

POLITICAL CRITERIA

I Democracy and the rule of law

Constitution

1. Please provide a brief description of the constitutional and institutional situation in Serbia. How is the constitutional system of check and balances between the three powers realised?

Constitution

At the Second Special Sitting of the National Assembly of the Republic of Serbia in 2006, held on 8 November 2006, the Decision on the Promulgation of the Constitution of the Republic of Serbia was taken, which was adopted by the National Assembly of the Republic of Serbia at the First Special Sitting of the National Assembly of the Republic of Serbia in 2006, held on 30 September 2006, and which was finally adopted at the state referendum conducted on 28 and 29 October 2006. The text of the Constitution was published in *Official Gazette of the Republic of Serbia*, No. 98/06 of 10 November 2006.

At the Second Special Sitting of the National Assembly of the Republic of Serbia in 2006, held on 10 November 2006, the Decision on the Promulgation of the Constitutional Law for the implementation of the Constitution of the Republic of Serbia was taken, which was adopted by the National Assembly of the Republic of Serbia at the Second Special Sitting of the National Assembly of the Republic of Serbia in 2006, held on 10 November 2006.

Fundamental principles of the Constitution involve provisions which define the Republic of Serbia as a state of Serbian people and all citizens who live in it, based on the rule of law and social justice, principles of civil democracy, human and minority rights and freedoms and commitment to European principles and values. Sovereignty is vested in citizens who exercise it through referendums, people's initiative or through their freely elected representatives, and they exercise their rights on the basis of constitutional principles of the rule of law, respect for human and minority rights, division of power, multi-party system and prohibition of the conflict of interest. The rule of law is the basic prerequisite for the Constitution and it resides in inalienable human rights.

The most important values of the constitutional order of the Republic of Serbia lie in the protection of human and minority rights and freedoms, gender equality and the guarantee of foreign nationals' status in accordance with international treaties and the highest level of international practice in this field.

Article 18 of the Constitution guarantees, and as such, directly implements human and minority rights, guaranteed by the generally accepted rules of international law, ratified international treaties and laws.

Provisions on human and minority rights are interpreted to the benefit of promoting values of a democratic society, pursuant to valid international standards in human and minority rights, as well as the practice of international institutions which supervise their implementation.

All are equal before the Constitution and law. Everyone has the right to equal legal protection, and any kind of discrimination, direct or indirect, based on any grounds, particularly on race, sex, national origin, social origin, birth, religion, political or other opinion, property status, culture, language, age, mental or physical disability are prohibited.

Everyone has the right to judicial protection when any of their human or minority rights guaranteed by the Constitution have been violated or denied, and they also have the right to elimination of consequences arising from the violation. The citizens have the right to address international institutions in order to protect their freedoms and rights guaranteed by the Constitution.

Legal order of the Republic of Serbia is unique.

The Constitution is the highest legal act of the Republic of Serbia. All laws and other general acts adopted in the Republic of Serbia have to be compliant with the Constitution. Ratified international treaties and the generally accepted rules of international law are a part of the legal order of the Republic of Serbia. Ratified international treaties must not contravene the Constitution. Laws and other general acts adopted in the Republic of Serbia must not contravene ratified international treaties and the generally accepted rules of international law.

Government system

Government system is based on the separation of powers into legislative, exercised by the National Assembly, executive, exercised by the President of the Republic and the Government and judicial power. Relation between the three branches of government is based on balance and mutual control.

Government system is basically a parliamentary system in which the Government arises from the parliamentary majority and it is politically accountable to the National Assembly, and the Government may propose dissolving of the National Assembly to the President of the Republic.

Government system of the Republic of Serbia also has an external characteristic of a mixed government system expressed through citizens' direct election of the President of the Republic.

National Assembly

The National Assembly in the current legislature was constituted on 11 June 2008.

The National Assembly of the Republic of Serbia is the supreme representative authority and holder of constitutional and legislative power in the Republic of Serbia.

The National Assembly is a unicameral parliament which consists of 250 Members of Parliament (hereinafter MPs), who are elected in direct elections by secret ballot, in accordance with the law. A mandate of an MP lasts for four years.

Pursuant to Article 99 of the Constitution, the National Assembly: adopts and amends the Constitution, decides on changes concerning borders of the Republic of Serbia, calls for the Republic referendum, ratifies international treaties when the obligation of their ratification is stipulated by the law, decides on war and peace and declares a state of war and a state of emergency, supervises the work of security services, adopts laws and other general acts within the competence of the Republic of Serbia, grants prior consent for the Statute of the autonomous province, adopts a defence strategy, adopts a development plan and a spatial plan, adopts the Budget and financial statement of the Republic of Serbia, upon the proposal of the Government, grants amnesty for criminal offences.

Within its election rights, the National Assembly: elects the Government, performs oversight over its work and decides on the expiry of the term of office of the Government and Ministers, appoints and dismisses judges of the Constitutional Court, appoints the President of the Supreme Court of Cassation, presidents of courts, the State Public Prosecutor, public prosecutors, judges and deputy public prosecutors, in accordance with the Constitution, appoints and dismisses the Governor of the National Bank of Serbia and supervises his/her work, appoints and dismisses the Protector of Citizens (hereinafter: Ombudsman) and supervise his/her work, appoints and dismisses other officials envisaged by the law and performs other functions stipulated by the Constitution and law.

Status, competence, organization and the mode of work and decision-making of the National Assembly are defined by the Law on the National Assembly (*Official Gazette of RS*, No. 9, of 26 February 2010).

In accordance with the Law on the National Assembly, the organization and work of the National Assembly and the manner in which the rights and duties of MPs are exercised are defined by the Rules of Procedure of the National Assembly (*Official Gazette of RS*, No. 52, of 28 July 2010).

President of the Republic

The president of the Republic of Serbia, Boris Tadić, was inaugurated on 15 February 2008.

Under Article 111 of the Constitution, the President of the Republic expresses the state unity of the Republic of Serbia.

Under Article 112 of the Constitution, the President of the Republic: represents the Republic of Serbia in the country and abroad, promulgates laws upon his/her decree, in accordance with the Constitution, proposes to the National Assembly the candidate for the Prime Minister, after considering views of representatives of elected election lists, proposes to the National Assembly holders of functions, in accordance with the Constitution and law, appoints and dismisses, upon his/her decree, ambassadors of the Republic of Serbia, upon the proposal of the Government, receives letters of credit and revocable letters of credit of foreign diplomatic

representatives, grants amnesties and awards honours and administers other affairs stipulated by the Constitution. In accordance with the law, the President of the Republic commands the Army and appoints, promotes and relieves officers of the Serbian Armed Forces of duties.

The President of the Republic is elected in direct elections, by secret ballot, in accordance with the law (Article 114 of the Constitution).

The term of office of the President of the Republic lasts for five years and begins on the date of taking of the oath of office before the National Assembly. No one may be elected to the position of the President of the Republic more than twice (Article 116 of the Constitution).

The manner in which the President of the Republic is elected is defined in more detail under the Law on the Election of the President of the Republic (*Official Gazette of RS*, No. 111/07 and 104/09 – other laws).

Under Article 24 of the Law on the President of the Republic (*Official Gazette of RS*, No. 111/07) the President enacts decrees, decisions, rules, directions, orders and other legal acts stipulated by the law.

Government

The Government of the Republic of Serbia was elected on 7 July 2008.

Under Article 122 of the Constitution, the Government of the Republic of Serbia is the holder of executive power in the Republic of Serbia.

Under Article 123 of the Constitution, the Government establishes and pursues policy, executes laws and other general acts of the National Assembly, adopts regulations and other general acts for the purpose of law execution, proposes to the National Assembly laws and other general acts and delivers its opinion on those laws and general acts, when another proposer proposes them, directs and adjusts the work of state authorities and performs supervision over their work and performs other tasks stipulated by the Constitution and law.

The Government accounts to the National Assembly for the policy of the Republic of Serbia, for enforcement of laws and other general acts of the National Assembly and for the work of state authorities (Article 124 of the Constitution).

The Government consists of the Prime Minister, one or more Deputy Prime Ministers and Ministers. The Prime Minister manages and directs the work of the Government, takes care of coordinated political activities of the Government, coordinates the work of members of the Government and represents the Government. Ministers account for their work and situation within the competence of their ministries to the Prime Minister, Government and National Assembly (Article 126 of the Constitution).

A candidate for the Prime Minister is proposed to the National Assembly by the President of the Republic, after he/she considers the opinions of representatives of elected election lists. A candidate for the Prime Minister presents to the National Assembly the Government's Programme and proposes its constitution. The National Assembly simultaneously votes on

the Government's Programme and election of the Prime Minister and members of the Government. The Government is deemed elected if the majority of the total number of MPs votes for it (Article 127 of the Constitution).

Under Article 6 of the Law on Government (*Official Gazette of RS*, No. 101/05, 71/05-corrigendum, 101/07 and 65/08), the Government supervises constitutionality and legality of general acts of autonomous provinces, municipalities, cities, the City of Belgrade, public undertakings, institutions and holders of public powers. The Government may suspend the enforcement of their general acts and individual acts based on them, by a decision which enters into force upon publication in *Official Gazette of the Republic of Serbia*, and which is repealed if the Government does not initiate the procedure for assessment of constitutionality and legality within 15 days.

According to the Law on Government, the system, manner of work and decision-making of the Government is defined in more detail by the Rules of Procedure of the Government (*Official Gazette of RS*, No. 61/06 – consolidated version, 69/08, 88/09 and 33/10).

Public Administration

Under Article 136 of the Constitution, the public administration is independent, bound by the Constitution and law and it accounts for its work to the Government.

The manner in which state authorities function is defined under the Law on Public Administration (*Official Gazette of RS*, No. 79/05 and 101/07).

Public Administration tasks are performed by Ministries and other state authorities stipulated by the law.

Ministries and special organisations are established and their competences are defined according to the Law on Ministries (*Official Gazette of RS*, No. 65/08).

In the interest of more efficient and rational exercise of citizens' rights and obligations and satisfying their needs of vital importance for life and work, the law may stipulate delegation of particular duties within the competence of the Republic of Serbia to the autonomous province and a local self-government unit.

According to the law, particular public powers may be delegated to enterprises, institutions, organizations and individuals. According to the law, public powers may also be delegated to special authorities through which regulatory function in particular fields or activities may be performed. The Republic of Serbia, autonomous provinces and local self-government units may establish public services. Activities and tasks for which public services are established, their organisation and work are stipulated by the law.

Under Article 8 of the Law on Government, the Government supervises the work of state authorities, directs these authorities with regard to policy implementation and enforcement of laws and other general acts and coordinates their work.

Ombudsman

The Ombudsman is an independent public authority who protects citizens' rights and monitors the work of state authorities, the authority in charge of the legal protection of proprietary rights and interests of the Republic of Serbia, as well as other authorities and organizations, companies and institutions to which public powers have been delegated.

The Ombudsman is not authorized to control the work of the National Assembly, President of the Republic, Government, Constitutional Court, courts and Public Prosecutors' Offices.

The Ombudsman is elected and dismissed by the National Assembly, in accordance with the Constitution and law. The Ombudsman accounts for his/her work to the National Assembly. The Ombudsman enjoys immunity as a Member of Parliament. The National Assembly decides on the immunity of the Ombudsman (Article 138 of the Constitution).

The work of the Ombudsman is defined in more detail under the Law on the Protector of Citizens (*Official Gazette of RS*, No. 79/05 and 54/07).

The National Assembly elected Saša Janković for the position of the Ombudsman on 29 June 2007, and he took an oath of office before the National Assembly on 23 July 2007.

National Bank of Serbia

The National Bank of Serbia is the central bank of the Republic of Serbia, it is independent and subject to the oversight of the National Assembly to which it accounts for its work.

The National Bank of Serbia is managed by the Governor, elected by the National Assembly (Article 95 of the Constitution).

The work of the National Bank of Serbia is defined in more detail under the Law on the National Bank of Serbia (*Official Gazette of RS*, No. 72/03 and 55/04, 85/05-other law and 44/10).

At the sitting held on 28 July 2010, the National Assembly elected Dejan Šoškić for the position of the Governor of the National Bank and Boško Živković for the President of the Council of the Governor of the National Bank of Serbia.

State Audit Institution

The State Audit Institution is the supreme public authority for auditing public finances in the Republic of Serbia, independent and subject to supervision by the National Assembly to which it accounts for its work (Article 96 of the Constitution).

The work of the State Audit Institution is defined in more detail under the Law on the State Audit Institution (*Official Gazette of RS*, No. 101/05 and 54/07 and 36/10).

Decision on the election of the Council of the State Audit Institution was adopted on 24 September 2007. Radoslav Sretenović was elected the President of the Council.

Serbian Armed Forces

The Serbian Armed Forces defend the country from external armed threat and perform other missions and tasks, in accordance with the Constitution, law and principles of international law, which regulate the use of force (Article 139 of the Constitution).

The Serbian Armed Forces may be used outside the borders of the Republic of Serbia only upon the decision of the National Assembly of the Republic of Serbia (Article 140 of the Constitution).

The Serbian Armed Forces are subject to democratic and civilian control (Article 141 of the Constitution).

The Law on the Serbian Armed Forces has been adopted (*Official Gazette of RS*, No. 116/07 and 88/09).

Courts

Under Article 142 of the Constitution, judiciary power is unique on the territory of the Republic of Serbia.

Courts are autonomous and independent in their work and they perform their duties in accordance with the Constitution, law and other general acts, when stipulated by the law, generally accepted rules of international law and ratified international treaties.

Election, permanent tenure, independence, competence, termination of tenure of office and immunity of judges are regulated by the Constitution, Law on Judges (*Official Gazette of RS*, No. 116/08, 58/09 – decision of the Constitutional Court and 104/09), Law on Organisation of Courts (*Official Gazette of RS*, No. 116/08 and 104/09), Law on the Seats and Territorial Jurisdiction of Courts and Public Prosecutor's Offices (*Official Gazette of RS*, No. 116/08) and Law on High Judicial Council (*Official Gazette of RS*, No. 116/08).

Courts of general jurisdiction are basic courts (34), higher courts (26), appellate courts (4) and the Supreme Court of Cassation.

Courts of special jurisdiction are commercial courts (16), the Commercial Appellate Court, misdemeanour courts (45), the Higher Misdemeanour Court and the Administrative Court.

A judge has a permanent tenure. In performing his/her judicial function, a judge is independent and accountable only to the Constitution and law. Any influence on a judge while performing his/her judicial function is prohibited. Political activities of judges are prohibited.

High Judicial Council

Under Article 153 of the Constitution, High Judicial Council is an independent and autonomous authority which guarantees and provides for independence and autonomy of courts and judges.

High Judicial Council consists of 11 members, out of which the President of the Supreme Court of Cassation, the Minister responsible for Justice and the Chairperson of the competent committee of the National Assembly are members ex officio, and eight members are elected by the National Assembly.

Under Article 154 of the Constitution, High Judicial Council appoints and relieves judges of duties, in accordance with the Constitution and law, proposes judges to the National Assembly in the first election to the function of a judge, proposes to the National Assembly the election of the President of the Supreme Court of Cassation as well as presidents of courts, in accordance with the Constitution and law, participates in the proceedings of terminating the tenure of office of the President of the Supreme Court of Cassation and presidents of courts, in the manner stipulated by the Constitution and law, and performs other duties stipulated by the law.

High Judicial Council was constituted on 6 April 2009. The President of High Judicial Council is Nata Mesarović, who is also the President of the Supreme Court of Cassation.

Public Prosecutor's Office

Public Prosecutor's Office is an independent public authority which prosecutes the perpetrators of criminal offences and other punishable actions, and takes measures in order to protect constitutionality and legality. Public Prosecutor's Office performs its function on the basis of the Constitution, law, ratified international treaty and regulation adopted on the basis of law.

Upon the proposal of the Government, the State Public Prosecutor is elected by the National Assembly, upon obtaining the opinion of the competent committee of the National Assembly. The State Public Prosecutor is elected for the period of six years and may be re-elected (Article 156 of the Constitution).

Constitutional Court

Under Article 166 of the Constitution, the Constitutional Court is an independent and autonomous public authority which protects constitutionality and legality, as well as human and minority rights and freedoms.

Decisions of the Constitutional Court are final, enforceable and generally binding. Status, competence, appointment, term of office and immunity are regulated by the Constitution and the Law on the Constitutional Court (*Official Gazette of RS*, No. 109/07).

Constitutional Court decides on the compliance of laws and other general acts with the Constitution, generally accepted rules of the international law and ratified international treaties, compliance of ratified international treaties with the Constitution, compliance of other general acts with the law, compliance of statutes and general acts of autonomous provinces and local self-government units with the Constitution and law, compliance of general acts of

organisations with delegated public powers, political parties, trade unions, civic organizations and collective agreements with the Constitution and law.

The Constitutional Court decides on the conflict of jurisdictions between courts and other public authorities, decides on the conflict of jurisdiction between republic and provincial authorities or authorities of local self-government units, decides on the conflict of jurisdiction between provincial authorities and authorities of local self-government units, decides on the conflict of jurisdiction between authorities of different autonomous provinces or different local self-government units, decides on the electoral disputes for which the court jurisdiction has not been specified by the law, decides on the banning of a political party, trade union organisation or civic organization.

The Constitutional Court consists of 15 judges who are elected and appointed for the period of nine years. Five judges of the Constitutional Court are elected by the National Assembly, five are appointed by the President of the State, and five are elected at the general session of the Supreme Court of Cassation of Serbia.

Provincial Autonomy and Local Self-Government

Citizens have the right to provincial autonomy and local self-government, which they exercise directly or through their freely elected representatives (Article 176 of the Constitution).

Local self-government units are competent in those matters which may be realized, in an effective way, within a local self-government unit, and autonomous provinces in those matters which may be realized, in an effective way, within an autonomous province, which are not within the competence of the Republic of Serbia. Which matters are of state, provincial or local interest is specified by the law (Article 177 of the Constitution).

The Law on Local Self-Government (*Official Gazette of RS*, No. 129/07) defines the criteria for their establishment, competences, authorities, supervision of their acts and work, protection of a local self-government and other matters of interest for the exercise of rights and obligations of a local self-government unit.

On 30 November 2009, the National Assembly adopted the Law on Establishing Competences of the Autonomous Province of Vojvodina and the Decision on Granting Prior Approval to the Proposal of the Statute of the Autonomous Province of Vojvodina (*Official Gazette of RS*, No. 99/09).

The Constitution stipulates that autonomous provinces have their assets and manage them in the manner stipulated by the law. It also provides that autonomous provinces have direct revenues. This matter, as well as the matter of local self-government assets, is yet to be regulated by the law.

Local self-government units are municipalities (150), cities (23) and the City of Belgrade.

Municipalities and cities are established according to the Law on Territorial Organisation of the Republic of Serbia (*Official Gazette of RS*, No. 129/07).

Status, competence and authorities of the City of Belgrade are defined by the Law on the Capital (*Official Gazette of RS*, No. 129/07).

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The system of government is based on the separation of power into legislative, executive and judicial. Relation between the three branches of government is based on balance and mutual control.

Judicial power is independent (Article 4 of the Constitution).

The meaning of this provision lies in the fact that balance and mutual control are completely implemented in relation between legislative and executive power, whereas judicial power is autonomous in its work in relation to the other two and it is bound only by the Constitution and law.

Within the relation between three branches of government, there is a high level of mutual control and balance between legislative and executive powers, as defined by the Constitution, Law on the National Assembly, Law on the President of the Republic, Law on the Government and other regulations.

In what manner does the National Assembly control the executive power?

Elections for the President of the Republic are called by the Speaker of the National Assembly (Article 114 of the Constitution).

The President of the Republic is dismissed for the violation of the Constitution upon the decision of the National Assembly, by the votes of at least two thirds of MPs.

Procedure for the dismissal may be initiated by the National Assembly, upon the proposal of at least one third of MPs, if they believe that he/she has violated the Constitution, and the dismissal procedure are initiated by a majority of vote of the total number of MPs (Article 118(1) and (2) of the Constitution).

The National Assembly may request information from the President of the Republic on the matters within his/her purview relevant for the realisation of competences of the National Assembly (Article 55 of the Law on the National Assembly).

The National Assembly elects the Government, carries out oversight over its work and decides on the expiry of the term of office of the Government and Ministers (Article 99 Paragraph 2(1) of the Constitution).

The National Assembly adopts the Budget and financial statement of the Republic of Serbia, upon the proposal of the Government (Article 99 Paragraph 1(11) of the Constitution).

The Government accounts to the National Assembly for the policy of the Republic of Serbia, for enforcement of laws and other general acts of the National Assembly (Article 124 of the Constitution).

The National Assembly controls the work of the Government or a member of the Government by posing an Parliamentary questions, submitting interpellation, deciding on no confidence in the Government or an individual member of the Government, and by establishing the Inquiry Committee.

The Government submits a work report to the National Assembly, upon the request of the National Assembly at least once a year (Article 56 of the Law on the National Assembly).

Relation between the President of the Republic and the National Assembly

The President of the Republic promulgates laws according to the Constitution.

The President of the Republic may return a law to the National Assembly for a repeated vote, with the accompanying written rationale (Article 113(1) of the Constitution).

The President of the Republic may not return a law to the National Assembly for a repeated voted, if the citizens have expressed their opinion on it in a referendum prior to its adoption, and he/she may not return the law confirmed by the citizens in a referendum.

The President of the Republic may request information from the National Assembly on matters within his/her competence which are relevant for performing the function of the President of the Republic.

The President of the Republic may dissolve the National Assembly upon a reasoned proposal of the Government. The President of the Republic is obliged to dissolve the National Assembly in the cases specified by the Constitution.

The President of the Republic proposes a candidate for the Prime Minister to the National Assembly whenever a new government is being elected. The President of the Republic is obliged to propose to the National Assembly the candidate for the Prime Minister who is able to ensure the Government election.

Relation between the Government and the National Assembly

The Government proposes to the National Assembly Bills and other general acts and deliver its opinion on them when submitted by another proposer (Article 123(4) of the Constitution).

In power separation and defining the relation between legislative and executive power, the Government has the power to enact regulations and other general acts for the purpose of execution of laws.

The Government executes laws and other general acts of the National Assembly.

The Government representatives participate in the work of the National Assembly in the process of adoption of laws and other general acts proposed by the Government. In the

process of adoption of laws and other general acts which have not been proposed by the Government, they are obliged to participate upon the request of the National Assembly.

The relation between the courts and other branches of government

The National Assembly prescribes, through laws, the competence, organisation and the manner of work of courts, whereas the election and termination of the term of office of judges is defined by the Constitution and law.

The National Assembly elects the President of the Supreme Court of Cassation, presidents of courts, the State Public Prosecutor and public prosecutors and decides on the termination of their term of office (Article 105 Paragraph 2(13) of the Constitution).

Judicial power, as non-political, expert and professional power, enjoys full independence in performing its functions, in relation to the other two branches of government.

2. How is the implementation of the Constitution coordinated? Which are the bodies involved and which are their respective competences in relation to the implementation of the Constitution? Are there any weaknesses of the Constitution identified and are there any plans to amend the Constitution? Please explain.

The Constitutional Law for implementing the Constitution establishes the procedure of amending the Constitution, in addition to establishing time-limits for elections, that is harmonisation of the Law with the Constitution. The decision on promulgation of the Constitutional Law for implementation of the Constitution of the Republic of Serbia was adopted by the National Assembly, on a special sitting on 10th November 2006, and it represents an integral part of the Constitution.

The Constitutional Law envisages: Election for members of Parliament, President of the Republic, council and committee members; harmonisation of the laws relating to the Protector of Citizens (hereinafter: Ombudsman) with the Constitution, the right of citizens to access information, establishing the Governor of the National Bank of Serbia and bodies of State Audit Institution, as well as the elections of these bodies; adoption of laws establishing the organisation and jurisdiction of courts, election and termination of term of office of court presidents and judges, the High Judicial Council, organisation and jurisdiction of Public Prosecutors' offices, the election and termination of term of office of public prosecutors and deputy public prosecutors and the State Prosecutorial Council; election of judges, court presidents, public prosecutors and deputy public prosecutors; the election, i.e. the appointment of Constitutional Court judges, as well as adoption of the Law on Organisation of the Constitutional Court, proceedings before the Constitutional Court and legal effects of its decisions; adoption of the Statute of AP of Vojvodina; harmonisation of the remaining state regulations with the provisions of the Constitution, harmonisation of the positions of holders of public functions with the provisions of the Constitution stipulating incompatibility of functions.

The elections for MPs in the National Assembly were held on 21st January 2007, elections for the President of the Republic were held on 20th January 2008, and elections for MPs in the Assembly of AP of Vojvodina and elections for local self-government councillors were held on 11th May 2008.

The Law Amending the Law on the Ombudsman has been adopted, as well as the Law Amending the Law on Free Access to Information of Public Importance and the Law Amending the Law of State Audit Institution. By these amendments the mentioned laws have been harmonised with the Constitution of the Republic of Serbia.

The Decisions on the Election of the Ombudsman and Commissioner for the Information of Public Importance were adopted on 29th June 2007. Decision on the Election of State Audit Institution Council was adopted on 24th September 2007, and the Decision on Election of the Governor of the National Bank was adopted on 26th September 2007.

The Law on Judges, the Law on Organisation of Courts, the Law on the High Judicial Council, the Law on Public Prosecution, the Law on State Prosecutorial Council and the Law on Seats and Territories of Courts and Public Prosecutor's Offices have been adopted, and thus the area of organisation and work of the judiciary has been harmonised with the Constitution.

The President of Supreme Court of Cassation and the State Public Prosecutor were elected on 30th November 2009. Public prosecutors were also elected on 30th November 2009. Acting Presidents of Courts were elected in December 2009, and the High Judicial Council was given a time-limit to propose candidates for Presidents of Courts to the National Assembly.

The Law on the Constitutional Court was adopted on 24th November 2007, and the Constitutional Court was constituted according to the Law following the adoption.

Law on Establishing Competences of the Autonomous Province of Vojvodina and the Decision of the National Assembly on Granting Prior Consent to the Proposal of the Statute of Autonomous Province of Vojvodina were adopted on 30th November 2009. The Assembly of the Autonomous Province of Vojvodina adopted the Statute of the Autonomous Province of Vojvodina on 14th December 2009.

Since the adoption of the Constitution on 8th November 2006, 593 laws have been adopted, so that the issues regulated by these laws have been harmonized with the Constitution.

The rules in relation to prevention of conflict of interest in performing public functions and incompatibility of functions, pursuant to Article 6 of the Constitution, are stipulated by the Law on Anti-Corruption Agency, which was the basis for the commencing of work of the Agency on 1st January 2010, as stipulated by the Law.

Coordination of the implementation of the Constitution is performed by National Assembly in cooperation with other competent state institutions which report to the National Assembly on the situation in the area of their competences and propose

acts, measures and other activities in order to fully implement the Constitution. Pursuant to its constitutional competences, the National Assembly, i.e. its working bodies, consider the principle issues of implementation of the Constitution, reports of the Constitutional Court on the situation and problems related to the realisation of constitutionality and legality, consider opinions and recommendations of the Constitutional Court on the necessity of adopting and amending laws, and monitor the establishment of the legal system.

Political and competent public, with the significant interest of the media, have raised the issue of incompleteness and shortcomings of the Constitution. However, there are **no proposals for amending the Constitution** pursuant to Article 203 in the moment of answering to this question. Pursuant to this Article, the proposal for amending the Constitution could be submitted by at least one third of total number of MPs, the President of the Republic, the Government and at least 150 000 voters.

3. Do you have a Constitutional Court? What is its legal basis, how are its members appointed and how do you guarantee its independence and respect for its decisions? Who has the right to seize the Constitutional Court and how is the scope of its competences regulated in relation to other courts? Please provide recent examples of rulings by the Constitutional Court.

The Constitutional Court of the Republic of Serbia was established by the Constitution of the Socialist Republic of Serbia of 1963 ("Official Gazette of the Socialist Republic of Serbia", No.14/63). Its first session took place on 15 February 1964. It has operated constantly for 47 years so far.

Constitutional Court in this composition was constituted based on the Constitution of the Republic of Serbia of 2006 ("Official Gazette of RS, No. 98 of 10 November 2006, hereinafter: Constitution of the RS).

The first session of the Constitutional Court in this composition took place on 10 January 2008, whereas the Court started processing cases on the fourth regular session on 1 April 2008.

The manner of election/appointment of the Constitutional Court judges

Constitutional Court has 15 judges. Under Constitution of 2006, a mixed system relating to the appointment of judges of Constitutional Court was established implying the combination of election and appointment of judges, including the participation and impact of all the three branches of government-legislative, executive and judicial. Five judges are appointed by the National Assembly amongst 10 candidates proposed by the President of the Republic, 5 judges are appointed by the President of the Republic amongst 10 candidates proposed by the National Assembly, and five judges are appointed by the Supreme Court of Cassation amongst 10 candidates proposed at a general session by the High Judicial Council and the State Prosecutor Council. Under Article 172(4) of the Constitution of the RS, on each of the proposed list of candidates one of the appointed candidates has to come from the territory of autonomous provinces.

Under Article 172(5), a judge of the Constitutional Court is appointed or elected from among the prominent lawyers, being at least 40 years old and having 15 years of experience in practising the law.

The President who is elected by the judges of the Constitutional Court from among them for a period of three years presents and governs the activities of the Court (Article 172(7) of the Constitution of the RS), with a possibility of reelection (Article 23 of the Law on the Constitutional Court, published in the “Official Gazette of the RS, No. 109 of 28 November 2007).

Independence of the Constitutional Court

The independence of the Constitutional Court may be discussed in two ways: a) independence of the Constitutional Court as a constitutional institution and b) independence of the members of the Constitutional Court, i.e. its judges. In both cases, the most significant source of the right guaranteeing the independence is the Constitution of the RS, even though some of the guarantees of independence are defined in the Law on Constitutional Court and the Rules of Procedure of the Constitutional Court (Official Gazette of the RS, No. 24 of 7 March 2008, corrigendum in the “Official Gazette of the RS”, No. 27 of 17 March 2008).

Under Article 166 of the Constitution of the RS relating to the status of the Constitutional Court “it is an autonomous and independent state authority which protects constitutionality and legality, as well as human and minority rights and freedoms.” Autonomy and independence of the Constitutional Court with regard to the legislative, executive and judicial branches of government is reflected in the fact that the Court formally and legally is not a part of any of them. The fact that the Constitutional Court does not have the authorities the state authorities of the stated branches of government have, but the specific jurisdictions defined by the Law contributes to the above-stated.

Constitutional Court realizes its constitutional functions by performing its competencies which are defined by the Constitution. Its functional independence is reflected in the fact that the jurisdiction of the Court is defined by the Constitution (except for the jurisdiction relating to the constitutional appeal proceedings due to the trial within a reasonable time, which is defined by the Law on Constitutional Court). Functional autonomy of the Constitutional Court is reflected in its exclusive constitutional role to assess general legal acts of the Republic of Serbia, as an independent state authority protecting the Constitution. Other state authorities do not have the stated jurisdiction.

Another constitutional guarantee of functional independence and autonomy of the Constitutional Court is defined explicitly by Article 166 of the Constitution, defining the character and effects of the decisions taken by the Constitutional Court: Constitutional Court decisions are final, enforceable and legally binding. There is no legal remedy against them in the legal order.

Independence of the Constitutional Court may be discussed with regard to its organizational independence and autonomy, which is, inter alia, reflected in the fact that the Court itself regulates internal rules relating to its work by adopting the Rules of Procedure of the Constitutional Court. In addition to this, the Court independently

disposes of the funds from the budget of the Republic of Serbia having been allocated to it. However, its complete financial independence cannot be discussed in practice, due to the fact that the Court cannot have influence on the amount and the allocation of funds defined in the budget for its needs.

The guarantees of the independence and impartiality of the judges of the Constitutional Court are the following: the length of term of office, immunity of judges, incompatibility of the function of the judge with other functions and activities and prohibition of the membership in the political parties.

Under Article 172(1)(6) of the Constitution of the RS, the judge of the Constitutional Court is elected or appointed for a period of nine years, with a possibility to be re-elected once again. The term of office amounting to nine years, that is prospective 18 years altogether, provides in itself the safety of the position of the Constitutional Court judge. This constitutional guarantee decreases the possibility of influences and pressures exerted on judges.

Under Article 173(2) of the Constitution, Constitutional Court judges enjoy immunity as Members of Parliament, from the date of assuming the office to the day the judgeship is terminated. Under Article 3 of the Rules of Procedure of the Constitutional Court, the Constitutional Court judge: a) cannot be held criminally or otherwise liable for expressing the opinion or voting in performing his/her judicial function. b) cannot be detained or criminal or any other proceedings that may result in an imprisonment sentence, cannot be conducted against him/her, without the approval granted by the Constitutional Court unless the judge has been caught in the very act of committing a crime, punishable by an imprisonment sentence for a term over five years. Constitutional Court takes decision on the immunity of judges.

Under Article 173 of the Constitution of the RS a judge of the Constitutional Court may not engage in another public or professional function or job, except for the professorship at a Faculty of Law in the Republic of Serbia (professorship implies giving lectures at the Faculty as a full professor or associated professor). The said constitutional order enables a complete dedication of judges of the Constitutional Court to the performing of their constitutional court duties, i.e. excludes the possibility of the conflict of interests and other factors that may have influence on the performing their duties of a judge.

Under Article 55(5) of the Constitution the judges of the Constitutional Court may not be the members of political parties. Under Article 15(1) of the Law on Constitutional Court, a Constitutional Court judge may be dismissed, if he/she becomes a member of a political party. In accordance with the Constitution, non-membership in a political party, i.e. not performing any political activities present the condition for impartial decision making, i.e. the performing duties of a Constitutional Court judge.

Observance of the decisions taken by the Constitutional Court

The basic constitutional provisions on the status of the Constitutional Court (Article 166(2) of the Constitution of the RS) define that the decisions of the Court are final, enforceable and legally binding. Legal and factual effects of decisions taken by the

Court are defined under Article 171 of the Constitution, according to which everyone is obliged to observe and enforce the Constitutional Court's decision.

Following the constitutional determination that enforcement of decisions should be regulated in details by the Law on Constitutional Court, that Law under Article 104(1) introduces an obligation for the state and other authorities, organizations with delegated public powers, political parties, trade union organizations, citizens' associations or religious communities, to observe and enforce decisions and rulings of the Constitutional Court.

Jurisdiction of Constitutional Court

The jurisdiction of Constitutional Court is the subject-matter of the constitutional order. The Constitutional Court exercises its function by performing the following jurisdictions:

1. In the domain of normative control, the decisions are taken on the constitutionality and legality of general legal acts in the legal order of the Republic of Serbia (Article 167(1)(1-5) of the Constitution of the RS), i.e. the Court decides on:
 - compliance of laws and other general acts with the Constitution, generally accepted rules of the international law and ratified international treaties,
 - compliance of ratified international treaties with the Constitution,
 - compliance of other general acts with the Law,
 - compliance of the Statute and general acts of autonomous provinces and local self-government units with the Constitution and the Law,
 - compliance of general acts of organizations with delegated public powers, political parties, trade unions, civil associations and collective agreements with the Constitution and the Law.

Under Constitution of the RS of 2006, the constitutional system of the Republic of Serbia obtained a mixed system of assessing the constitutionality of the Law, which can be subsequent (*a posteriori*, repressive) or preliminary (*a priori*, preventive). Subsequent normative control of the constitutionality of the Law is performed with regard to adopted and promulgated laws. This type of normative control is dominant in the practice of the Constitutional Court.

As for the preliminary normative control, the assessment of constitutionality of the text of the law adopted by the majority in the Parliament but still not promulgated by the President of the Republic is performed. The purpose of this type of normative control is that the law which is not in line with the Constitution, generally accepted rules of international law and ratified international treaties, even though it is adopted by the Parliament, does not come into force. The Constitutional Court is obliged within seven days to assess constitutionality of the law. (Article 169(1) of the Constitution of the RS).

Except for their compliance with the Constitution, the assessment of laws is analogously performed with regard to generally accepted rules of the international law and ratified international treaties.

Normative control *a priori* may be exceptionally performed with regard to the decisions taken by the autonomous province, at the proposal of the Government (Article 186 of the Constitution of the RS).

2. It decides on the conflict of jurisdictions (Article 167(2) of the Constitution of the RS) between:

- courts and other state authorities;
- republic and provincial bodies or bodies of local self-government units;
- provincial bodies and bodies of local self-government units;
- bodies of different autonomous provinces or different local self-government units.

3. It decides on the banning of a political party, trade union organisation or civil association whose activities are aimed at violent overthrow of Constitutional order, violation of guaranteed human or minority rights, inciting racial, national or religious hatred. (Article 167(3) of the Constitution of the RS).

4. It may ban a religious community only if its activities infringe the right to life, right to mental and physical health, the rights of child, right to personal and family integrity, right to property, public safety and order, or if it incites religious, national or racial intolerance. (Article 44(3) of the Constitution of the RS).

5. It decides on the violation of the Constitution by the President of the Republic (Article 118(3) of the Constitution of the RS).

6. It decides on electoral disputes for which the court jurisdiction has not been specified by the Law (Article 167(2)(5) of the Constitution of the RS).

7. It acts as a “Court of Appeals” in the following cases:

- a. exercising a direct protection of human and minority rights and freedoms in the constitutional appeal proceedings. A constitutional appeal may be lodged “against individual general acts or actions performed by state bodies or organisations with delegated public powers which violate or deny human or minority rights and freedoms guaranteed by the Constitution, if other legal remedies for their protection have already been applied or not specified.” (Article 170 of the Constitution of the RS). Constitutional appeal may also be lodged even if all legal remedies have not been exhausted, in cases where the applicant’s right to a trial within a reasonable time was violated (based on Article 82(2) of the Law on Constitutional Court. It is the only jurisdiction of the Court performed in accordance with the Law and not with the Constitution);
- b. an appeal may be lodged before the Constitutional Court against the decision rendered in relation to the confirmation of terms of office of Members of Parliament (Article 101(5) of the Constitution), deciding on it within 72 hours;
- c. in the appeal proceedings against a decision on the termination of judge’s tenure of office (Article 148(2) of the Constitution of the RS);
- d. in the appeal proceedings against a decision on the termination of term of office of a Public Prosecutor or a Deputy Public Prosecutor (Article 161(4) of the Constitution of the RS);
- e. in the appeal proceedings against a decision of the High Judicial Council (Article 155 of the Constitution of the RS);
- f. in order to protect autonomous province, i.e. in the appeal proceedings of a body designated by the Statute of the autonomous province against an individual legal act or action of a state body or body of local self-government unit obstructing

performing the competences of the autonomous province. (Article 187(1) of the Constitution of the RS) and

g. in order to protect local self-government, i.e. in the appeal proceedings of a body designated by the Statute of the municipality against an individual legal act or action of a state body or body of local self-government unit obstructing performing the competences of the municipality. (Article 193(1) of the Constitution of the RS).

It can be concluded from the above stated that the jurisdiction of the Constitutional Court is not comparable by its character with the jurisdictions of courts having regular and special jurisdictions.

Constitutional Court can examine individual acts or actions of all courts in the Republic of Serbia, not acting as an instance court, but deciding solely on the violation and denying of human or minority rights or freedoms by the court, in the constitutional appeal proceedings. During the proceedings, Constitutional Court may even annul a disputed ruling, or a decision rendered by a court (inclusive of the decisions issued by the Supreme Court of Cassation) if detrimental consequences for a petitioner of a constitutional appeal could not have been eliminated by other means (see Chapter Political Criteria of the Questionnaire, answer to question 5).

Instituting proceedings before the Constitutional Court

The proceedings before the Constitutional Court are instituted by a proposal, request, constitutional appeal or another appeal, i.e. another petition. Initiative for the instituting of the proceedings may be filed as well. Under Article 10 of the Constitution of the RS, proceedings before the Constitutional Court are conducted in Serbian language using the Cyrillic alphabet. The official usage of other languages and alphabets is allowed, in accordance with the Law regulating the usage of those languages and alphabets.

There are different authorized petitioners, i.e. initiators of certain proceedings before the Constitutional Court so that the peculiarities of the proceedings in that respect are the following:

1. Proceedings of subsequent (*a posteriori*) assessment of constitutionality or the legality of a general act are instituted:

- by a proposal submitted by an *authorized petitioner*: state authorities, territorial autonomy bodies or local self-governments bodies, or at least 25 Members of Parliament (Article 168(1) of the Constitution of the RS);
- by a decision rendered by the Constitutional Court owing to an initiative to institute the proceedings, which may be filed by a legal entity or an individual (Article 168(2) of the Constitution of the RS);
- by a decision rendered by the Court, when the Constitutional Court itself institutes the proceedings (Article 168(1) of the Constitution of the RS). The decision is taken on the basis of a two-thirds majority of the votes of all its judges. (Article 50(2) of the Law on Constitutional Court).

The proceedings are deemed initiated on the date of the submission of the proposal of an authorized petitioner, i.e. on the date of the issuance of a decision of the Court on the instituting of the proceedings.

An authorized petitioner for the instituting of the proceedings of preliminary (*a priori*) normative control has to be at least a third of the total number of Members of Parliament. The proceedings are deemed instituted on the date of the submission of requests of the Members of Parliament to the Court.

2. The proceedings for resolving conflicts of jurisdiction are instituted at the request of one or both of the conflicted authorities, as well as the person in connection with whose right the conflict of jurisdiction arose. (Article 68 of the Law on Constitutional Court). The proceedings are deemed initiated on the date of the submission of request to the Court.

3. The proceedings relating to rendering decisions on the prohibition of the activity of political parties, trade union organizations, civil associations or religious communities are initiated based on the proposal of the Government, the Public Prosecutor's Office or authority in charge of the registration of political parties, trade union organizations, civil associations or religious communities (Article 80(1) of the Law on Constitutional Court). The proceedings are deemed initiated on the date of the submission of a proposal to the Court.

4. The proceedings of deciding on a violation of the Constitution by the President of the Republic are initiated by the National Assembly, at the proposal of one third of the total number of Members of Parliament. (Article 93(1) of the Law on Constitutional Court).

5. The proceedings relating to the deciding on electoral dispute for which the jurisdiction of courts has not been defined are initiated by the request submitted by a voter, candidate for the President of the Republic, i.e. Member of Parliament or Municipal Council Member, as well as those who nominate candidates. Appeals against decisions rendered with regard to the confirmation of mandates of Members of Parliament may be filed by a candidate for a Member of Parliament and those who have proposed the candidate.

6. Constitutional appeal proceedings are initiated on the date of the submission of the constitutional appeal to the Court. Every legal entity or an individual, foreign or domestic has the right to this legal remedy in case he/she is the titular of human and minority rights and freedoms guaranteed by the Constitution. In addition to this, another individual, state or other authority competent for monitoring or realization of human and minority rights and freedoms, based on a special written authorization, may lodge a constitutional appeal on behalf of the person who considers that he/she has been deprived of a right or freedom guaranteed by the Constitution.

7. Appeal proceedings against a decision on the termination of the term of office of judges, public prosecutors and public prosecutor deputies are instituted on the date of the lodging of an appeal to the Constitutional Court, as well as the appeal proceedings against a decision of a High Judicial Council.

8. Appeal proceedings against an individual act or an action of a state authority or a body of local self-government unit obstructing performing the competences of the autonomous province are instituted on the date of the lodging of an appeal of an authority defined by the statute of an autonomous province. Appeal proceedings against an individual act or an action of a state authority or a body of local self-government unit obstructing performing the competences of the municipality are instituted on the date of the lodging of an appeal of an authority defined by the statute of the municipality.

Examples of decisions rendered by the Constitutional Court of Serbia

Due to the fact that replying to question 4 of the same Chapter of the Questionnaire the examples from the practise of the Constitutional Court have been provided relating to the execution of normative control, we are providing the examples of the practise of the Court relating to the constitutional appeal proceedings in this review.

1. Decision CA-122/2009 of 21 January 2010

Acting on the constitutional appeal of V.S., filed due to the violation of the right to trial within a reasonable period guaranteed under Article 32(1) of the Constitution of the Republic of Serbia and the violation of the right to property guaranteed by Article 58(1) of the Constitution, during an enforcement procedure conducted before the relevant municipal court in Belgrade, the Constitutional Court issued a decision according to which: 1. it adopted a constitutional appeal 2. it confirmed the right of the petitioner of constitutional appeal to the compensation of non-pecuniary damage and 3. it ordered relevant state authorities and organizations to undertake measures within their competence to complete the enforcement procedure as soon as possible.

Under the Constitution of the RS whose violation is indicated: everyone has the right to a public hearing before an independent and impartial court established by the law which renders decisions on their rights and obligations, grounds for suspicion resulting in initiated procedure and accusations brought against them within reasonable time and fairly (Article 32(1) of the Constitution); peaceful enjoyment of property and other property rights acquired by the law are guaranteed (Article 58(1)).

When assessing the statements from the constitutional appeal relating to the violation of Article 32(1) of the Constitution of Serbia, the Court concluded that:

- the enforcement of ruling is deemed an integral part of the “trial” within the meaning of Article 32(1) of the Constitution of the RS, i.e. it is a part of a court proceedings;
- the enforcement procedure following the proposal of the petitioner of a constitutional appeal commenced on 21 November 2005 and it was not completed at the time of the lodging of a constitutional appeal, i.e. the enforcement was not executed;
- even though under the Constitution of 8 November 2006 a constitutional appeal was established and the right to trial within reasonable period guaranteed, when estimating the period to be taken into account when deciding on the request of a petitioner of the constitutional appeal, i.e. when defining a reasonable period for enforcement procedure in this case, one has to bear in mind the whole period starting with the submission of the enforcement proposal to the competent municipal

court on 21 November 2005 to date, due to the fact that the procedure has not been completed yet;

- the proceedings on the basis of which the courts execute enforcement based on executive or authentic document is urgent in accordance with the law, and the court is obliged to act not solely observing the deadlines defined by law, but also in accordance with the rule of urgency. In this case the enforcement procedure is extremely important for the petitioner of the constitutional appeal, due to the fact that the issue is execution of final decision relating to the unpaid salaries of the petitioner of the constitutional appeal based on work, i.e. employment with the employer, for a period exceeding a year, presenting the basis for the petitioner's subsistence;
- the court has not taken all actions defined by the law aimed at the urgent completion of the procedure;
- the actions of other state authorities, National Bank of Serbia and Privatization Agency have had influence on the duration of enforcement procedure;
- the petitioner of constitutional appeal did his best to accelerate execution procedure by addressing the Court and the National Bank of Serbia in writing on several occasions to conduct the enforcement.

Owing to the above stated reasons, the Court confirmed the violation of the right to trial within reasonable period guaranteed by Article 32(1) of the Constitution of the RS.

With regard to the violation of Article 58(1) of the Constitution of the RS, the Court defined that the failure of the competent municipal court and the National Bank of Serbia to execute final decision and executive partial verdict pronounced in favour of the petitioner of a constitutional appeal in the period exceeding four years also presents the violation of the petitioner's right to peaceful enjoyment of property acquired owing to the said decision, the right being guaranteed by Article 58(1) of the Constitution. The Court referred to the practice of the European Court of Human Rights in the judgments relating to the cases "Vlahovic against Serbia", of 16 December 2008 (Official Gazette of the RS", No.1/09) and "Kacapor and others against Serbia", of 15 January 2008 (Official Gazette of the RS", No.14/08) in terms of which the European Court expressed its attitude that the failure of the state to execute a final decision pronounced in favour of the petitioner presents interference into his right to peaceful enjoyment of property. The Constitutional Court also referred to its decision Uz-1499/2008 of 16 July 2009, in terms of which it took a stand that all pecuniary claims adjudicated by a final court decision pertain to the property of the creditor. Hence, failure to execute the said court decision presents the violation of right to peaceful enjoyment of property guaranteed by Article 58(1) of the Constitution of the Republic of Serbia.

Owing to the stated reasons the Constitutional Court defined the right of the petitioner of a constitutional appeal to the compensation of non-pecuniary damage, in order to eliminate detrimental consequences being the result of the violation of the rights guaranteed by the Constitution. Compensations of non-pecuniary damage may be realized in the manner defined under Article 90 of the Law on Constitutional Court, i.e. by filing a request to the relevant Damage Compensation Committee.

By this constitutional appeal, the Court has ordered a relevant court, the National Bank of Serbia and organizations taking part in the enforcement procedure to undertake

necessary measures to complete the enforcement procedure regarding this case as soon as possible.

2. Decision CA-292/2008 of 17 March 2010

Acting on constitutional appeal of G.P., filed due to the violation of right to fair remuneration for work done guaranteed by Article 60(4) of the Constitution of the Republic of Serbia, the Constitutional Court: 1. adopted a constitutional appeal; 2. annulled a decision rendered by the Second Instance (District) Court relating to the part adopting the complaint of the Ministry of Interior (hereinafter: MoI) and rendered decision that G.P. was not entitled to the payment of bonus for the period from December 2005 to June 2006, ordering the Appellate Court being competent as of 1 January 2010 to render a new decision based on the appeal in that part; 3. stated that the decision referred to the persons who did not file a constitutional appeal if they were in the same legal position, in accordance with Article 87 of the Law on Constitutional Court.

Under Article 60(4) of the Constitution, the violation of which is referred to in the constitutional appeal, it is defined that everyone has the right to respect of his person at work, safe and healthy working conditions, necessary protection at work, limited working hours, daily and weekly interval for rest, paid annual holiday, fair remuneration for work done and legal protection in case of termination of working relations. No person may forgo these rights.

In this proceedings the Constitutional Court defined that the right of the petitioner of constitutional appeal to the fair remuneration for the work done guaranteed by Article 60(4) of the Constitution was violated by a disputed judgement of the Second Instance Court:

- Based on the Law on Police which came into force in November 2005, police officers and other employees in the MoI may, under certain conditions, realize the right to bonus, that is increased salary (based on overtime, night shifts and work during state and religious holidays), by defining higher salary coefficients. However, this is only a possibility, but not the obligation of an employer, i.e. the MoI. In accordance with the stated Law, employees of the MoI cannot realize the right to increased salary owing to special working conditions based on the provisions of general working regulations if they have already realized this right based on the Law on Police;
- If a salary coefficient which is 30-50% higher in nominal terms than the coefficient of other civil servants was not defined with regard to an employee of the Ministry of Interior by the decision of the employer, the employee cannot be deprived of the right to increased salary to which all the employees of the Republic of Serbia are entitled to relating to the work during holidays, night shifts, and overtime, i.e. on this occasion adequate provisions of general work regulations may be implemented;
- in this case, the Second Instance (District) Court arbitrarily applied relevant material law, having estimated wrongly that the petitioner of a constitutional appeal was not entitled to the payment of bonus based on overtime, night shifts and working during state holidays that are non-business days, solely by

coming into force of the Law on Police, i.e. it did not defined in an adequate manner whether the petitioner actually obtained the bonus.

Constitutional Court also defined that detrimental consequences owing to the violation of the right may be eliminated solely by the annulment of the disputed second instance judgement in the part deciding on the appeal of the accused Republic of Serbia, i.e. the MoI, relating to the right to increased salary of G.P. in the period starting with December 2005 until June 2006. Owing to the fact that by the disputed decision, i.e. its disputed part, the right of other persons who did not file a constitutional appeal was violated, as they are in the same legal position as the petitioner of the constitutional appeal, the constitutional appeal refers to them as well.

4. How many laws have been invalidated by the Constitutional Court in the last 3 years? Give concrete examples including on their content.

This short review of the decisions rendered by the Constitutional Court of Serbia encompasses the period starting with April 2008 (the period when the Constitutional Court started processing cases in the composition established under the Constitution of 2006) until the end of 2010. All stated normative control proceedings during which the incompatibility of the laws or some of their provisions with the Constitution, general accepted rules of international law and ratified international treaties was defined, were conducted as subsequent normative control proceedings (*a posteriori*).

The year 2008:

No decisions relating to the defining of incompatibility of laws were rendered in 2008.

The year 2009:

Constitutional Court issued 9 defining decisions, as follows:

a) IUz-28/2006 of 19 February 2009, defining that Article 10 of the Law on the Amendments to the Law on Judges ("Official Gazette of the RS", No. 44/04) in the following segment: "and Minister competent for judiciary" is not in accordance with the Constitution. The stated decision was published in the "Official Gazette of RS", No.21/2009. With regard to these normative control proceedings Constitutional Court rendered decisions on the legal powers of the Minister of Justice relating to the instituting of the proceedings for defining the completion of active life and the reasons for the dismissal of the judge. Constitutional Court confirmed that constitutional principles of division of power and autonomy and independence of courts, as well as generally accepted principle rule of the international law proclaimed in the European Charter on the Statute for Judges and fundamental principles of the UN on the independence of courts were breached by the stated powers of the Minister. Under Article 10 of the Law on the Amendments to the Law on Judges, Article 166(2) of the Constitution according to which the decisions rendered by the Constitutional Court are final, enforceable and legally binding was breached, due to the fact that the same legal provision had been proclaimed unconstitutional by the Constitutional Court in its former decision IU-122/2002 of 11 February 2003. In spite of this, legislator reintroduced it in the Law on Judges.

b) IUz-206/2000 of 25 March 2009, defining that the Law on the Measures for Elimination and Alleviation of the Consequences of the Implementation of Sanctions Imposed by International Organizations ("Official Gazette of the RS", No. 46/92, 7/95 and 45/02), is not in accordance with the Constitution. The said decision was published in the "Official Gazette of the RS", No. 47/2009. The Constitutional Court defined during these proceedings that the statements of the petitioners were well grounded. According to them the fundamental rules of economic order, as well as human and minority rights and freedoms defined by the Constitution of 2006 are based on rather different grounds not providing the possibility for the introduction of restrictions in the area of supply of goods and services, disposal of the part of funds of legal entities and individuals, i.e. other measures on the single and free market and also in the area of rights and freedoms of individuals. Bearing in mind that the sanctions imposed to Serbia by international organizations were lifted, the Court concluded that the disputed Law was not in accordance with the Constitution in its entirety. This is the only case in relation to which the entire Law was proclaimed incompatible. It was eliminated from the legal order of the Republic of Serbia on the date of its publication.

c) IUz-409/2005 of 2 April 2009, defining that Article 86(10) of the Law on Planning and Construction ("Official Gazette of the RS", No. 47/03 and 34/06) is not in accordance with the Constitution. The said decision was published in the "Official Gazette of the RS", No.39/2009. In these proceedings Constitutional Court dealt with judicial protection in the administrative proceedings, upon the confirmation that the statements of the petitioners were well grounded. According to the statements, exclusion of the possibility to conduct administrative dispute against a Second Instance Decision of the Minister competent for decision making with regard to the complaints against the decisions of municipal or city authorities relating to the termination of the right to disposal of building land, owing to the fact that other judicial protection was not stipulated by the Law, is not in accordance with the Constitution.

d) IUz-42/2009 of 17 June 2009, defining that Article 30(1) in the following segment: "A judge can be the member of Republic Electoral Commission", i.e. electoral commission of autonomous province and local self-government unit" and Article 64(2) in the following segment: "Minister competent for judiciary" of the Law on Judges ("Official Gazette of the RS", No. 116/08) are not in accordance with the Law. The said decision was published in the "Official Gazette of the RS", No. 58/2009. With regard to these normative control proceedings, instituted by the Constitutional Court, the legal solution according to which the judges, being members of electoral commissions in the procedure relating to the election of Members of Parliament, i.e. Municipal Council members, participate in the adoption of individual acts, the lawfulness of which is determined by competent courts. According to the Constitutional Court, the solution is not in accordance with the constitutional rules relating to the rule of law, division of power and the prohibition of the conflict of interests, as well as with the provisions of the Constitution relating to the autonomy and independence of judiciary, i.e. the independence of judges. According to the Court, the powers of the Minister competent for judiciary, being the holder of executive power, relating to the instituting of the proceedings for the dismissal of judges, are not in accordance with the constitutional rules related to the division of power and autonomy and independence of courts.

e) IUz-149/2008 of 28 May 2009, defining that Article 55(1) in the following segment: “by the Law or”, of the Law on Telecommunications (“Official Gazette of the RS” No. 44/03 and 36/06) is not in accordance with the Constitution. The said decision was published in the “Official Gazette of the RS”, No. 50/2009. As for these proceedings, Constitutional Court determined that a segment of Article 55(1) was not in accordance with the Constitution, due to the fact that it exceeded the limitation of the right guaranteed by the Constitution relating to the integrity of the confidentiality of letters and other means of communication, as it allowed derogation from the prohibition of the activities or the usage of device jeopardizing or disturbing the confidentiality of messages transmitted by telecommunication networks, not solely when performed in accordance with the court decision, but also without a court warrant, when such possibility is defined by this or another Law.

f) IUz-216/2004 of 25 April 2009, defining that Article 5(6) of the Law on Financing of Political Parties (“Official Gazette of RS”, No. 72/03 and 75/03) in the following segment: “Annual income of a political party from property owned by such party may not exceed 20% of the amount of the overall income of a political party. Within thirty days after submitting of the annual statement of accounts in accordance with Article 16 thereof, a political party gives as charity, to one or more organisations engaged in charity work, any amount of income exceeding the above mentioned 20%”, is not in accordance with the Constitution. The decision was published in the “Official Gazette of the RS”, No.60/2009. With regard to these proceedings the Court determined that the obligation of a political party to “give away certain funds as a charity” cannot be defined by the Law.

g) IUz-68/2006 of 9 July 2009, defining that the provisions of Article 128 of the Law on Police (“Official Gazette of the RS”, No. 101/05) are not in accordance with the Constitution. The said decision was published in the “Official Gazette of the RS”, No.63/2009. With regard to these proceedings the Court determined that by the legal solution according to which the deadline for the submission of the request for the re-examination of the act defining the rights of an employee during the period of employment, commences on the date of the adoption, and not on the date of the submission of the act to the employee, the equal protection of employed police officers, which is guaranteed by the Constitution, is not provided. The Court also determined that the legal solution excluding the right to conduct administrative dispute against the act adopted following the request for the re-examination of decision defining certain rights of police officers during the period of employment was unconstitutional, owing to the fact that other judicial protection was not stipulated by the Law. Owing to this, police officers do not have the same status as other civil servant in the same legal position.

h) IUz-468/2004 of 16 July 2009, defining that Article 174(1)(15) of the Law on Insurance (“Official Gazette of the RS”, No. 55/04, 70/04, 61/05, 85/05 and 101/07), is not in accordance with the Constitution. The said decision was published in the “Official Gazette of the RS”, No. 63/2009. With regard to these normative control proceedings the Constitutional Court determined that the National bank of Serbia, i.e. the Governor of the National Bank by issuing a final decision on taking away a work permit from the supervised entity, cannot act in the manner and under the conditions not defined by the law. The Court also defined that the obligation of the legislator is to define the issue of the supervision performed by the National Bank of Serbia, being the

central bank, of the financial system of the state, and of the measures that may be imposed with regard to the supervised entity, inclusive of the conditions for their imposition whilst observing the constitutional guarantees for legal security and the freedom of entrepreneurship.

i) IU-41/2004 of 26 November 2009, defining that the segment of Article 294(1) and the segment of Article 296(1) of the Law on Customs (“Official Gazette of the RS”, No. 73/03) are not in accordance with the Constitution. The said decision was published in the “Official Gazette of the RS”, No. 9/2010. With regard to these normative control proceedings the Constitutional Court rendered decisions related to the powers of the customs authority during the customs procedure. According to the Court, the legal obligation of an individual to act following the request of a customs authority against his/her own will, in the period and in the manner not defined by the Law, is not in accordance with the Constitution. The legal solution according to which a customs officer is released from duty to inform the person in relation to whom he/she collects the data is deemed unconstitutional.

The year 2010:

The Constitutional Court defined the unconstitutionality of the law with regard to three cases this year, as follows:

a) IUz-52/2008 of 21 April 2010, defining that Article 43 of the Law on Local Elections (“Official Gazette of the RS”, No. 129/07) is not in accordance with the Constitution, whereas Article 47 point (1) of the Law is not in accordance with the Constitution and ratified international treaties. The said decision was published in the “Official Gazette of the RS”, No. 34/2010. With regard to these proceedings, the Court assessed a legal provision defining, *inter alia*, that the submitter of the electoral list and candidate for Municipal Council Member, i.e. a Municipal Council Member, may conclude a contract that should regulate mutual relations and anticipate the right of the submitter of an electoral list to resign on behalf of the Municipal Council Member in the Assembly of the local self-government unit. The Court actually dealt with the institute of so called “blank resignation”. When assessing the mentioned provision, the Court defined that the legislator, using the contract dealing with the disposal of the mandate of Municipal Council Member, altered indirectly the character of the representative mandate defined by the Constitution introducing a “hidden” imperative mandate of the Municipal Council Member as compared to a political party or another authorized submitter being on his/her electoral list. According to the Court, the mandate, presenting a public law relationship between the voter and the representative, cannot be the subject-matter of the contract between the candidate for Municipal Council Member (Municipal Council Member) and the submitter of an electoral list. The function of a Municipal Council Member, as other public functions, may be terminated by choice of its holder. However, the will has to be a Municipal Council Member’s will and has to be freely expressed. The Court defined that, in the situation when the submitter of an electoral list decides independently whether and when he/she will “activate” a blank resignation signed in advance, the said resignation does not present a free will of a Municipal Council Member. The Court also defined that, based on the disputed provision, a political party may replace a “disobedient” Municipal Council Member with another one, alter the composition of the Assembly and have impact on the

decisions taken in the Assembly of the local self-government. There is a possibility that parties, contrary to the Constitution, subordinate the local government, undertake the role of the electoral body and assume the sovereignty from citizens by bringing political parties into the legal position to dispose of the mandates of Municipal Council Members. Under Article 47 of the Law, according to the Court, the right of a citizen to be elected, guaranteed by the Constitution (Article 52), International Covenant on Civil and Political Rights (Article 25(b)) and Protocol No.1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms of the Council of Europe (Article 3) is limited. According to the Constitutional Court, the right of a citizen to be elected, implies the right to hold the office in the period for which he/she has been elected and the guaranteed protection from arbitrary revocation of mandate that is the termination of mandate. From the stated reasons, the Court estimated that the stated legal provision is unconstitutional.

Constitutional Court instituted independently the proceedings for the assessment of Article 43 of the same Law. In these proceedings, the Court defined that the stated provision was incompatible with the Constitution. It defined that the submitter of an electoral list, upon the confirmation of electoral results, allocates obtained mandates to the candidates from the list at his/her own will, and not observing the sequence on the electoral list. According to the Court, this leads to the introduction of indirect local elections, whereas the submitters of electoral lists present “intermediaries” between voters and their representatives upon the voting. The Constitution explicitly defines that citizens are holders of sovereignty, sovereignty of citizens cannot be assumed, citizens have the right to elect in direct elections. The Court also defines that the capacity of Municipal Council Members in accordance with the Constitution may be obtained solely through direct elections of citizens.

b) IUz-231/2009 of 22 July 2010, defining that the following provisions of the Law on the Amendments to the Law on Public Information (“Official Gazette of the RS”, No. 71/09) are not in accordance with the Constitution and ratified international treaties:

- Article 1(1) added to Article 14 of the Law on Public Information (“Official Gazette of RS”, No. 43/03 and 61/05) in the following segment: “Public medium may be established by a domestic legal entity (founder of public medium)”;
- Article 2 added to Article 14 of the Law on Public Information as Article 14a, i.e. paragraphs 5, 6 and 7 of Article 2;
- Articles 4, 5 and 6.

The said decision was published in the “Official Gazette of the RS”, No. 89/2010 of 29 November 2010. With regard to these proceedings the Constitutional Court stated it is extremely important for every individual in democratic society that the manner defining the realization of the freedom of media ensures full affirmation and the realization of the freedom of opinion and expression as well as the right to information. However, the freedom of media, presenting the means to attain the said goal, is not absolute under Article 50 of the Constitution of the Republic of Serbia, under Article 10 of the European Convention and Article 19 of the International Covenant on Civil and Political Rights. Under Article 50 of the Constitution, everyone has the freedom to establish newspapers and other forms of public information (paragraph 1) without prior permission and without censorship (paragraph 3, the first sentence) in the manner laid down by the law. The competent court may prevent the dissemination of information through means of public informing only when this is necessary in a democratic society

to prevent inciting to violent overthrow of the system established by the Constitution or to prevent violation of territorial integrity of the Republic of Serbia, to prevent propagation of war or instigation to direct violence, or to prevent advocacy of racial, ethnic or religious hatred enticing discrimination, hostility or violence.(paragraph 3, the second sentence). Under Article 20 of the Constitution, human and minority rights guaranteed by the Constitution may be restricted by the law if the Constitution permits such restriction and for the purpose allowed by the Constitution, to the extent necessary to meet the constitutional purpose of restriction in a democratic society and without encroaching upon the substance of the relevant guaranteed right. Attained level of human and minority rights may not be lowered.

When restricting human and minority rights, all state authorities, particularly the courts, are obliged to consider the substance of the restricted right, pertinence of restriction, nature and extent of restriction, relation of restriction and its purpose and possibility to achieve the purpose of the restriction with less restrictive means. Under Article 18(2) of the Constitution, the Constitution may prescribe the manner of exercising these rights only if explicitly stipulated in the Constitution or necessary to exercise a specific right owing to its nature, whereby the law may not under any circumstances influence the substance of the relevant guaranteed right. In this respect, the legal provision regulating that the founder of a public medium may be solely a domestic legal entity is not in accordance with the Law. The said restriction, in a manner prohibited by the Constitution, has impact on the essence of guaranteed freedom of establishment of newspapers and other means of public information, i.e. violates basic principles of Articles 18 and 20 of the Constitution. According to the Constitutional Court, the term “everybody” used in Article 50(1) of the Constitution, does not imply solely a domestic legal entity. The Court did not accept the statements of the petitioner of a disputed act according to which the disputed decision was “in line with” former regulations, since, generally speaking, even according to these regulations the founder of a public medium may be a domestic or foreign legal entity or individual. The Court defined that the disputed provision was not in accordance with ratified international treaties, i.e. Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and Article 19 of the International Covenant on Civil and Political Rights.

The Court also assessed disputed provisions of Article (14a) paragraphs 5, 6 and 7 of the Law, relating to certain competencies of the relevant public prosecutor and the competent court in relation to the founders of a public medium who: 1. violate Article 14a(3), according to which it is not allowed to establish a public medium having the same or similar name which might cause confusion relating to the identity of a public medium following the termination of a public medium by removing it from the register of public media or in another manner, i.e. the termination of printing or the publishing of a public medium, 2. publish public medium not registered in the Register of Public Media. Disputed provisions, in the stated cases, define the obligation of a relevant public prosecutor to institute promptly the economic offence proceedings before the competent court demanding a temporary prohibition of operating of public medium (paragraph 5), as well as the obligation of the court to order a temporary prohibition of the publishing activity of a public medium within 12 hours following the submission of the proposal of the public prosecutor in accordance with the Law, pending the final decision on the proceedings from Article 6(5). Provisions of Article 24(7) of this Law

should be applied accordingly during the proceedings related to the pronouncing of sentence from paragraph 6.

When assessing disputed provisions, the Court observed constitutional principles relating to the unity of legal order and division of power to legislative, executive and judicial branches, i.e. autonomy and independence of judicial power as well as independence of public prosecution in addition to Article 50(1) of the Constitution. According to the Court, the obligation of a public prosecutor to institute promptly economic offence proceedings, as well as to demand pronouncing the sentence, makes the stated provision contrary to the status of public prosecution as an independent state authority which is defined by the Constitution. The commitment of the Court to pronounce the sentence presents the violation of the principle of division of power as well as the autonomy and independence of courts guaranteed by the Constitution. The Court took into account the provisions of the Law on Economic Offences, since the constitutional principle relating to the unity of legal order imposes that the fundamental principles and legal institutes defined by laws systemically regulating one area of social relations have to be observed in other laws as well. The Court defined that by ordering a temporary prohibition of publishing activity of a public medium the legislator violated the principle of the unity of legal order and principle of the equality before the law introducing the type of sanctions not defined by the Law on Economic Offences. Under the Law on Economic Offences, legal entities are prohibited from engaging in an economic activity, which is a protection measure pronounced solely if the perpetrator of an economic offence has been pronounced a sentence, and not during the proceedings, presenting a form of temporary measure. According to the Court, ordering (temporary) prohibition of the publishing of public medium due to the fact that it has not been registered in the Register of Public Medium makes the entry into the Register an obligatory segment in the procedure relating to the establishment of public medium and indirect way of approving of the establishment, which is incompatible with Article 50(1) of the Constitution, Article 10 of the European Convention and Article 19 of International Covenant.

With regard to disputed provisions which increase the fines that may be imposed for defined minor offences, the Constitutional Court points out that general minimum and maximum amount of fines imposed with regard to the offences defined by the Law are stipulated by the Law on Minor Offences, being a systemic law in the field of misdemeanour law. Pursuant to the Law, authorities competent for the adoption of regulations relating to minor offences may prescribe solely penalties and protection measures stipulated by the said Law and within the limits defined by the said Law. Due to the fact that the maximum amount of potential fines for minor offences in the field of public information was defined by the disputed provisions of the Law on Public Information exceeding the level of general maximum amount defined by the Law on Minor Offences, the Court estimated that these provisions are not in accordance with the Constitution, ratified international treaties and the practice of international organizations competent for the protection of human rights and freedoms. They may not be deemed compatible with defined constitutional principles providing the realization of every guaranteed freedom and right.

c) IUz-74/2010 of 9 September 2010, defining that Article 104(4) of the Law on Planning and Construction ("Official Gazette of the RS", No. 72/09 and 81/09) is not in

accordance with the Constitution. The said decision was published in the “Official Gazette of the RS”, No 64/2010. A disputed legal provision, defining that the persons not fulfilling conditions for the conversion of their former right to use property into the ownership right, in case the relevant body of local self-government unit does not perform the conversion within a year following the entry into force of the Law on Planning and Construction as defined by the Law, lose the right to use property. The local self-government unit gets the ownership right with regard to the said property. According to the Court, defining the time limit for the conversion violates the constitutional right to peaceful enjoyment of property and other property rights defined by the Law. The realization of the right defined by the Law may not be dependent on the efficiency of the authorities competent for conducting the procedure. Hence, the loss of the established right may not be dependent on the fact whether the competent authorities completed the procedure within the specified time limit or not. According to the Court, the principle of equality before the Constitution and the Law was also violated. The persons fulfilling defined conditions for conversion are in the same legal position; hence the realization of their right may not be dependent solely on the efficacy of competent authorities.

5. How are the decisions of the Constitutional Court implemented? Are there cases of decisions of the Constitutional Court that have not been implemented or have not been taken into consideration? Please give examples.

State and other authorities, organizations with public authority and other entities defined under Article 104(1) of the Law on Constitutional Court are obliged to observe and execute Constitutional Court decisions in accordance with the Constitution. However, the law does not define whether they are obliged to inform the Court on the execution of its decisions.

Under Article 172(2) of the Constitution of the RS, the Constitutional Court is authorized to regulate the manner of the enforcement of its decisions through special and binding decision. If necessary, the enforcement of the Constitutional Court decisions, under Article 104(2) of the Law on Constitutional Court is secured by the Government, directly or through the relevant state authority, in the manner defined by the Constitutional Court decision.

The enforcement of Constitutional Court decisions is regarded as a constitutional obligation of everyone. The cases related to the violating of its decisions are rare.

With regard to the normative control proceedings, i.e. assessment of constitutionality and legality of general legal acts, decisions of Constitutional Court have *erga omnes* effect. It implies in practice that state authorities, organizations with delegated public powers and other legal entities which fall within the scope of Article 104(1) of the Law on Constitutional Court are obliged: a) not to implement certain general act (or certain provision of a general act) whose incompatibility with the Constitution, generally accepted rules of international law, ratified international treaties or the Law is determined by the decision of the Court (from the date when the decision of the Court came into force); b) to harmonize general act, which they have adopted, and whose incompatibility is defined by the Constitution, with the Constitution, generally accepted

rules of international law and ratified international treaties or the Law. c) to adopt a new general act or a certain provision of a general act instead of the acts eliminated from the legal order, having adopted general acts the incompatibility of which is defined by the decision of the Constitutional Court.

Following the situation and the problems related to the exercising of constitutionality and legality in the Republic of Serbia, Constitutional Court monitors whether legislative activities are in accordance with its decisions issued in normative control proceedings. If needed, it specifies to the National Assembly that it is necessary to adopt a general act or a provision of a general act instead of the acts eliminated from the legal order by its decisions (Article 105 of the Law on Constitutional Court).

The most serious example related to the failure to comply with the decisions of the Constitutional Court occurred in 2004. The National Assembly adopted the Law on the Amendments to the Law on Judges ("Official Gazette of the RS", No 44/04). Under Article 10 it defined the authorities of the Minister of Justice to institute the proceedings for defining the completion of active life and the reasons for the dismissal of the judge, even though by the former decision of the Constitutional Court IU-122/2002 of 11 February 2003 the incompatibility of the same legal provision with the Constitution was determined, implying that the legislator introduced an unconstitutional provision into a new general act. In the subsequent proceedings for the assessment of constitutionality of the same provision in 2009, the Court issued a decision IUz-28/2006 defining its unconstitutionality (see an example in the answer to question No. 4 of this Chapter, referred to in a) for the year 2009) due to the violation of the constitutional principle on the division of power and the independence of judiciary. The Court also defined the violation of Article 171 of the Constitution of the RS. Under the said Article, the legislator, as well as other state authorities, were obliged to observe and enforce the decisions of the Constitutional Court (in this case the decision IU-122/2002 of 11 February 2003).

Decisions of Constitutional Court based on the appeal have *inter partes litigantes* effect. Within the said competence of the Court, there is a possibility (article 87 of the Law on Constitutional Court) that the decision issued by the Constitutional Court defining the violation of human rights and freedoms guaranteed by the Constitution, has effect on the persons who did not lodge a constitutional appeal, in case they are in the same legal position as the petitioner of the constitutional appeal. In the constitutional appeal proceedings, Constitutional Court makes assessment whether human rights or freedoms guaranteed by the Constitution are violated or denied by an individual act or action (acts or omissions) of state authorities or organizations with delegated public powers. In this regard, the obligation to enforce the decisions rendered by the Constitutional Court refers to the state authority or an organization with delegated public powers whose individual act or action, upon the decision of the Court, brought about violation or denial of human or minority rights and fundamental freedoms. Under Article 89(2) of the law on Constitutional Court, Constitutional Court may annul an individual act by its defining decision, if detrimental consequences could not have been removed by other means, prohibit the performance or order the performance of an action and order elimination of detrimental consequences within a defined time limit. Important decisions based on constitutional appeal are published in the "Official Gazette of the

RS". So far the Court has not obtained any information related to the failure to observe decisions based on the constitutional appeal.

6. What are the constitutional guarantees that ensure the independence of the constitutional institutions vis-à-vis the political power?

In the Section One of the Constitution of the Republic of Serbia, which defines the principles of the Constitution, the following is established:

- "No state body, political organisation, group or individual may usurp the sovereignty from the citizens, nor establish government against freely expressed will of the citizens." (Article 2, paragraph 2)
- "The rule of law shall be exercised through free and direct elections, constitutional guarantees of human and minority rights, separation of powers, independent judiciary and complying with the Constitution and Law by the authorities." (Article 3, paragraph 2)
- "The legal system is unique. Government system shall be based on the separation of powers into legislative, executive and judicial. Relation between three branches of government shall be based on balance and mutual control. Judicial power shall be independent." (Article 4)
- "Political parties may not exercise power directly or submit it to their control." (Article 5, paragraph 4)
- "No person may perform a state or public function which is in conflict with his/her other functions, occupation or private interests." (Article 6, paragraph 1)

The quoted provisions of the Constitution, as well as the provisions of the Constitution and individual laws establishing some institutions (state bodies), are the constitutional guarantees providing the independence of those institutions from the political power.

The independence of the constitutional institutions from political power is established through: the method of the election of officials for those institutions; the length of mandate for which these officials have been elected; incompatibility of the public function with another public function; prohibition of the membership of officials in a political party; competence of the institutions in relation to deciding on their immunity; the possibility for officials of these institutions to be dismissed only for reasons stipulated by law; competence of the Constitutional Court in the protection of principles established by the Constitution.

Article 55 paragraph 5 of the Constitution stipulates that the judges of the Constitutional Court, judges, public prosecutors, Ombudsman, members of the police and armed forces may not be members of political parties.

- Article 138 of the Constitution and the Law on the Protector of Citizens (*Official Gazette of RS*, no 79/05 and 54/07) establishes the position and the competence of the Ombudsman. The Ombudsman is **independent and autonomous** in performing the duties envisaged by the Law and no one has the right to influence his/her work and actions. The Ombudsman is **elected by the National Assembly with a majority vote of all Members of Parliament, on the proposal of the competent Committee on**

Constitutional Issues. Proposal for the election of the Ombudsman is established by a majority vote of the total number of the members of the Committee on Constitutional Issues. the Ombudsman is **elected for the time period of five years** and the same person could be elected twice in a roll for this function, at most. The function of the Ombudsman, that is Deputy Ombudsman is **incompatible with performance of any other public function or professional activity**, as well as performance of another duty or work which could influence their independence and freedom. Ombudsman and Deputy Ombudsman are **not allowed to be members of political parties**. Ombudsman and Deputy Ombudsman are not allowed to make statements of political nature. Ombudsman enjoys the same **immunity as an MP**. The National Assembly decides on his immunity. The National Assembly may dismiss the Ombudsman only in cases referred to in Article 12 of the Law and by a majority vote of all MPs, on the proposal of the Committee or at least of one third of the total number of MPs.

- Article 95 of the Constitution and the Law on **National Bank of Serbia** (*Official Gazette of RS* no 72/03, 55/04, 85/05 and 44/10) establish the position and competence of the National Bank of Serbia. The National Bank of Serbia is the central bank of the Republic of Serbia, **independent and autonomous** in performing its competence established by the Constitution and law. The bodies of the National Bank of Serbia are: the Governor of NBS, Executive Board of NBS (Governor and Vice-Governors) and the Council of the Governors of NBS. The National Bank of Serbia, bodies of the National Bank of Serbia and members of these bodies, when performing their duties, neither receive nor require instructions from state institutions and organizations, or other individuals. State institutions and organizations, as well as other individuals, may neither threaten the independence of the National Bank of Serbia, nor influence the National Bank of Serbia, bodies of the National Bank of Serbia and members of these bodies when performing their duties. The **Governor is elected by the National Assembly on proposal of the President of the Republic of Serbia**. The Governor is elected for the time period of six years, with the right to be re- elected. Article 19 of the Law establishes the incompatibility of the function of the Governor with other functions (may not be an MP in the National Assembly, a member of the Government or authorities or bodies established by the National Assembly or the Government, or an official of a political organisation, i.e. may not perform the function of an authority or a member of an authority of the Autonomous Province or a unit of a local self- government or trade-union organisation, nor may he/she perform any other public function or public position). The Council is composed of five members, including the President, **elected by the National Assembly** on the proposal of the Committee of the National Assembly competent for financial issues. The **Council members are elected for the time period of six years**, with the right to be re- elected. The Council members are not employees of the National Bank of Serbia. Election, incompatibility of functions and conflict of interests of the Council members are subject to the provisions of the Law relating to the Governor. The National Assembly may dismiss the Governor and members of the Council only in cases stipulated by Article 28 of the Law.

- Article 96 of the Constitution and the **Law on State Audit Institution** (*Official Gazette of RS*, no 101/05, 54/07 and 36/10) establish the position and the competence of the State Audit Institution (SAI). SAI is the highest state institution for the revision of public funds in the Republic of Serbia, **independent and autonomous** in performing its

duties. Audit documents in the competence of SAI cannot be the subject of a dispute before courts and other state institutions. The Council is the highest body of SAI, with five members elected by the National Assembly with a majority vote of all MPs, on the proposal of the committee competent for financial issues. A member of the Council **is elected for the time period of five years**. The same member may be elected for the same position twice, at most. Article 17 of the Law establishes the **incompatibility of the function of the Council member** with other functions. A Council member may not be held responsible for an opinion stated in an audit report, and in the legal proceedings instituted for a criminal offence committed while performing his/ her duties and cannot be detained without the approval of the National Assembly. Article 22 of the Law stipulates the reasons for the dismissal of a Council member by the National Assembly.

- Article 153 and 154 of the Constitution and the Law on **The High Judicial Council** (*Official Gazette of RS*, no 116/08) stipulate the position and competence of the High Judicial Council. The High Judicial Council is an **independent and autonomous institution** which provides for and guarantees independence and autonomy of courts and judges. The High Judicial Council has eleven members, **eight of which are elected by the National Assembly** on the proposal of the proposers authorised by Law. Tenure of office of the High Judicial Council's members **lasts for five years**, except for the members appointed ex officio. Elected Council members may be re-elected, but not consecutively. During the tenure of the mandate, the judge who is the Council member cannot be elected for a judge of another court. Article 11 of the Law establishes the **incompatibility of the function** of the Council member with another function. A member of the High Judicial Council enjoys **immunity as a judge**. A member of the Council may not be held responsible for an expressed opinion or voting during the adoption of the Council decisions. A Council member cannot be deprived of liberty in the legal proceedings due to a criminal offence committed while performing his/ her duties as a Council member without the consent of the Council. The High Judicial Council decides on the immunity of a Council member. Article 41 of the Law stipulates the reasons for the dismissal of a Council member.

- Articles 142 – 152 of the Constitution and the Law on Judges (*Official Gazette of RS*, no 116/08, 58/09 and 104/09) stipulate the judiciary principles, types of courts, position of judges, election and dismissal of judges. **Courts are independent and autonomous** in their work and they perform their duties in accordance with the Constitution, the law and other general acts, generally accepted rules of international law and ratified international treaties. Judicial power in the Republic of Serbia belongs to courts of general and special jurisdiction. The Supreme Court of Cassation is the Supreme Court in the Republic of Serbia. **A judge has a permanent tenure**. The High Judicial Council elects judges to the posts of permanent judges (as an exception, on the proposal of the High Judicial Council, the National Assembly elects for a judge the person who is elected to the post of judge for the first time, for the tenure of office of three years). **A judge is prohibited to engage in political actions. Any influence on a judge while performing his/her judicial function is prohibited**. A judge may not be held responsible for his/her expressed opinion or voting in the process of passing a court decision, except in cases when he/she committed a criminal offence by violating the law. A judge may not be detained or arrested in the legal proceedings instituted due to a criminal offence committed while performing his/her judicial function without the approval of the High Judicial Council. **The High Judicial Council decides on the**

immunity of the judge. President of the Supreme Court of Cassation is elected by the National Assembly, upon the proposal of the High Judicial Council and received opinion from the general session of the Supreme Court of Cassation and the competent committee of the National Assembly. President of the Supreme Court of Cassation is elected for **the period of five years** and may not be reelected. A Court **President, upon the proposal of the High Judicial Council, is elected by the National Assembly for the period of four years** and cannot be re-elected. Reasons for the dismissal of the President of the Supreme Court of Cassation and judges are established in Articles 144 and 148 of the Constitution. The reasons for relieving judges, court presidents and, the President of the Supreme Court of Cassation of their judicial duties are stipulated by Articles 62, 75 and 79 of the Law on Judges.

- Articles 166 to 175 of the Constitution and the Law on **Constitutional Court** (*Official Gazette of RS*, no 109/07) establish the status and competence of the state institution, as well as election, conflict of interest, immunity and termination of tenure of office of a judge of the Constitutional Court. The Constitutional Court is **autonomous and independent state institution which protects constitutionality and legality, as well as human and minority rights and freedoms.** The role of the Constitutional Court is very important from the aspect of assuring guarantees of the respect and protection of citizen's rights according to Constitution. In addition to deciding on compliance of laws and other general acts with the Constitution, generally accepted rules of the international law and ratified international treaties and on the conflict of competency of different authorities, the Constitutional Court decides on: electoral disputes for which the court jurisdiction has not been specified by the Law, prohibition of a political party, trade union organisations or associations of citizens; breach of Constitution by the President of the Republic; appeals against a decision of the High Judicial Council, appeals of judges, public prosecutors and deputy public prosecutors on the decision on the termination of function; appeals of the bodies of the local self- government (body established by Municipal Statute has the right to appeal to the Constitutional Court if a single act or action of the state authority or body of the unit of local self- government prohibits the realisation of municipal competences); constitutional appeals (constitutional appeal may be lodged against individual acts or actions performed by state institutions or organisations exercising delegated public powers, which violate or deny human or minority rights and freedoms guaranteed by the Constitution, if other legal remedies for their protection have already been applied or not specified). The Constitutional Court has 15 judges who are **elected and appointed for the period of nine years.** One person may be elected or appointed as a judge of the Constitutional Court twice, at the most. A judge of the Constitutional Court **may not perform another public or professional function or occupation**, except for the professorship at Law School (faculty) in the Republic of Serbia. A Judge of the **Constitutional Court enjoys immunity as an MP. The Constitutional Court decides on his immunity.** Article 174 paragraph 2 of the Constitution and Article 15 of the Law establish **reasons for the relief of office of a judge.** The National Assembly decides on the relief of office of a judge, on the request of movers authorised for election, that is appointment for election of a judge or on the initiative of the Constitutional Court itself. **The Constitutional Court decisions are final, enforceable and generally binding.** State and other institutions, organizations with public powers vested in them, political parties, trade union organizations, associations of citizens or religious communities are obliged to, according to their rights and duties, execute the

decisions of the Constitutional Court. If necessary, the execution of a decision of the Constitutional Court will be ensured by the Government, in the manner established by the special decision of the Constitutional Court.

(Note: Independence of the Constitutional Court is described in the answer to Question No. 3)

- Articles 139 to 141 of the Constitution and the Law on the **Serbian Armed Forces** (*Official Gazette of RS*, no 116/07 and 88/09) establish the position, competencies and principles of the Serbian Armed Forces. The Serbian Armed Forces realise its competences pursuant to the Constitution, laws, other provisions and general acts and international agreements and treaties which have been signed, i.e. ratified by the Republic of Serbia, in compliance with the Defence Strategy, Doctrine of the Serbian Armed Forces and principles of international law which regulate the use of force. **The Serbian Armed Forces are ideologically, politically and in interest neutral. The Serbian Armed Forces are subject to democratic and civil control.** No person may influence a member of the Serbian Armed Forces to do or not to do anything contrary to regulations.

7. Please specify/clarify the role of the Ministry of Justice in checking draft-laws on their constitutionality, and the procedure in practice.

In the legal system of the Republic of Serbia, work related to checking the compliance of draft-laws and proposals of other regulations and general acts with the Constitution and legislation – in the preparatory procedure for draft-laws and proposals for other regulations and general acts, is not within the competence of the Ministry of Justice, as defined by Article 7 of the Law on Ministries (*Official Gazette of RS*, No. 65/08, 36/09 – other law and 73/10 – other law”). Instead, it is within competence of the State Legislation Secretariat, which acts as a special organization established by the Law on Ministries, and that competence is defined under Article 31 of this law.

Under the provision of Article 31(1) of the Law on Ministries, State Legislation Secretariat performs expert tasks related to the following: building, monitoring and improvement of the legal system, ensuring compliance of regulations and general acts within the legal system in the process of their adoption and ensuring their normative, technical and linguistic quality; monitoring over publication and ensuring publication of regulations and other acts of the Government, ministries and other authorities and organizations, authorized for it by the law, as well as other tasks defined by the law.

Rules related to the role of the State Legislation Secretariat with regard to checking the compliance with the Constitution and the legislation of draft-laws and proposals for other regulations and general acts, are defined under the Government Rules of Procedure (*Official Gazette of RS*, No. 61/06 – consolidated version, 69/08, 88/09, 33/10 and 69/10). Provisions under Article 46 of the Government’s Rules of Procedure, which refer to obtaining opinions, prescribe that – on a draft-law and proposal of a regulation, decision, budget memorandum, development strategy, declaration and conclusion, the proposer shall also obtain the opinion of the State Legislation Secretariat (Article 46(1)). State Legislation Secretariat delivers opinion to the proposer – in written form, within ten working days, or within 20 working days in the case of system laws

(Article 47 of the Government's Rules of Procedure). In practice, the State Legislation Secretariat also performs its role in direct cooperation with proposers, which is also carried out at meetings with proposers or their representatives, where proposers or their representatives directly obtain the opinion on the compliance of draft-laws or proposals for other regulations and general acts with the Constitution and the law, as well as the opinion on their normative, technical and linguistic quality and where positions of proposers and the Secretariat are coordinated.

Article 20(2) of the Rules of Procedure of the Government prescribes that, among others, a representative of the State Legislation Secretariat shall also participate in the work of the Government Committee session, without voting rights.

Article 60(1) of the Government Rules of Procedure prescribes that, among others, the Managing Director of the State Legislation Secretariat shall also participate in the Government session, and with regard to this, provisions of Article 61 of the Government's Rules of Procedure prescribe obligations of the Managing Director of the State Legislation Secretariat, according to which he/she is obliged to apply for participation in a debate if he/she decides, based on the given material or debate, that a draft or a proposal of an act contravenes the Constitution or the law, and he/she is also obliged to warn about the possible discord in the legal system of the Republic of Serbia (Article 61(1) and (2)).

With regard to the modes of publication of regulations and other acts, under Article 6, the Law on the Publication of Laws and Other Regulations and General Acts and on the Publication of the *Official Gazette of the Republic of Serbia* (*Official Gazette of RS*, No. 72/91, *Official Journal of FRY*, No. 11/93 – Federal Constitutional Court and *Official Gazette of RS*, No. 30/2010), it is prescribed that regulations and other acts shall be published in "the Official Gazette of the Republic of Serbia", based on the directions of authorities, organizations or services authorized to ensure the publication of these acts. Article 7(3) of the Law defines that the State Legislation Secretariat is in charge of the publication of regulations and other acts of the Government, ministries and special organisations, and with regard to this, Article 8 of the abovementioned law also defines that – when the State Legislation Secretariat believes that a regulation of a ministry or special organization is not in compliance with the law or another regulation and general act of the National Assembly or regulation of the Government, it shall warn the Government about the discord, prior to the publication of this regulation, and it shall propose appropriate measures, that are to be undertaken by the Government, which is authorized for it by the Constitution and the law.

The Parliament

8. Please provide a description of the structure and functioning of the Parliament including the competences of the Parliamentary Committees and the speaker of the Parliament, the prerogatives and competences of the Parliament with respect to control of the executive power, and of the procedures for the adoption of legislation (including an explanation of existing fast track procedures and their applicability to the adoption of *acquis*-related legislation, if any).

Structure and functioning of the National Assembly (with competences of the Speaker of the National Assembly and Parliamentary committees)

The National Assembly is the supreme representative body and holder of constitutional and legislative power in the Republic of Serbia (Article 98 of the Constitution of RS).

Structure and functioning, organisation and work of the National Assembly are regulated by the Constitution of RS, the Law on the National Assembly (*Official Gazette of RS*, No. 9/10, of 26 February 2010) and the Rules of Procedure of the National Assembly (*Official Gazette of RS*, No. 52/10, of 28 July 2010).

The National Assembly is a **unicameral Parliament with 250 Members of Parliament** (hereinafter: MPs) who are, pursuant to the Constitution, elected in free and secret elections for the period of four years.

The work of the National Assembly and its working bodies is performed at sittings.

The National Assembly is convoked for two regular sessions annually. The first regular session starts on the first weekday of March, and the second regular session starts on the first weekday of October. A regular session may not last for longer than 90 days. The National Assembly is convoked for an extraordinary session upon the request of at least one third of MPs or upon the request of the Government, with previously determined agenda. The National Assembly is convoked without notice upon the declaration of the state of war or emergency.

The Speaker of the National Assembly may, on the occasion of national and international holidays, convoke a solemn sitting of the National Assembly and invite a state President, Prime Minister, representatives of other authorities and organisations from Serbia or abroad to address the National Assembly. The Speaker of the National Assembly may convoke a special sitting at which the President of the Republic of Serbia or the President or a representative of a foreign country, representative of the Parliament of a foreign country or a representative of an international organisation may address the Assembly.

The National Assembly adopts decisions by majority vote of MPs at the sitting at which majority of MPs are present.

By means of majority vote of all MPs the National Assembly:

1. grants amnesty for criminal offences,
2. declares and calls off the state of emergency,
3. orders measures of deviation from human and minority rights in the state of war and emergency,
4. adopts the law by which the Republic of Serbia delegates certain issues from within its competences to autonomous provinces and local self-government units,
5. gives previous approval of the Statute of an autonomous province,
6. decides on the Rules of Procedure pertaining to its work,
7. waives immunity to MPs, the President of the Republic, members of the Government and Ombudsman,
8. adopts the Budget and financial statement,

9. elects members of the Government and decides on the termination of the Government's and Ministers' mandates,
10. decides on the response to interpellation,
11. elects judges of the Constitutional court and decides on their dismissal and termination of their mandates,
12. elects the President of the Supreme Court of Cassation, court presidents, State Public Prosecutor and public prosecutors and decides on the termination of their term of office;
13. elects judges and deputy public prosecutor, in accordance with the Constitution;
14. elects and dismisses the Governor of the National Bank of Serbia, the Governors' Council and Ombudsman,
15. performs other electoral competences of the National Assembly.

By means of majority vote of all MPs, the National Assembly decides on laws regulating the following:

1. referendum and national initiative,
2. individual and collective rights of members of national minorities,
3. development and spatial plan,
4. public debt,.
5. territories of autonomous provinces and local self-government units,
6. conclusion and ratification of international treaties,
7. other issues stipulated by the Constitution.

The **Speaker of the National Assembly** represents the national Assembly, convokes its sittings, chairs them and performs other duties stipulated by the Constitution, the Law and Rules of Procedure of the National Assembly. By means of majority vote of all MPs the National Assembly elects the Speaker and one or more **Deputy Speakers** of the National Assembly. The number of Deputy Speakers is determined by a special decision of the National Assembly. Deputy Speakers assist the Speaker in performing the duties within his/her scope of work. One of the Deputy Speakers of the National Assembly, delegated by the Speaker, substitutes the Speaker in case of his/her temporary inability to work or absence, and has powers of the Speaker in chairing the sitting of the National Assembly.

The Speaker of the National Assembly:

- 1) represents the National Assembly;
- 2) convokes the sittings of the National Assembly and proposes the agenda;
- 3) chairs the National Assembly sittings;
- 4) ensures the order in the sittings of the National Assembly and application of the Rules of Procedure;
- 5) determines the Annual Work Plan of the National Assembly;
- 6) convokes the meetings of the Collegium of the National Assembly and chairs them;
- 7) sees to the timely and coordinated work of the working bodies of the National Assembly;
- 8) performs other duties stipulated by the Law and Rules of Procedure.

The Law on National Assembly stipulates that the Speaker of the National Assembly is assisted by the **Collegium**, as a parliamentary body, which is convoked by the Speaker of the National Assembly to coordinate the work and perform consultations regarding the work of the National Assembly. The Collegium is composed of the Speaker of the National Assembly, Deputy Speakers of the National Assembly and heads of parliamentary groups in the National Assembly. The Collegium assists the Speaker in performance of the abovementioned competences. The meetings of the Collegium are attended by the Secretary General, Head of the Speaker's Office, and other persons, on the invitation of the Speaker.

In the National Assembly, **parliamentary groups** are established from the ranks of MPs as a form of political organization of MPs with the same interests. A parliamentary group has a Head and a Deputy Head. The Head of a parliamentary group represents the parliamentary group. At least five MPs are necessary to establish a parliamentary group.

The National Assembly independently establishes and disposes of resources necessary for the work of the National Assembly, i.e. the parliamentary budget. The parliamentary budget is a constituent part of the budget of the Republic of Serbia. (Article 64 of the Law on National Assembly).

The National Assembly establishes standing **working bodies** as a form of political and working organization of MPs, and it may also establish *ad hoc* working bodies. Standing working bodies are committees, and *ad hoc* working bodies are inquiry committees and commissions.

The committees are established for consideration of draft Bills and proposals of other acts submitted to the National Assembly, for carrying out the review of policies pursued by the Government, supervision of the Government's and other state authorities' execution of laws and other general acts, and for consideration of other matters falling within the competence of the National Assembly.

A committee, within its competences, supervises the work of the Government and other bodies and institutions whose work is overseen by the National Assembly in accordance with the Constitution and the law.

The Committee considers the reports of the bodies, organisations and institutions which are submitted to the National Assembly in accordance with the law.

A committee makes decisions by majority vote of MPs at the sitting at which majority of MPs are present, if the law does not stipulate a special majority. Voting in a committee is public. A member of a committee is entitled to deliver an opinion, and the National Assembly is informed thereon in the committee report.

The new Rules of Procedure lay down that the National Assembly elects members of a committee and deputy members of a committee (deputy members of committees have not been elected yet) upon the proposals of parliamentary groups, proportional to the number of MPs of each parliamentary group in relation to the total number of MPs in the National Assembly. Deputy member of a committee is obliged to participate in the

work of the committee at a sitting that is not attended by the committee member he/she substitutes.

A committee has a Chairperson and a Deputy Chairperson. A committee Chairperson manages the work of the committee. A committee Chairperson and Deputy Chairperson are in practice, by rule, one from position and the other from opposition, which is subject to a political agreement.

Transitional provisions of the new Rules of Procedures lay down that the existing committees continue operating in accordance with their present scopes of work, until a new legislature is established. It means that committees are operating in line with provisions of the old Rules of Procedure of the National Assembly of the Republic of Serbia (*Official Gazette of RS*, No. 14/09 - Consolidated version) which is, in this part, from Article 46 to 67, in force until next legislature is established.

The National Assembly has thirty standing committees:

- Committee on Constitutional Issues,.
- Legislative Committee,
- Defence and Security Committee,
- Foreign Affairs Committee,
- Justice and Administration Committee,
- Committee on Inter-Ethnic Relations,
- Committee on Relations with Serbs Living Outside Serbia,
- Committee on Development and International Economic Relations,
- Finance Committee,
- Industry Committee,
- Transport and Communications Committee,
- Committee on Urban Planning and Construction,
- Agriculture Committee,
- Committee on Trade and Tourism,
- Privatisation Committee,
- Committee on Kosovo and Metohija,
- Health and the Family Committee,
- Environmental Protection Committee,
- Education Committee,
- Youth and Sports Committee,
- Culture and Information Committee,
- Committee on Science and Technological Development,
- Committee on Labour, Ex-Servicemen and Social Issues,
- Committee on Petitions and Proposals,
- Economic Reforms Committee,
- European Integration Committee,
- Poverty Reduction Committee,
- Gender Equality Committee,
- Local Self-Government Committee,
- Administrative Committee.

The majority of tasks of parliamentary committees refer to preparation of plenary sessions of the National Assembly, especially a debate on draft Bills. At a sitting of a committee, first there is a debate in principle on a draft Bill, and then a debate in detail

on the draft Bill. Debate in detail is carried out for those Articles of draft Bills for which amendments have been submitted, and on the amendments that propose introduction of new provisions, and the debate may be attended by committee members, Bill proposers or their representative, Government representative if it is not the proposer, and those who submitted the amendments or every MP who attends the sitting of the committee. After the debate, the committee submits to the National Assembly a report with the opinion and proposals of the committee. The committee designates a rapporteur who, if necessary, elaborates on the report of the committee at a sitting of the National Assembly.

Committees may organise **public hearings**. Committee may organise public hearings for the purpose of obtaining information, or professional opinions on proposed acts which are in parliamentary procedure, clarification of certain provisions from an existing or proposed act, clarification of issues of importance for preparing the proposals of acts or other issues within the competences of the committee, as well as for the purpose of monitoring the implementation and application of legislation, i.e., realisation of the oversight function of the National Assembly. Proposals for organising public hearings, with the topic of the public hearing and list of persons who would be invited, may be submitted by any committee member, and the decision thereon is made by the committee. After a public hearing, the committee Chairperson communicates the information on the public hearing to the Speaker of the National Assembly, committee members and the participants of the public hearing.

After the constitution of the new legislature, new committees will be established as referred to in Article 46 of the new Rules of Procedure:

- 1) - Committee on Constitutional and Legislative Issues,
- 2) - Defence and Internal Affairs Committee,
- 3) Foreign Affairs Committee,
- 4) Committee on the Judiciary, Public Administration and Local Self-Government,
- 5) Committee on Human and Minority Rights and Gender Equality,
- 6) Committee on the Diaspora and Serbs in the Region,
- 7) Committee on the Economy, Regional Development, Trade, Tourism and Energy,
- 8) Committee on Finance, State Budget and Control of Public Spending
- 9) Agriculture, Forestry and Water Management Committee,
- 10) Committee on Spatial Planning, Transport, Infrastructure and Telecommunications,
- 11) Committee on Education, Science, Technological Development and the Information Society,
- 12) Committee on Kosovo and Metohija,
- 13) Culture and Information Committee,
- 14) Committee on Labour, Social Issues, Social Inclusion and Poverty Reduction,
- 15) Health and the Family Committee ,
- 16) Environmental Protection Committee,
- 17) European Integration Committee,
- 18) Committee on Administrative, Budgetary, Mandate and Immunity Issues,
- 19) Security Services Control Committee.

Besides these committees as standing working bodies, Article 47 envisages the establishment of the Committee on the Rights of the Child. The Chairperson of the Committee is the Speaker of the National Assembly. Along with the Speaker of the National Assembly, members of the Committee are: Deputy Speakers, representatives of parliamentary groups in the National Assembly and the Chairperson of the Committee on Labour, Social Issues, Social Inclusion and Poverty Reduction.

(Note: a detailed description of committee competences is provided in the reply to question No. 11)

Oversight over the executive authority

The National Assembly performs its oversight function by holding a vote of no confidence in the Government or a Government member, by expressing opinion in case the Government asks a question regarding the confidence in it in the National Assembly, by submitting interpellation, posing parliamentary questions, by performing its function of electing and dismissing state officials elected by the National Assembly, by considering reports on the work of the Government submitted to the National Assembly by the Government, by considering other reports submitted by the Government and other executive authorities, and by establishing inquiry committees.

A minimum of 60 MPs may submit a **motion for a vote of no confidence in the Government or a Government member**. The motion is submitted in writing to the Speaker of the National Assembly.

The Government may require voting on confidence in it. Motion for a vote of no confidence in the Government is considered at the first following sitting, and not earlier than five days after submitting the motion. Upon the request of the Government, motion for a vote of no confidence in the Government may also be considered at the sitting of the National Assembly which is ongoing. The Prime Minister, on behalf of the Government, poses a question regarding no confidence. The motion for a vote of no confidence in the Government is deemed accepted if more than half of all MPs have voted in favour of it. If the National Assembly votes for no confidence in the Government, the Government's mandate terminates.

A minimum of 50 MPs may submit an **interpellation** regarding the work of the Government or a Government member. The Government shall reply to the interpellation within 30 days from the date of receiving the interpellation. The National Assembly discusses and votes on the reply to the interpellation submitted by the Government or a Government member to whom the interpellation refers. If the National Assembly votes to accept the reply to the interpellation, it continues its work according to the adopted agenda. If the National Assembly votes not to accept the reply to the interpellation given by the Government or a Government member, a vote of no confidence in the Government or a Government member shall be taken, unless they previously resign.

MPs are entitled to pose a **parliamentary question** to an individual Government minister or the Government from within their competences. Article 205 lays down that once a month (last Thursday of a month, between 16.00 to 19.00 o'clock) a sitting is held, during which members of the Government reply to parliamentary questions.

An MP is entitled to require information and explanation from the Speaker of the National Assembly, Chairperson of a parliamentary committee, ministers and state officials from other public authorities and organisations, regarding the issues within the framework of rights and duties of these officials, within the competences of the authority whose Heads they are, at the sitting of the National Assembly, on Tuesdays and Thursdays, right after the opening of the sitting, and before proceeding with the debate.

The Speaker of the National Assembly, upon the proposal of a parliamentary group, at least once per month, determines the day on which certain ministers in the Government will reply to **parliamentary questions regarding a topical subject**.

The Government reports to the National Assembly on its work, and especially on the policy pursued by the Government, on enforcement of laws, other regulations and general acts, on realisation of the development plan and spatial plan, and on the execution of the state budget. The Government submits a report to the National Assembly when the National Assembly requires it or on its own initiative, and at least once per year. The National Assembly may, acting on a motion of a committee, conclude without a debate to ask the Government to submit a report on its work, or a report in which the Government informs the National Assembly on issues regarding the implementation of policies, enforcement of laws and other general acts, in a certain field of activity.

One of the ways to carry out an oversight over the work of the executive authorities is by **informing committees on the work of ministries**. The Rules of Procedure envisage that a Minister informs the competent committee on the work of his/her Ministry once quarterly, on which the committee submits a report to the National Assembly, along with its conclusions on it.

The National Assembly may establish the **Inquiry Committee**, as a form of controlling the executive authorities, for the purpose of assessment of the situation in a certain area or establishment of facts on certain issues.

In line with the adopted amendments of the Rules of Procedure, performance of the oversight function over the executive authorities has been improved. The European Integration Committee and the Defence and Security Committee are examples of good practice considering the fact that competent Government representatives, in line with previously established obligations, regularly informed them on the Government activities within their competences. This type of the control has also been carried out by the Environmental Protection Committee. As for other committees, further improvements of the oversight function could be made by the implementation of the newly established provisions of the Rules of Procedure. Moreover, new provisions of the Rules of Procedure enable more complete realisation of the oversight function of the National Assembly by previously mentioned type of realisation of this parliamentary competence at plenary sessions, by more active participation of the executive authority (shorter time period for providing replies, higher quality of replies, etc.).

Procedure for adoption of laws

The procedure for adoption of laws starts by submitting a Bill to the Speaker of the National Assembly. All MPs, the Government, the Assembly of the Autonomous Provinces or at least 30,000 voters are entitled to propose laws, other regulations and general acts, and The Ombudsman and the National Bank of Serbia are entitled to propose laws within their competences.

Authorised Bill proposer submits the Bill in the form in which the law is adopted, with a rationale. The Rationale contains the constitutional basis for adopting the regulation, reasons for adopting the regulation, explanation of the basic legal institutions and individual provisions, an estimate of the funds necessary for implementation of the regulation, the general interest owing to which the retroactive effect is being proposed, if the Bill contains provisions with retroactive effect, reasons for adopting the Bill by an urgent procedure, if an urgent procedure has been proposed, reasons for which it is proposed that the regulation becomes effective before the eighth day following its publication and a list of the provisions which are being amended. The Rationale may also contain the analysis of the regulation effect, with detailed explanations.

Along with the Bill, the Bill proposer submits a statement that the Bill has been harmonised with the EU *acquis*, or that there exists no obligation for such harmonisation, or that it is not possible to harmonise the Bill with the EU *acquis*, and a Table of Compliance of the Bill with the EU *acquis*.

Where the Bill proposer is a group of MPs, a representative of the proposer shall be specified and communicated together with the Bill. Where this has not been done, the first of the MPs who signed the Bill is deemed the representative of the proposer.

Immediately after receiving it, the Speaker of the National Assembly communicates the Bill submitted to the National Assembly to MPs, the competent committees and the Government, if the Government is not the proposer. The Speaker also communicates the Bill to the Ombudsman or the National Bank of Serbia if it regulates issues within their competences.

The Bills are considered by the National Assembly by a regular and urgent procedure. Regular and urgent procedure, depending on how long the debates last at the sitting of the National Assembly, may be standard and abbreviated. In standard procedure, total time envisaged for the debate in principle for parliamentary groups amounts to five hours, and in abbreviated procedure it amounts to 50% of the time envisaged for the debate in principle.

Before being discussed at a sitting of the National Assembly, Bills are discussed by competent committees and the Government, if it is not the Bill proposer.

The competent committee and the Government, if it is not the Bill proposer, in their reports, i.e., opinions, may propose to the National Assembly to accept or not to accept the Bill in principle.

The Bill is initially put to a debate in principle. The National Assembly may decide to conduct a cognate debate in principle on several Bills on the agenda of the same sitting,

and are mutually conditioned, or the provisions in them are related, with the proviso that each Bill is voted on separately.

The Bill ratifying an international treaty is put to a single debate, which means that the Bill will be put to a debate in principle and a debate in detail simultaneously.

After the conclusion of the general debate in principle, the National Assembly opens a debate in principle on the Bill, or a single debate on the proposal of another act from other items of the agenda, followed by the debate in detail. Exceptionally, a debate in detail begins immediately after the conclusion of the debate in principle when the proposal of the Law on the Budget of the Republic of Serbia is on the agenda.

To begin a debate on the Bill in detail, at least 24 hours must pass from the conclusion of the debate in principle. In the period between the conclusion of the debate in principle and opening the debate in detail, competent committees may submit amendments to the Bill.

The National Assembly may decide to hold a debate in detail on some Bills immediately after the conclusion of the debate in principle.

Debates in detail are conducted on the Articles to which amendments have been submitted and on the amendments which propose introduction of new provisions.

The Bill proposer is entitled to withdraw the Bill from the procedure until the conclusion of the debate on the Bill at a sitting of the National Assembly.

The National Assembly, acting on a reasoned proposal of the Bill proposer, may decide to strike a certain item on the agenda of an ongoing sitting, until the beginning of the debate on that item at a sitting of the National Assembly, provided the sitting is being attended by at least 126 MPs.

The National Assembly votes on Bills in principle, in detail, or on the Bill in its entirety, on the Voting Day. If the Bill is approved in principle, the National Assembly votes on the amendments. After voting on the amendments, the National Assembly votes on the Bill in its entirety.

Laws may be adopted according to an **urgent procedure**.

Only laws regulating issues and relations which arose under unforeseeable circumstances, and the non-adoption of such a law by urgent procedure could cause detrimental consequences for human lives and health, the state security and the work of bodies and organisations, may be adopted by urgent procedure.

Laws may be adopted by an urgent procedure for the purpose of fulfilling international obligations and harmonisation of regulations with the EU acquis.

The Bill proposer is obliged to specify, in writing, reasons for adoption of the law by urgent procedure, in the rationale of the Bill.

Bills which regulate defence and security issues, for the adoption of which an urgent procedure is proposed, may be placed on the agenda of a sitting of the National Assembly even if submitted on the date of holding the sitting, two hours before the scheduled beginning of the sitting, and where the proposer is the Government, a Bill may be placed on the agenda even if submitted during the sitting of the National Assembly, provided the sitting is being attended by a minimum of 126 MPs. In practice, during this legislature there have been no cases when a Bill regulating these issues was put on the agenda of the ongoing sitting.

The Bill for the adoption of which an urgent procedure is proposed, may be put on the agenda of a sitting of the National Assembly if it has been submitted 24 hours before the scheduled beginning of the sitting, at the latest.

The National Assembly decides on every motion for placing on the agenda acts under an urgent procedure without a debate, during the determination of the agenda, or during a sitting, immediately on receiving the motion, provided the sitting is attended by the majority of the total number of MPs.

When at the sitting of the National Assembly, the motion for adoption of a Bill by an urgent procedure is not accepted before determining the agenda, consideration and adoption of the Bill are carried out in accordance with the provisions of the Rules of Procedure on adoption of Bills by regular procedure.

The urgent procedure for adoption of laws may, just as the regular one, be abbreviated depending on the length of the debate at the sitting of the National Assembly, if so proposed by an MP. Abbreviated urgent procedure is possible in case of ratification of international treaties, small amendments to existing laws, in case the law is no longer in force, there are amendments to the law related to a ruling of the Constitutional Court, in case there is an authentic interpretation of the law, and in case the law is to be harmonised with the legal system of the Republic of Serbia. Urgent procedure may also be abbreviated when a law is to be harmonised with the EU acquis.

Provisions of the Rules of Procedure on urgent and abbreviated procedures for adoption of laws provide necessary procedural conditions for harmonisation of national legislation with the EU acquis.

During this legislature, from June 2008 to December 2010, the National Assembly adopted 520 laws in total, out of which 193 were adopted by urgent procedure. The Most frequent reason for adopting laws by an urgent procedure was the harmonisation with the EU acquis, in line with the dynamics determined by the Government.

9. Please describe in detail the Parliament's rules of procedure and your experience from their implementation.

The Rules of Procedure of the National Assembly (*Official Gazette of RS*, No. 52/10, of 28 July 2010) was adopted on 28 July 2010 and entered into force on 5 August 2010. Transitional and final provisions lay down that the provisions regulating the number and scope of work of committees start being implemented after the establishment of a new

legislature. They also lay down that the tasks of the Committee on Administrative, Budgetary, Mandate and Immunity Issues are performed by the Administrative Committee until the establishment of a new legislature.

These Rules of Procedure harmonise the parliamentary procedures with the Constitution and the Law on the National Assembly.

The Rules of Procedure regulate the following issues:

- constitution of the National Assembly (convening the first sitting of the National Assembly, Verification of MPs' mandates, election of Speaker and Deputy Speaker of the National Assembly and appointment of the Secretary General of the National Assembly, formation of parliamentary groups, constitution of committees of the National Assembly and standing parliamentary delegations to international institutions),
- managing the work of the National Assembly (Speaker, Deputy Speakers, Collegium, Secretary General, Deputy Secretary General of the National Assembly)
- parliamentary groups,
Working bodies (committees and other working bodies, scope of work of the committees, committee sittings, public hearings), .
- sitting of the National Assembly at regular session (preparing and convening, opening and participation at the sitting, the course of a sitting, maintaining order at a sitting, minutes),
- special and solemn sitting of the National Assembly,
- decision making (vote by open and secret ballot),
- procedures for adoption of acts, and other procedures (for revision of the Constitution, adoption of Bills, ratification of international treaties, adoption of the budget of the Republic of Serbia and financial statement, for determining the parliamentary budget, for adoption of the Development Plan of RS and Spatial Plan of RS, for provision of previous approval of the Statute of the Autonomous Province, for adoption of a declaration, resolution, recommendation, and strategy, for adoption of the Rules of Procedure and other general acts, for authentic interpretation of laws, for adoption of Unique Methodology Rules for Making Regulations, for verification and termination of MPs' mandates, for election and termination of term of office, oversight over the Government, supervision of the work of security services, for dismissal of the state President, oversight over other state institutions, organisations and bodies, for providing replies to Constitutional Court request, and for deciding on war and peace and declaring a state of war and a state of emergency),
- originals and publication of acts,
- extraordinary session of the National Assembly,
- immunity of an MP,
- publicity of work of the National Assembly,
- relations between the National Assembly and the President of the Republic (Oath of office of the President of the Republic, nomination of candidates for certain functions, promulgation of laws and repeated votes on laws, resignation of the President of the Republic),
- Relations between the National Assembly and the Government (election of the Government, representation of the Government in the National Assembly, confidence in the Government),
- relations between the National Assembly and the Constitutional Court,

- rights and duties of MPs,
- dissolution of the National Assembly,
- international cooperation of the National Assembly (with representative bodies and institutions of other countries, participation of its representatives in the work of certain international organisations and missions, and parliamentary friendship groups),
- support service of the National Assembly.

Last chapter contains transitional provisions regarding the application of the Rules of procedure. These provisions provide normative conditions for introduction and stipulation of e-parliament. They also lay down that existing committees shall continue with their work by the end of the current legislature, having the scopes of work stipulated by the old Rules of Procedures that are no longer in force, except in the part referring to the scope of work of committees. Standing parliamentary delegations to international organizations, according to the new transitional provisions, continue with their work until new ones are elected.

The new Rules of Procedure have not only been harmonised with the Constitution and the Law on the National Assembly, but they have also, based on the experience with application of the old Rules of Procedure, introduced the following:

- the number of parliamentary committees has been reduced from 30 to 19, and their scopes of work have been particularly developed and specified;
- the already existing practice of holding committee sittings outside the premises of the National Assembly is regulated;
- new institutions have been introduced - the Collegium of the National Assembly and public hearing that has existed in practice, but is now for the first time regulated by these Rules of Procedure;
- procedures for adoption of laws and other acts are regulated in more details and more systematically;
- for the first time, the Rules of Procedure regulate the procedure for revision of the Constitution and the procedure for providing previous approval of the Statute of the Autonomous Province;
- procedures regulating the oversight function of the National Assembly are more detailed; The Rules of Procedure stipulate that quarterly reports on the work of ministries shall be submitted to committees, and the procedure for considering the quarterly reports is regulated. The procedure for oversight over the work of independent and regulatory bodies by considering their reports at a sitting of a competent committee and of the National Assembly, is particularly regulated. However, the Rules of Procedure do not clearly specify the consequences in case the reports are not adopted.

Experiences with application of the Rules of Procedure are positive as regards the provisions on adoption of laws, owing to which a large number of laws have been adopted and the efficiency of the work of the National Assembly has been increased. Notwithstanding the fact that the time management at sittings of the National Assembly has been improved, it is still necessary to improve the quality of debates at plenary sessions, committee sittings, and public hearings, and make prerequisites for developing a calendar of parliamentary activities.

As of the date the Rules of Procedure came into force, the Government, as the Bill proposer, has been obliged to submit regulatory impact analysis with proper explanations.. The practice hitherto has shown that the proposer should, along with the Bill, submit the Statement on compliance of the Bill with the EU acquis and Table of compliance of the Bill with the EU acquis.

Having in mind that the Rules of Procedure entered into force in the beginning of August 2010, it is still too early to mention other concrete experiences with the application of new provisions of the Rules of Procedure.

10. How is the Parliament exercising its legislative functions?

Is there a system of verifying, at Parliament level, the compatibility of new legislation with the 'acquis '? Explain.

Is there an obligation to analyse the fiscal impact of new legislation before it is adopted? How is this process working in practice? Explain.

The National Assembly exercises its legislative function by adopting laws, the budget, development plans and a spatial plan, its Rules of Procedure, strategies, declarations, resolutions, recommendations, decisions, conclusions and authentic interpretation of laws. (Article 8, paragraph 1 of the Law on the National Assembly, *Official Gazette of RS*, No. 9/10, of 26 February 2010).

Pursuant to Article 94 of the Rules of Procedure of the National Assembly (*Official Gazette of RS*, No. 52/10, of 28 July 2010) the National Assembly adopts laws and other acts by regular and urgent procedures. Regular and urgent procedure, depending on how long the debates last at a sitting of the National Assembly, may be standard and abbreviated.

Besides the law adoption procedure (which is described in the reply to question 8), the National Assembly applies the following procedures when exercising its legislative function: procedure for ratification of international treaties, procedure for determining the parliamentary budget, procedure for adoption of Development Plan of RS and Spatial Plan of RS, procedure for adoption of declarations, resolutions, recommendations, and strategies and the procedure for adoption of Rules of Procedure and other general acts.

The procedure for ratification of international treaties – provisions of the Rules of Procedure relating to the law adoption procedure are applied when adopting these laws, but the Bills ratifying international treaties are put to a single debate. It means that a debate in principle and a debate in detail are held simultaneously. No amendments may be submitted to the text of an international treaty.

The procedure for adoption of the Budget of the Republic of Serbia and financial statement – the Government submits to the National Assembly the proposal of the Law on the Budget with a Rationale (constitutional basis for adoption of the budget, reasoning for the proposed necessary resources by each budget beneficiary – expenditures, explanation of the structure of revenues in the state budget). The debate on the Bill on the budget may begin no earlier than on the fifteenth day from the date

the budget proposal is received in the National Assembly. Before the debate at a sitting of the National Assembly, the budget proposal may be considered by committees of the National Assembly which communicate their opinions to the competent committee that submits its report to the National Assembly. At a sitting of the National Assembly, there is a debate in principle and a debate in detail on the budget proposal. Voting on the budget proposal in principle, in detail, and in its entirety is carried out on the Voting Day. During a year, amendments to the budget may be made pursuant to the provisions of the Rules of Procedure regulating the procedure for adoption of the budget.

The procedure for determining Parliamentary budget – Secretary General drafts a proposal of the Parliamentary budget and submits it to the competent committee with a rationale, which considers the proposal. When the competent committee determines the proposal of the Parliamentary budget it submits the proposal to the Ministry responsible for finance for its opinion. The competent committee considers the opinion of the Ministry in order to harmonise its positions with the positions of the Minister responsible for finance. Parliamentary budget is deemed determined when at a sitting of the competent committee a consensus is reached on it. If the consensus is not reached at a sitting of the competent committee, the Ministry responsible for finance shall incorporate, without changes, the parliamentary budget proposal into the Draft Budget of the Republic of Serbia, and the Government shall incorporate it without changes into the proposal of the Law on the Budget of the Republic of Serbia.

Procedure for adoption of the Development Plan of RS and Spatial Plan of RS – the proposal of the Development Plan is submitted by the Government. Before the debate at a sitting of the National Assembly, the Development Plan is considered by committees of the National Assembly which communicate their reports to the competent committee that submits its report to the National Assembly. The same procedure is applied for adoption of the Spatial Plan of RS. These Plans may not be considered by urgent procedure. The procedure for adoption of the Plans is subject to the provisions of the Rules of Procedure on the law adoption procedure.

Procedure for adoption of declarations, resolutions, recommendations and strategies – proposals of these acts may be submitted by Bill proposers authorised by the Constitution. A single debate is conducted on these acts at a sitting of the National Assembly, and they are subject to provisions of the Rules of Procedure on the law adoption procedure.

Procedure for adoption of Rules of Procedure of the National Assembly and other general acts – proposal of the Rules of Procedure may be submitted by an MP or a competent committee and the proposal of a decision or a conclusion may be submitted by an authorised proposer in accordance with the Constitution, the law or the Rules of Procedure. A single debate is conducted on these acts at a sitting of the National Assembly, and the procedure for their adoption is in line with the provisions of the Rules of Procedure on the law adoption procedure.

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The Rules of Procedure of the National Assembly stipulate a system of verifying the compatibility of Bills with the EU *acquis*. Namely, Article 151, paragraph 3 lays down

that every Bill in its Rationale must contain a Statement on compliance of the Bill with the EU *acquis* and a Table of compliance of the Bill with the EU *acquis*.

In case the Rationale of the Bill does not contain the abovementioned, the Bill shall not enter the procedure due to formal reasons. In such case, the Speaker of the National Assembly, pursuant to Article 153 of the Rules of Procedure of the National Assembly, may require from the proposer to harmonise the Bill with the provisions of the Rules of Procedure, i.e. require the Statement and Table of Compliance to be submitted.

The competent committee, i.e. the European Integration Committee, pursuant to Article 64 of the Rules of Procedure of NARS, considers Bills and proposals of other general acts from the aspect of their conformity with the EU *acquis* and the Council of Europe legislation, and reports to the National Assembly thereon. Besides this, the Committee considers plans, programmes, reports and information on the EU Stabilisation and Association Process, monitors the implementation of the Association Strategy, proposes measures and launches initiatives for accelerating the realisation of the Association Strategy within the competences of the National Assembly, proposes measures for the establishment of a general, national agreement on Serbia's association with the European institutions, develops international cooperation with parliamentary committees of other countries and parliamentary institutions of the European Union. This Article also lays down that the Committee issues preliminary opinion on justification of the abbreviated procedure on which, pursuant to Article 93 of the Rules of Procedure of NARS, decides the National Assembly. An MP, pursuant to Article 95 of the Rules of Procedure of NARS, may propose a shorter time of a debate on an act proposal when, *inter alia*, a law is to be harmonised with the legal system of the Republic of Serbia and the EU *acquis*. Also, for the purpose of adopting the laws within the European agenda, i.e. within the National Programme for Integration with the European Union (NPI), Article 167 of the Rules of Procedure of NARS envisages that laws may be adopted by an urgent procedure for the purpose of fulfilling international obligations and harmonisation of regulations with the EU *acquis*.

Since the Adoption of the Rules of Procedure of the National Assembly, 28 July 2010, the Government, or the competent Ministries and other proposers have also, along with the Bill, been submitting the Statement and Table of Compliance.

Even before the adoption of the new Rules of Procedure, consideration of Bills from the aspect of their compliance with the EU *acquis* had been within the competences of the European Integration Committee, and this task was introduced by the amendments to the Rules of Procedure of the National Assembly of 30 May 2003, when this Committee was established. The European Integration Department was established having the same idea in mind. However, owing to the fact that the Government, since then until the adoption of the new Rules of Procedure, was not legally obliged to submit the abovementioned documents, the compliance with the EU *acquis* was verified exclusively on the basis of the Rationale of the Bill. The text of the Rationale, by rule, contained parts in which it was stated to what extent the Bill was harmonised with the EU *acquis* (it was frequently expressed in percentages).

After the adoption of the new Rules of Procedure of NARS, i.e. after establishing the obligation of submitting the Statement and Table of Compliance, a real prerequisite was

created for monitoring, on the Parliamentary level, the compliance of the national legislation with the EU *acquis*. For now, however, the European Integration Committee considers Bills only in principle and not in detail. For the purpose of introducing this practice, which would introduce a quality control of the compliance of the national legislation with the EU *acquis*, it would be pivotal to reduce the frequency of considering laws by urgent procedure, especially when important system laws are concerned. The introduction of this practice also demands further strengthening of research and analytic professional and human resource capacities of the National Assembly support service, especially of the European Integration Department.

* * *

The Rules of Procedure of the National Assembly, Article 151 stipulates that an authorised Bill proposer submits the Bill in the form in which laws are adopted, with a Rationale. The Rationale, *inter alia*, must contain the estimate of financial resources necessary for the implementation of regulations, which includes the sources from which the resources would be provided. Namely, the abovementioned provision of the Rules of Procedure stipulates that every Bill submitter shall include in the Rationale an estimate of potentially necessary resources that are to be allocated in the budget of the Republic of Serbia in order to ensure an unobstructed application of the Bill. This further means that the Rationale may contain an explanation of expenses that the application of the regulation may incur for the citizens and economy (especially for small and medium enterprises), explanation on whether positive consequences of adoption of the regulation are such as to justify the expenses incurred by it, whether the regulation supports establishment of new businesses on the market and market competition.

If the Rationale does not contain the estimate of financial resources necessary for the implementation of regulations, the Bill is not deemed to have been prepared in accordance with the Rules of Procedure. The Speaker of the National Assembly will require from the proposer to harmonise the Bill with provisions of the Rules of Procedure, specifying in detail where the harmonisation is required. The proposer may submit, within 15 days, the Bill harmonised with the provisions of the Rules of Procedure. In case there is a disagreement on this issue, the proposer may require from the National Assembly to vote on the issue and the National Assembly shall vote on that issue at the first subsequent sitting, before starting the agenda, without a debate. Before the vote, the proposer is entitled to present his/her position for no longer than five minutes. If the Bill proposer does not act in accordance with the order of the Speaker of the National Assembly, the Bill will be deemed withdrawn (Article 153 of the Rules of Procedure of NA) .

In the existing provisions of the legislation there is no an explicitly defined obligation to analyse the fiscal impact of new legislation before it is adopted. The introduction of this kind of obligation in the National Assembly would require strengthening the capacities of the parliamentary Finance Committee.

11. Please specify competences of the committees. How much time is dedicated to scrutiny of legislation by the committees?

Constitution, competences and composition of working bodies of the National Assembly are regulated by the Law on the National Assembly (*Official Gazette of RS*, No. 9/10, of 26 February 2010) and the Rules of Procedure of the National Assembly (*Official Gazette of RS*, No. 52/10, of 28 July 2010). According to Article 27 of the Law, the National Assembly establishes standing working bodies and it may also establish *ad hoc* working bodies. Standing working bodies are committees. *Ad hoc* working bodies are inquiry committees and commissions. An *ad hoc* working body may be established for the purpose of assessment of the situation in a certain area or establishment of facts on certain occurrences or events. Composition and tasks of an *ad hoc* working body is laid down in the Decision of the National Assembly. Composition, scope of work and manner of work of committees are determined by the Rules of Procedure.

According to the Law on the National Assembly, committees are established for consideration of Bills and proposals of other acts submitted to the National Assembly; for carrying out the review of policies pursued by the Government; supervision of the Government's and other state authorities' execution of laws and other general acts, and for consideration of other matters falling within the competence of the National Assembly. The National Assembly elects members of a Committee and deputy members of a Committee upon the proposals of parliamentary groups, proportional to the number of MPs of each parliamentary group in relation to the total number of MPs in the National Assembly. A committee, within its competences, supervises the work of the Government and other bodies and institutions whose work is overseen by the National Assembly in accordance with the Constitution and the law. A committee considers the reports of the bodies, organisations and institutions which are submitted to the National Assembly in accordance with the law. A Member of the Government, i.e. an authorised Government representative, attends the Committee sitting when proposals or opinions of the Government are considered and in other cases on the invitation of the Committee, as well as an authorised representative of other proposer of the law and acts. Pursuant to Article 44 of the Rules of Procedure of the National Assembly, within their individual scopes of work, committees: Considers Bills and proposals of other acts, monitor the implementation of Government policy, monitor the execution of laws and other acts, considers work plans and reports of competent ministries and other public authorities, organisations and bodies, consider the National Assembly's Annual Work Plan, issues assents to the acts of public authorities, organisations and bodies which, in accordance with the Law, submits them to the National Assembly for its approval, launches initiatives and submits proposals to the National Assembly, pursuant to the Law and the Rules of Procedure, considers initiatives, petitions, complaints and proposals which are within its scope of work, considers other issues within the competences of the National Assembly. Decisions on disputed issues related to the scope of work of committees are, if any, made by the Speaker of the National Assembly. Committees engage in mutual co-operation and may hold joint meetings to discuss issues of common interest. Committees separately decide on the work plan and reports of a competent Ministry and other public bodies, organisations and institutions. Committees may form sub-committees from the ranks of their members to consider certain issues from within their scopes of work and prepare proposals on those issues, and the Chairperson of a committee may form a special working group. Sub-

committees, i.e. working groups perform activities for the needs of committees and may not make decisions on their own, unless decided otherwise by the competent committee.

According to Articles of the Rules of Procedure regulating the procedures for adoption of acts, the Bill submitted to the National Assembly is immediately after the receipt of it communicated by the Speaker of the National Assembly to MPs, the competent committee and the Government, if the Government is not the proposer (a Bill is also communicated to the Ombudsman or the National Bank of Serbia if it regulates issues within their competences). Bills prepared in accordance with the provisions of the Rules of Procedure may be included in the agenda of a sitting of the National Assembly within no less than 15 days of the date of its submittal. Before being considered at a sitting of the National Assembly, Bills are considered by competent committees and the Government, if it is not the proposer of the Bill. The competent committee and the Government, if it is not the Bill proposer, in their reports, i.e., opinions, may propose to the National Assembly to accept or not to accept the Bill in principle. If the competent committee and the Government propose acceptance of the Bill in principle, they are obliged to specify whether they accept the Bill in its entirety or with changes that they propose in the form of amendments. The competent committee and the Government submit to the National Assembly reports, i.e. opinions, as a rule within at least five days before the date of the beginning of the sitting of the National Assembly at which the Bill will be considered. If the competent committee does not submit the report, or the Government does not submit its opinion on the Bill, the Bill will be considered without the report and/or the opinion. At a sitting of the competent committee, first there is a debate in principle and then a debate in detail on a Bill. Debates in detail are conducted on the Articles to which amendments have been submitted and on the amendments which propose introduction of new provisions to the Bill and the following may participate in the debate: committee members, the Bill proposer or its representative, a Government representative if the Government is not the proposer and the proposer of the amendments or every MP who attends the sitting of the relevant committee, as well as other persons invited. On the conclusion of the debate, the competent committee submits to the National Assembly a report which contains the opinion and proposals of the committee, and a dissenting opinion of a committee member. The committee designates a rapporteur who is entitled to substantiate the report of the committee at a sitting of the National Assembly.

Amendments may be submitted to the Speaker of the National Assembly in written or electronic form, by the Bill proposer authorised for it by the Constitution, and a competent committee of the National Assembly (provisions relating to submitting Bills and proposals of other acts of the National Assembly and amendments in electronic form will be applied when technical conditions for it are provided, which will be established by a competent committee of the National Assembly that will adopt the act regulating the procedure for submitting Bills and proposals of other acts in electronic form) as of the date the Bill is received in the National Assembly, and three days, at the latest, before the date scheduled for holding the sitting at which consideration of that Bill has been proposed, except if a sitting of the National Assembly is convened within a time-limit shorter than that envisaged by the Rules of Procedure, when the deadline for submitting amendments extends until the beginning of the debate in principle at a sitting of the National Assembly. Amendments to the Bill, which are considered by an urgent procedure, may be submitted before the beginning of the debate in principle on

that Bill. The submitter of the amendment may not, alone or together with other MPs, submit more than one amendment to the same Article of the Bill. Bill proposer or the authorised representative of the Bill proposer and the competent committee consider the amendments submitted to the Bill and propose to the National Assembly which amendments should be accepted and which rejected. Amendments which are in line with the Constitution and legal system, and are accepted by the Bill proposer and the competent committee become an integral part of the Bill and the National Assembly does not vote on them separately.

Competences of the Chairperson of a committee are stipulated by Article 70 of the Rules of Procedure, and he/she convenes a sitting of the committee upon the request of at least one third of the total number of the committee members or upon the request of the Speaker of the National Assembly. The agenda of the sitting is determined by the committee, by a majority of votes cast by those members present, at a sitting where the majority of the total number of committee members is present. Debates at committee sittings, according to the determined agenda, are conducted irrespective of the number of committee members present. A committee may hold sittings without the quorum required for making decisions, if the sitting is held for the purpose of a debate aimed at informing the committee on issues within its scope of work. A committee makes decisions by a majority vote of committee members present, at the sitting at which majority of committee members are present, unless stipulated otherwise by the law and the Rules of Procedure. A deputy committee member has decision-making powers in the absence of the member he/she is substituting.

Committees may organise public hearings. Scientists and experts may, on the invitation, participate in the work of working bodies. The Speaker of the National Assembly, acting on the proposal of a working body, may commission the services of scientific and professional institutions, as well as scientists and experts, to inquire into certain issues from the scope of work of the National Assembly. According to Articles 83 and 84 of the Rules of Procedure of the National Assembly, committees may organise public hearings for the purpose of obtaining information, or professional opinions on proposed acts which are in the parliamentary procedure, clarification of certain provisions from an existing or proposed act, clarification of issues of importance for preparing the proposals of acts or other issues within the competences of the committee, as well as for the purpose of monitoring the implementation and application of legislation, i.e., realisation of the oversight function of the National Assembly. Proposals for organising public hearings may be submitted by any committee member, and the decision thereon is made by the committee. The Chairperson of a committee invites to the public hearing committee members, MPs and other persons whose presence is of importance for the topic of the public hearing. A public hearing is held regardless of the number of the committee members present. After a public hearing, the committee Chairperson communicates the information on the public hearing to the Speaker of the National Assembly, committee members and the participants of the public hearing.

Competences of committees according to the previous Rules of Procedure

Transitional provisions of the new Rules of Procedures lay down that the existing committees continue operating in accordance with their present scopes of work, until a new legislature is established. It means that committees work in line with provisions of

the Rules of Procedure of the National Assembly of the Republic of Serbia (*Official Gazette of RS* No. 14/09 - Consolidated version) which is, in this part, from Article 46 to 67, in force until next legislature is established. Competences of these committees are the following:

Committee on Constitutional Issues considers proposals to amend the Constitution of the Republic of Serbia, proposals to amend the Constitution of the Federal Republic of Yugoslavia and the Statutes of Autonomous Provinces in the procedure of granting approval of the National Assembly, proposals for initiating the procedure for dismissal of the President of the Republic, as well as general issues concerning the application of the Constitution. The Chairperson of the Committee is the Speaker of the National Assembly.

The Legislative Committee considers Bills, other regulations and general acts addressed to the National Assembly to assess compliance with the Constitution and the legal system, proposals for adoption of authentic interpretations of laws, other regulations and general acts adopted by the National Assembly, as well as issues of uniform legislative methodology and other issues of relevance to the uniform legal and technical processing of acts adopted by the National Assembly.

The Legislative Committee considers notifications of the Constitutional Court on the state and problems of adherence to the Constitution and laws in the Republic, opinions and advice of the Constitutional Court about the necessity of adopting and amending laws and undertaking other measures to safeguard constitutionality and legality, as well as proposals and initiatives for initiating procedures for assessing constitutionality of laws, other regulations, and general acts adopted by the National Assembly. The Committee monitors the development of the legal system and reports thereon to the National Assembly.

The Committee on Defence and Security considers Bills and other regulations and general acts, and other issues related to the Serbian Armed Forces; defence of the Republic of Serbia; integrated management of border affairs; production, trade in and transport of arms; considers the Defence Strategy, issues regarding the realisation of civil and democratic control of the Serbian Armed Forces and defence system, as well as issues in the area of public and national security; reports on the work of the Ministry of the Interior on security situation in the Republic of Serbia submitted to the National Assembly upon its request; and performs oversight over security services and monitors other issues in the area of security, in accordance with the law.

The Foreign Affairs Committee considers Bills and other regulations and general acts, as well as other issues in the area of: foreign policy; relations with other countries and international organisations; ratification of international treaties in the area of foreign-policy relations; regulation of the procedure of concluding and enforcing international treaties; protection of the citizens of the Republic of Serbia and their interests and interests of national legal entities in foreign countries.

The Committee plans foreign policy activities of the National Assembly and makes decisions thereon. When the Committee is not able to decide on these issues, the decisions are made by the Speaker of the National Assembly. The Committee may

conduct interviews with the ambassadors of the Republic of Serbia before they assume their diplomatic duties.

The Justice and Administration Committee considers Bills and other regulations and general acts, as well as other issues in the area of organisation of judicial authorities and actions taken by such authorities and magistrates, execution of criminal sanctions, international legal aid, organisation and work of public authorities and execution of public powers, organisation of authorities, electoral system, and the association of citizens. The Committee delivers its opinion on proposals of decisions on the election of court presidents, of public prosecutors and deputy public prosecutors, and of other judicial and administrative officials envisaged by the law, and proposes decisions on the termination of their term of office, or their dismissal.

The Committee on Inter-Ethnic Relations considers Bills and other regulations and general acts, as well as other issues from the aspect of exercising rights of ethnic minorities and realisation of inter-ethnic relations in the Republic.

The Committee on Relations with Serbs Living outside Serbia considers issues within the competences of the National Assembly relating to the establishment and maintenance and fostering relations with the Serbs living outside the Republic of Serbia, in order to contribute to their struggle for the protection of their national identity.

The Committee on Development and International Economic Relations considers Bills and other regulations and general acts, as well as other issues in the area of: relations with international economic and financial organisations; ratification of international treaties; development plans and programmes; economic development and the credit and monetary and banking systems; foreign economic relations, chambers of commerce, public services systems, the health care system and developments in the area of health care, social security, ex-servicemen's and disability insurance, social care for children and youth, education, culture and protection of cultural heritage, physical culture, policy and measures for directing and promoting development, including development of underdeveloped regions, as well as issues of commodity reserves.

The Finance Committee considers Bills and other regulations and general acts, as well as other issues in the area of: the system of financing state functions, taxes, duties and other levies, the state budget and financial statements, loans, guarantees, lotteries, insurance, ownership relations and contractual obligations, expropriation, as well as other issues in the area of finance

The Industry Committee considers Bills and other regulations and general acts, as well as other issues in the area of industry, except for the food industry, development and production of all types of energy, as well as in the area of mining, geological, and seismological research.

The Committee on Transport and Communications considers Bills and other regulations and general acts, as well as other issues in the area of road, railway, water and air transport, postal traffic, and telecommunications.

The Committee on Urban Planning and Construction considers Bills other regulations and general acts, and other issues in the field of urbanism and spatial planning, housing and utility activities, construction, regulation and use of buildable land and land surveying and land register.

The Agriculture Committee considers Bills and other regulations and general acts, as well as other issues in the area of agriculture, forestry, food industry, water management, veterinary medicine, agricultural cooperatives and rural development.

The Committee on Trade and Tourism considers Bills and other regulations and general acts, as well as other issues in the area of trade, catering and tourism, arts and crafts and other services.

The Privatisation Committee considers Bills, other regulations and general acts in the area of privatisation; considers monthly reports of the Ministry responsible for privatisation activities on the situation during the privatisation process, concluded capital/property sale contracts, initiated privatisation procedures and the work of entities responsible for implementing privatisation procedures, and delivers to the National Assembly opinions and proposals regarding these issues.

The Committee for Kosovo and Metohija considers all issues regarding this Province taking care, above all, of the Serbian national interests and state interests of the Republic of Serbia; proposes to the National Assembly relevant decisions, declarations and resolutions and monitors their implementation or realisation by relevant bodies and institutions.

The Health and Family Committee considers Bills and other regulations and general acts, as well as other issues in the area of health care, the system and organisation of the health care activity, demographic policy and family protection. .

The Environmental Protection Committee considers Bills and other regulations and general acts, as well as other issues in the area of environmental protection and improvement, preservation and development of natural and man-made resources, rational use, prevention and elimination of pollution of natural resources, as well as other types and sources of threats to the environment, in the area of forestry, hunting, fishing, and hydrometeorology.

The Education Committee considers Bills and other regulations and general acts, as well as other issues in the area of pre-school, elementary and secondary education, and college and university education.

The Youth and Sports Committee considers Bills and other regulations and general acts in the area of sports and physical culture, and issues related to the status of the youth.

The Committee on Culture and Information considers Bills and other general acts and other issues in the area of culture and public information.

The Committee on Science and Technological Development considers Bills and other regulations and general acts in the area science and research, development of science, and application of scientific achievements at universities, scientific institutes and in economy, development of new technologies and their application, standardisation, measures and precious metals, and statistics.

The Committee on Labour, Ex-Servicemen's and Social Issues considers Bills and other regulations and general acts and other issues in the area of labour relations, occupational safety, employment, social security, social care for families and children, pension and disability insurance, care for ex-servicemen who served in wars of liberation, and disabled ex-servicemen and their family members, care for victims of fascist terror and civilian victims of wars, as well as other forms of social security.

The Committee on Petitions and Proposals considers petitions and proposals addressed to the National Assembly, proposes to the National Assembly and to competent bodies measures for the settlement of issues contained therein, and inform the petitioners thereof, if so requested. The Committee submits a report to the National Assembly on its observations concerning petitions and proposals at least once during every regular session.

The Economic Reforms Committee considers economic development plans and programmes, considers Bills and other regulations and general acts and other issues in the area of economic system and economic policy and analyses and monitors the economic reforms policy. The Committee has twenty-one (21) members, out of which 12 are delegated from the following National Assembly Committees: the Legislative Committee, the Committee on Development and International Economic Co-operation, the Finance Committee, the Industry Committee, the Committee on Transport and Communications, Committee on Urban Planning and Construction, the Agriculture Committee, the Committee on Trade and Tourism, the Privatisation Committee, the Environmental Protection Committee, the Committee on Science and Technological Development, and the Committee on Labour, Ex-Servicemen's and Social Issues. The remaining nine (9) members are elected in the manner stipulated by provisions of Article 24 of these Rules of Procedure.

The European Integration Committee considers Bills and other regulations and general acts, as well as other issues from the aspect of conformity with the EU acquis and the Council of Europe. The Committee considers plans, programmes, reports and information on the EU Stabilisation and Association Process, monitors the implementation of the Association Strategy, proposes measures and launches initiatives for accelerating the realisation of the Association Strategy within the competences of the National Assembly, proposes measures for the establishment of a general, national agreement on Serbia's association with the European institutions, and develops international cooperation with parliamentary committees of other countries aimed at better understanding of the EU accession process and integration.

The Poverty Reduction Committee defines the manner of National Assembly's participation in implementing the national Poverty Reduction Strategy; considers Bills and other regulations and general acts, and other issues from the aspect of implementing the Poverty Reduction Strategy; supervises the process of adopting the budget and

allocating budget resources in relation to the implementation of the Strategy and engages in institutionalisation and participation of civic representatives in the decision-making process related to the Strategy.

The Gender Equality Committee considers Bills and other regulations and general acts from the aspect of improvement and achievement of gender equality. The Committee carries out the review of policies pursued by the Government, execution of laws and other general acts by the Government of the Republic of Serbia and other authorities and public officials accountable to the National Assembly, from the aspect of respecting gender equality.

The Local Self-Government Committee considers Bills and other regulations and general acts, as well as other issues related to the territorial organisation of the Republic of Serbia and to organisation, election, scope of work, financing and manner of work of bodies and services of the local self-government units.

The Administrative Committee:

- prepares and proposes regulations related to issues of realisation of MPs' rights and duties;
- adopts individual acts on the issues regarding the status of MPs and officials elected or appointed by the National Assembly, if not stipulated otherwise by the law;
- determines proposals for allocation of resources from the budget of the Republic of Serbia necessary for the work of the National Assembly, sees to the regularity of use of the resources and submits a report to the National Assembly thereof;
- prepares and proposes acts on the organisation and work of the National Assembly, performs appointments;
- adopts acts on the establishment of Tender and Complaints Commission;
- adopts the act on employing consultants for expert and administrative tasks of parliamentary groups of the National Assembly.
- adopts the Rulebook on Internal Organisation and Job Classification (*Systematisation*) in the National Assembly Service of the Republic of Serbia;
- adopts the decision on working hours of the National Assembly Service of the Republic of Serbia;;
- makes decisions on remuneration of the Secretary General and Deputy Secretary General of the National Assembly, as well as civil servants in appointed positions of the National Assembly;
- adopts the act on handling materials considered state materials, official or military secret and on storing such materials in the National Assembly, as well as the act on internal order in the National Assembly building, as well as other general acts on the manner of exercise of particular rights and duties of MPs and employees of the National Assembly Service, in accordance with law;
- determines MPs' seating arrangements in the National Assembly chamber, by parliamentary Groups;
- considers requests for approval of the remand in custody of a judge or public prosecutor, and submits a report thereon, with proposal of the decision, to the National Assembly;
- performs other tasks laid down in acts and demands of the National Assembly.

The Committee considers the following:

- reasons for the termination of mandates of particular MPs, and submits reports thereof to the National Assembly, along with a proposal for the assignment of mandates to a new MP, in the manner envisaged by the law;
- reports of the Republic Electoral Commission and certificate attesting to the election of MPs, and submits to the National Assembly its own reports with the proposal to verify the mandate of the MPs;
- issues regarding the establishing or waiving the immunity of MPs and other elected officials, in cases envisaged by the Constitution;
- other issues related to mandate and immunity rights of MPs.

The Committee monitors the implementation of these Rules of Procedure, considers and makes proposals for amendments thereto, and delivers opinions to the National Assembly upon its request on the application of particular provisions thereof; Competences of committees according to the new Rules of Procedure are regulated by Articles 48 to 67 of the Rules of Procedure of the National Assembly:

Committee on Constitutional and Legislative Issues considers proposals amending the Constitution of the Republic of Serbia; Draft acts amending the Constitution of the Republic of Serbia; draft Bills, proposals of other regulations and general acts from the aspect of conformity with the Constitution and the legal system and justification of their adoption; Bills on the organisation of the Constitutional Court, proceedings before the Constitutional Court and the legal effect of its decisions; statutes of autonomous provinces in the procedure for granting approval of the National Assembly; motions for initiating a procedure for the dismissal of the President of the Republic; principle issues regarding the application of the Constitution; Issues regarding the election and appointment of the Constitutional Court judges, the election of the Ombudsman and other public officials in accordance with the law; information of the Constitutional Court on the existing situation and problems referring to the realisation of constitutionality and legality, opinions and indications of the Constitutional Court to the necessity of revising laws and undertaking other measures to protect constitutionality and legality, as well as proposals and initiatives to start procedures of assessing the constitutionality of laws and other general acts adopted by the National Assembly; proposals to adopt authentic interpretations of the law, and drafts a proposal of the authentic interpretation of the law.

The Committee prepares a proposal of an act on the amendment of the Constitution of the Republic of Serbia, unless the National Assembly decides otherwise, and prepares a proposal of a constitutional law on implementing the Constitution; examines formal compliance of an interpellation with the provisions of the Rules of Procedure, and submits a report thereon to the Speaker of the National Assembly; monitors the construction of the legal system and informs the National Assembly thereon; adopts an act regulating Unique Methodological Rules for Making Regulations; determines which amendments to Bills are identical in their content, which is important for the application of the Article 158 paragraph 5 and 6 of the Rules of Procedure, and rejects amendments that are incomplete or have offensive content; monitors the implementation of these Rules of Procedure, considers and issues proposals for its amendments and, on the request of the National Assembly, it delivers an opinion to the National Assembly on the implementation of certain provisions of the Rules of Procedure; performs other activities in accordance with the law and the Rules of Procedure.

The Defence and Internal Affairs Committee considers Bills and proposals of other general acts on conscription, labour and material obligations, mobilisation, state of emergency and state of war, status and other issues of professional personnel in the Serbian Armed Forces, the military education system, international co-operation in the area of defence and military co-operation; maintaining public law and order, public gatherings; road traffic safety; security of national borders and border control, as well as the control of movement and stay in border zones; residence of foreign nationals; trade and transport of weapons, ammunition, explosive and other hazardous materials from the scope of work of the ministry in charge of internal affairs; fire protection; citizenship; a citizen's unique personal identification number [JMBG]; temporary and permanent residence of citizens; personal ID cards of citizens; travel documents; international assistance and forms of international co-operation in the area of internal affairs, including re-admission; illegal migrations; asylum; other issues relating to: the Serbian Armed Forces, the defence of the Republic of Serbia, production, trade in and transport of weaponry and military equipment and sending the Serbian Armed Forces' service personnel and other defence forces to multinational operations outside the borders of the Republic Serbia; National Security Strategy and Defence Strategy; issues regarding the realisation of parliamentary control of the Serbian Armed Forces and the defence system; Proposals of budgetary resources necessary for the activities of the Serbian Armed Forces and control of spending of the budgetary resources; Reports of the Ministry of Defence submitted on a quarterly basis by the Minister for Defence to the Committee during sittings of the National Assembly; Public and state security issues; Report on the performance of the Ministry in charge of internal affairs on the security status in the Republic of Serbia submitted to the National Assembly on its request; and other issues in the area of defence and internal affairs. The Committee performs other activities in accordance with the law and the Rules of Procedure.

The Foreign Affairs Committee considers Bills and proposals of other general acts, as well as other issues in the area of: foreign policy; relations with other countries, international organisations and institutions; ratification of international treaties in the area of foreign-policy relations; regulation of the procedure of concluding and enforcing international treaties; protection of the rights and interests of the Republic of Serbia and its citizens and national legal entities in foreign countries. The Committee conducts interviews with the ambassadors of the Republic of Serbia before they assume their diplomatic duties.

The Committee decides on the composition of delegations which are not standing, as well as the objectives and tasks of the delegations of the National Assembly; designates the heads and members of parliamentary groups of friendship and approve decisions on exchanges of visits with parliamentary groups of friendship of other countries' representative bodies and keeps records on membership in parliamentary groups of friendship . Where the Committee is not able to decide on the composition of the delegation or approve the decisions on exchanges of visits with parliamentary groups of friendship of other countries' representative bodies, the relevant decision is made by the Speaker of the National Assembly, or a deputy Speaker of the National Assembly and the Chairperson of the competent committee.

The Committee performs other activities relating to the co-operation of the National Assembly with representative bodies of other states and to the participation of its

representatives in the work of certain international organisations and missions; considers and adopts reports of the National Assembly's delegations' visits and their participation in international meetings; submits annual reports on international cooperation to the National Assembly; performs other activities in accordance with the law and the Rules of Procedure.

The Committee on the Judiciary, State Administration and Local Self-Government considers Bills and proposals of other general acts, as well as other issues in the following areas: criminal legislation and legislation on economic infractions and economic offences; contractual obligations and probate law; proceedings before court; organisation and activities of the judiciary; control of criminal sanction execution, introduction of national mechanisms for prevention of torture, cruel, inhumane and humiliating punishments and proceedings; international legal assistance and extradition; amnesties and pardons; expert-witnessing, the lawyer's profession and other legal professions; organisation and work of public authorities and execution of public powers; administrative procedure and administrative disputes; organisation of authorities, electoral system and associations of citizens; the territorial organisation of the Republic of Serbia; the organisation of local self-government and elections, funding and manner of work of bodies and services of the local self-government units; registration books and seals; holidays, decorations of the Republic of Serbia and the use of state symbols. The Committee delivers its Opinion on the proposed decision on the election of the President of the Supreme Court of Cassation and the State Public Prosecutor. The Committee considers the proposed decision on the election of the members of the High Judicial Council, members of the State Prosecutorial Council, court presidents, public prosecutors, and judges and deputy public prosecutors elected for the first time; delivers an opinion on proposals of decisions on the election and dismissal of public officials, in accordance with the law; performs other activities in accordance with the law and the Rules of Procedure.

The Committee on Human and Minority Rights and Gender Equality considers Bills and proposals of other general acts, as well as other issues in the following areas: realisation and protection of human rights and freedoms and the rights of the child; implementation of ratified international treaties which regulate the protection of human rights; exercising of the freedom of religion; the status of churches and religious communities; realisation of ethnic minority rights and inter-ethnic relations in the Republic of Serbia. The Committee cooperates with National Minority Councils. The Committee considers Bills and proposals of other general acts from the aspect of the advancement and achievement of gender equality, carries out the review of policies pursued by the Government, execution of laws and other general acts by the Government and other authorities and public officials accountable to the National Assembly, from the aspect of respecting gender equality. The Committee performs other activities in accordance with the law and the Rules of Procedure.

The Committee on the Diaspora and Serbs in the Region considers Bills and proposals of other general acts, as well as other issues regarding: preservation, fostering and establishing relations between the kin-state and the Serbs in the region; improving the position and protection of rights and interests of the Diaspora and Serbs in the region; creating conditions for the use, learning and preservation of Serbian language and Cyrillic Script, preservation and fostering of the Serbian cultural, ethnic, language and religious identity of the Diaspora and Serbs in the region; creating conditions for

return of the Diaspora members to the Republic of Serbia and their inclusion into political, economic and cultural life of the Republic of Serbia; creating conditions for return of the Serbian refugees to the places of their prior residence and proposes measures for protection of their rights aimed at sustainable return. The Committee cooperates with state institutions, organisations and bodies dealing with protection of the rights of the Diaspora and Serbs in the region, as well as with organisations and the Diaspora and Serbs in the region, and the Committee performs other activities in accordance with the law and the Rules of Procedure.

The Committee on the Economy, Regional Development, Trade, Tourism and Energy considers Bills and proposals of other general acts and other issues in the following areas: economy and economic development, equal regional development, business companies and other forms of businesses, business and financial restructuring; entrepreneurship, bankruptcy, investments, standardisation, accreditation; foreign economic relations, international trade agreements, foreign trade, foreign investments, concessions; economic, bilateral and regional co-operation of the Serbian state institutions with international trade organisations; industry, except for the food industry; mining, geological and seismological research; energy sector, the oil and natural gas economy; the operation of public enterprises in the areas of industry, mining and energy; trade and supply of goods and services, control of services, standards and units of measurement; the use of trademarks and service marks, quality marks and denominations of origin of products; functioning of the market, prevention of monopolistic activities and unfair competition; commodity reserves and the consumer protection; establishment and functioning of commodity markets; tourism development planning, zoning plans, protection and use of areas intended for tourism and promotion of tourism; measures and precious metals; and privatisation. The Committee considers monthly reports of the Ministry in charge of privatisation activities during the privatisation process, concluded capital/property sale contracts, initiated privatisation procedures and the work of entities in charge of implementing privatisation procedures, and delivers to the National Assembly opinions and proposals regarding privatisation issues. The Committee performs other activities in accordance with the law and the Rules of Procedure.

The Committee on Finance, State Budget and Control of Public Spending considers Bills and proposals of other general acts and other issues in the following areas: the system of financing public functions, taxes, duties and other public revenues; state budget and financial plans of compulsory social insurance organisations; the Budget Financial Statement, final financial statements of financial plans of compulsory social insurance organisations and audit of the final financial statements; loans, guarantees and lottery; the public debt and the financial assets of the Republic of Serbia; public procurement; the credit and monetary, banking, foreign-exchange and customs systems; insurance of assets and persons; ownership relations and expropriation; payments and payment operations, securities and the money market; prevention of money laundering and combating corruption; accounting and auditing; other issues in the field of finance.

The Committee: considers reports of the State Audit Institution and submits a report with opinions and recommendations thereof to the National Assembly; controls the implementation of the state budget and accompanying financial plans in regard to legality, purposefulness and efficiency of public spending, and submits a report thereof

with recommendations of measures to the National Assembly; performs other tasks in accordance with the law and the Rules of Procedure.

The Committee on Agriculture, Forestry and Water Management considers Bills and proposals of other general acts and other issues in the following areas: agriculture and the food industry; agricultural cooperatives and rural development; veterinary medicine and plant protection; forestry and water management. The Committee performs other activities in accordance with the law and the Rules of Procedure.

The Committee on Spatial Planning, Transport, Infrastructure and Telecommunications considers Bills and proposals of other general acts and other issues in the following areas: railway, road, water and air transport; urbanism and spatial planning, and housing and utility issues-related activities; construction and civil engineering, regulation and use of buildable land and land surveying and land register; postal traffic and telecommunications. The Committee considers the proposal of the Spatial Plan of the Republic of Serbia, by the procedure stipulated in the Rules of Procedure and performs other activities in accordance with the law and the Rules of Procedure.

The Committee on Education, Science, Technological Development and the Information Society considers Bills and proposals of other general acts and other issues in the following areas: pre-school, elementary and secondary education; college and university education; schoolchildren's and students' standards of living; scientific research activities; scientific and technological development and innovation policies; nuclear energy research and security of nuclear facilities; production and storage of radioactive materials, except in nuclear power plants; developing an information society and an information infrastructure; sports and physical culture, the status of the youth and the protection of their interests. The Committee performs other activities in accordance with the law and the Rules of Procedure.

The Committee for Kosovo and Metohija considers Bills and proposals of other general acts and other issues regarding the Autonomous Province of Kosovo and Metohija taking care of the Serbian national interests and state interests of the Republic of Serbia. The Committee proposes to the National Assembly relevant decisions, declarations and resolutions and monitors their implementation or realisation by relevant bodies and institutions.

The Committee on Culture and Information considers Bills and proposals of other general acts and other issues in the following areas: development of culture and artistic creation; protection of cultural monuments and cultural heritage; literature, translation, music and theatre; fine arts, applied arts and design; feature films and other creative audio-visual media activities; library, publishing, cinematographic and musical performance activities; endowments, foundations and funds; public information. The Committee performs other activities in accordance with the law and the Rules of Procedure.

The Committee on Labour, Social Issues, Social Inclusion and Poverty Reduction considers Bills and proposals of other general acts and other issues in the following areas: labour relations and rights stemming from labour, occupational health and safety;

employment; the right to strike and trade union organisation; social protection system; the system of pension and disability insurance, social insurance and protection of insured military personnel; protection of ex-servicemen, disabled military personnel, civilians with disabilities and war victims, members of their families and the members of families of conscripted servicemen.

The Committee considers Bills and proposals of other general acts from the aspect of social inclusion and monitors the decision-making process and allocation of the budget in the area of social inclusion; provides suggestions, views and assessments related to policy realization; develops partner relations at all levels in order to achieve efficient, rational and opportune realization of the social inclusion process with an aim to achieve the European standard and full social inclusion of all citizens and marginalised groups; engages in institutionalisation and participation of citizen's representatives in the decision-making process. The Committee performs other activities in accordance with the law and the Rules of Procedure.

The Health and Family Committee considers Bills and proposals of other general acts and other issues in the following areas: health care, the system and organisation of the health-care activity; the system of health insurance; protection of the population from communicable diseases; production and trade in medicaments and other pharmaceuticals; production and trade in narcotics and precursors of prohibited narcotics; requirements for harvesting and transplanting human body parts; family-legal protection, marriage, family planning and social care about family; other issues in the area of health care ensuring the required legal preconditions for regulating the health care system, preservation and advancement of public health. The Committee performs other activities in accordance with the law and the Rules of Procedure.

Environmental Protection Committee considers Bills and proposals of other general acts and other issues in the following areas: environmental protection and improvement; protection and sustainable use of natural resources; removal of threats to natural resources and prevention of pollution of natural resources; production and trade in poisons and other hazardous materials, except for narcotics and precursors. The Committee performs other activities in accordance with the law and the Rules of Procedure.

The European Integration Committee: considers Bills and proposals of other general acts from the aspect of their conformity with the EU *acquis* and the Council of Europe legislation and issues preliminary opinion on justification of the abbreviated procedure; considers plans, programmes, reports and information on the EU Stabilisation and Association Process; monitors the implementation of the Association Strategy, proposes measures and launches initiatives for accelerating the realisation of the Association Strategy within the competences of the National Assembly; proposes measures for the establishment of a general, national agreement on Serbia's association with the European institutions; develops international cooperation with parliamentary committees of other countries and parliamentary institutions of the European Union. The Committee performs other activities in accordance with the law and the Rules of Procedure.

The Committee on Administrative, Budgetary, Mandate and Immunity Issues: adopts general and individual acts on status and material matters of MPs, rights and duties of MPs and officials elected by the National Assembly, in accordance with the law, and issues opinions on another public office held by these persons; submits a proposal of the Code of Conduct of MPs; submits the proposal of the Act on design and use of official emblems, insignias and other symbols and accoutrements of the National Assembly; adopts the Act on the management of acts submitted in an electronic form, acts treated as secret, short-hand notes and issues an approval for the Act on Back Office and Electronic Back Office Operations; adopts the Act on the internal order in the building of the National Assembly, the distribution of seating for MPs and other persons in the session chamber of the National Assembly, **and** the Act on the use of the area around the building and official vehicles; adopts the Act on the accreditation and work conditions for the public media representatives in the National Assembly; adopts the Act on employing consultants in parliamentary groups of the National Assembly and on cost compensation for engaging scientists and experts in the work of the National Assembly; submits a proposal of the Decision on the Organisation and Activities of the National Assembly Service; approve of the Rulebook on Internal Organisation and Job Classification (*Systematisation*) in the National Assembly Service; adopts acts on the Establishment of Tender and Complaints Commission; makes appointments in the National Assembly Service, acting on a proposal of the Secretary General of the National Assembly, makes decisions on remuneration of the Secretary General and Deputy Secretary General of the National Assembly, as well as civil servants in appointed positions or appointed persons in the National Assembly Service; determines the parliamentary budget and sees to the regularity of the use of the parliamentary budget resources and performs control of expenditures, in line with these Rules of Procedure, and submits annual reports to the National Assembly thereof; adopts the Act on property records and other issues of interest for managing the property of the National Assembly; considers the objections to the minutes from the National Assembly sitting and submits a report to the National Assembly thereof.

The Committee considers: reasons for the termination of mandates of MPs, along with proposals for verification of mandates, and submit a report to the National Assembly thereof; issues regarding the establishing or waiving the immunity of MPs and other elected persons, in accordance with the Constitution and the law, and submit a proposed decision thereon to the National Assembly; requests for approving deprivation of liberty of a public prosecutor, deputy public prosecutor and member of the State Prosecutorial Council, and renders a decision thereon. The Committee performs other activities in accordance with the law and the Rules of Procedure.

The Security Services Control Committee: supervises the constitutionality and legality of the work of security services; supervises conformity of the work of security services with the National Security Strategy, the Defence Strategy and the Security and Intelligence Policy of the Republic of Serbia; supervises preservation of political, ideological and interest neutrality in the work of the security services; supervises the legality of the application of special procedures and measures for secret collection of data; considers proposal of budget resources necessary for the work of security services and supervises the legality of budget and other resources spending; consider and adopt reports on the work of the security services; considers Bills, proposals of other regulations and general acts in the scope of work of the services; launches initiatives

and submits Bills in the scope of work of the services; considers proposals, petitions and complaints of citizens addressed to the National Assembly regarding the work of the security services and proposes measures to resolve them, and notifies the applicant thereof; determines facts on identified illegal acts or irregularities found in the work of the security services and their personnel and deliver conclusions thereon; informs the National Assembly on its conclusions and proposals. The Committee performs other activities in accordance with the law and the Rules of Procedure.

The Committee on the Rights of the Child, as a **special standing working body**, considers Bills from the aspect of the protection of rights of the child; monitors the implementation and application of laws and other acts regulating the status of the rights of the child; assesses conformity of national legislation with international standards in the area of the rights of the child; co-operates with national and international institutions and bodies, and with local authorities; initiates amendments of regulations and proposes the adoption of certain acts and taking measures aimed at the protection of the rights of the child; promotes the rights of the child; considers other issues of importance for the rights of the child. The Committee performs other activities in accordance with the law and the Rules of Procedure.

Time envisaged for consideration of legal acts

As for the time limits at committee sittings, each committee member is granted the floor for up to ten minutes during the debate in principle. The proposer of Bills or other general acts, or the authorised representative of the proposer, is granted the floor for up to twenty minutes in total. An MP from the parliamentary group which has a member within the committee is granted the floor within the timeframe allocated for the committee member from the same Parliamentary group, in agreement with the member of the committee. An MP from a parliamentary group which does not have a member in the committee is granted the floor for up to ten minutes. Independent MPs, who are not members of the committee, are granted the floor for up to five minutes. The time for the debate in detail is equal to the time for the debate in principle. However, the committee may decide, upon the proposal of a member of the committee, to shorten, extend or not to limit the time.

As regards the time period allocated to certain participants in a committee sitting, it may be concluded from the practice so far that it is satisfying, having in mind that so far there have been no requests to apply Article 78 which lays down that the time period for the floor will not be limited for certain participant in a committee sitting.

However, the legal framework proscribed is not fully implemented, and the practice is such that the debate is mainly held at plenary sessions. Committees mostly discuss Bills that are already on the agenda of the plenary session, and rarely on Bills which are in procedure, but not yet on the agenda. The quality of the debate is influenced by a large number of laws on the agenda.

12. How many political parties are registered in your country? How many of these are represented in Parliament? What percentage of parliamentarians are (a) women and (b) from ethnic and national minorities?

In the Register of Political Parties, kept by the Ministry for Public Administration and Local Self-Government, there have been 75 political parties registered by the 1st December 2010, namely:

- 1) Democratic Party
- 2) Sandzak Democratic Party
- 3) G 17 Plus
- 4) United Serbia
- 5) Political party "Associated Pensioners and Social Justice"
- 6) Together for Sumadija
- 7) Social Democratic Party of Serbia
- 8) Party for Sandzak
- 9) New Serbia
- 10) Democratic Union of Croats in Vojvodina
- 11) Party of United Pensioners of Serbia
- 12) Serbian Renewal Movement
- 13) Democratic Party of Serbia
- 14) Serbian Radical Party
- 15) National Party
- 16) POWER OF SERBIA Movement - BK
- 17) Sandzak National Party
- 18) Party of Democratic Action of Sanz dak
- 19) REFORMISTS OF VOJVODINA
- 20) Democratic Union of Dolina - Bashkimi Demokratik i Luginës
- 21) Liberal Democratic Party
- 22) Socialist Party of Serbia
- 23) Democratic Christian Party of Serbia
- 24) Democratic Party of Bulgarians – Демократическа партия на Българите
- 25) Democratic Party of Vojvodinian Hungarians – Vajdasági Magyar Demokrata Párt
- 26) Sandzak Reformists
- 27) League of Social Democrates of Vojvodina
- 28) Movement of Hungarian Hope - Magyar Remény Mozgalom
- 29) Democratic Party of Sanz dak
- 30) Wallachian Democratic Party of Serbia - Partia democratică a Rumânilor din Sârbie
- 31) Democratic Union of Albanians - Unioni demokratik Shqiptar
- 32) Union of Vojvodinian Hungarians -Vajdasági Magyar Szövetség
- 33) Movement of Veterans
- 34) Roma Democratic Party
- 35) Movement "I Live for Krajna"
- 36) Democratic Party of Macedonians – Демократска партија на македонците
- 37) Democratic Community of Croats
- 38) Slovak Party – Slovenska strana
- 39) Movement of Socialists
- 40) Sandzak Alternative
- 41) Green Ecological Party - The Green
- 42) DEMOCRATIC UNION OF BULGARIANS – ДЕМОКРАТИЧЕН СЪЮЗ НА БЪЛГАРИТЕ

- 43) PARTY OF BULGARIANS OF SERBIA – ПАРТИЈА НА БЪЛГАРИТЕ В СЪРБИЈА
- 44) Bosniak Democratic Party of Sandzak
- 45) PARTY FOR DEMOCRATIC ACTION – PARTIA PËR VEPRIM DEMOKRATIK
- 46) Reformist Party
- 47) CIVIC UNION OF HUNGARIANS – MAGYAR POLGÁRI SZÖVETSÉG
- 48) Serbian Progressive Party
- 49) Social Democratic Union
- 50) Democratic Union of Vojvodinian Hungarians – Vajdasági Magyarok Demokratikus Közössége
- 51) Movement for Democratic Progress – Lëvizja e Progresit Demokratik
- 52) Democratic Left-Wing of Roma – Demokratikani levica e Rromendji
- 53) Wallachian Democratic Party
- 54) Democratic Party of Albanians – Partia demokratike Shqiptare
- 55) Bunjevac Party of Vojvodina
- 56) Social Democratic Movement
- 57) Sandzak - Raska Party
- 58) Montenegrin Party
- 59) "The Green of Serbia"
- 60) People's Peasant Party
- 61) Civic Initiative of Goranci
- 62) Democratic Movement of Romanians of Serbia – Mișcarea democratică a Românilor din Serbia
- 63) Roma Party
- 64) United Party of Roma – Jekutni Partija Romani
- 65) National Movement of Sandzak
- 66) Russian Democratic Party – Руска демократична странка
- 67) SERBIAN UNITEDNESS
- 68) UNION OF BUNJEVCI FORM BACKA
- 69) VOJVODINIAN PARTY
- 70) ALLIANCE OF VOJVODINIAN ROMAINANS – ALIANȚA ROMÂNILOR DIN VOIVODINA
- 71) Party of Vojvodinian Slovaks - Strana Vojvodinských Slovákov"
- 72) Roma Party Unity
- 73) PULS OF SERBIA
- 74) Political party "None of the Offered Answers"
- 75) United Peasant Party

The political parties are enrolled in the Register of Political Parties pursuant to the provisions of the Law on Political Parties ("Official Gazette of the RS, No. 36/90) from the 12th of May 2009, applicable from the 23rd of July of the same year. In this regard, it is necessary to emphasise that the Law on Political Parties prescribes that political organizations enrolled in the Register of Political Organizations (488 political organizations) and the Register of Associations, Social Organizations and Political Organizations (154 political organizations), under previously valid regulations, continue with their work if they harmonise their statute and other general acts with the provisions of this Law and submit the Application for Enrolment of Harmonization to the Register of Political Parties within six month from the date of application commencement of the

Law. Of total number of political parties enrolled in the Register of Political Parties (75 political parties), 71 are enrolled in the Register upon the Application for Enrolment of Harmonization, and four are founded after enactment of the new Law on Political Parties and are enrolled the Register in accordance with this Regulation. Also, of total number of political parties enrolled in the Register of Political Parties – 43 of them are political parties of national minorities.

In the National Assembly of the Republic of Serbia, 10 parliamentary groups were, whose members are affiliates of 23 political parties, namely:

- 1) Democratic Party
- 2) Serbian Radical Party
- 3) G 17 Plus
- 4) Democratic Party of Serbia
- 5) Serbian Progressive Party
- 6) Socialist Party of Serbia
- 7) Liberal Democratic Party
- 8) New Serbia
- 9) Party of United Pensioners of Serbia
- 10) United Serbia
- 11) Union of Vojvodinian Hungarians
- 12) Serbian Renewal Movement
- 13) League Social Democrats of Vojvodina
- 14) Sandzak Democratic Party
- 15) Social Democratic Union
- 16) Movement of Veterans
- 17) Democratic Union of Croats in Vojvodina
- 18) “Together for Sumadija”
- 19) Social Liberal Party of Sandzak
- 20) Bosniak Democratic Party of Sandzak
- 21) Party for Democratic Acting
- 22) Democratic Christian Party of Serbia
- 23) Roma Democratic Party

Two Members of Parliament of the National Assembly act independently, i.e. do not belong to any of the parliamentary groups.

We note that the Social Liberal Party of Sandzak did not submit the Application for Enrolment of Harmonization within the legal deadline, i.e. is not enrolled in the Register of Political Parties.

There are 250 Members of Parliament in the National Assembly of the Republic of Serbia, of which 56 are women (22%) and 194 men (78%) and 31 (12,4%) Members of Parliament declared as an affiliate of ethnic or national minority.

13. Please describe the legal provisions and the institutional arrangements in place for the election of members of Parliament and the rules applying to their replacement in the course of their mandate. Please indicate if and when you plan to

review or repeal existing legislation on blank resignations of holders of parliamentary mandates.

Pursuant to **the Constitution of the Republic of Serbia** ("Official Gazette of the RS" No. 98/06) any adult, legal capacity citizen of the Republic of Serbia is eligible to elect and to be elected (Article 52).

The Constitution prescribes that the National Assembly is constituted of 250 Members of Parliament, elected in direct elections, secret voting, pursuant to the Law (Article 100(1)); that the elections for Members of Parliament are called by the President of the Republic within 90 days before the expiry of the mandate of the National Assembly, so that the elections are completed within following 60 days (Article 101(1)); that the mandate of the Member of Parliament starts on the date of verification of the mandate in the National Assembly and lasts for four years, i.e. until the termination of the mandate of the Members of Parliaments of that convocation of the National Assembly (Article 102(1)); that a Member of Parliament is free to, under the conditions of a certain law, irrevocably make his/her mandate available to the political party at whose proposal he had been elected to be a Member of Parliament (Article 102(2)), that elections, termination of a mandate and the position of Members of Parliament is regulated by the law (Article 102(4)).

Pursuant to **the Law on Election of National Assembly Members** ("Official Gazette of the RS" No. 35/00, 57/03- decision of the CCRS, 72/03- other Law, 75/03- correction of the other Law, 18/04, 101/05- other Law, 85/05- other Law and 104/09- other Law) it is prescribed that Members of Parliament are elected in the Republic of Serbia as one electoral unit, based of electoral lists which can be submitted by political parties, coalitions of political parties and groups of citizens (Article 4(1)).

An electoral list is established when it is supported by at least 10.000 voters by signing it (Article 43(1)).

In an electoral list, among every four candidates successive on the list (the first four positions, the second four positions and so on until the end of the list), one candidate has to belong to the gender which is less present in the list, and there has to be at least 30% of candidates belonging to the gender less present in the list (Article 40a(1)).

An electoral list is submitted to the Republic Electoral Commission, at the latest 15 days before the date of holding elections (Article 44(1)).

The Republic Electoral Commission declares the electoral list of one political party (electoral list of parties), a list of two or more political parties (coalition election list), and electoral list of a group of citizens (electoral list of a group of citizens), immediately after the receipt of the electoral list and supporting documentation, at the latest within 24 hours from the moment of receipt (Article 45(1)).

If the Republic Electoral Commission finds that the electoral list is not submitted timely, it makes a decision on its rejection (Article 46(1)).

If the Republic Electoral Commission finds that there are shortcomings in the electoral list which prevent its declaration, it shall make a conclusion within 24 hours from the receipt of the electoral list, to order to the applicant of the electoral list to remedy the shortcomings within 48 hours (Article 46(2)).

If the Republic Electoral Commission finds that there are shortcomings in the electoral list provided for by the Law i.e. if it finds that the shortcomings are not remedied, or are not remedied in due time, it makes a decision to reject the declaration of the electoral list within 48 hours (Article 46(3)).

A voter can vote only for one electoral list from the voting paper. Voting takes place by circling an ordinal number preceded the name of the electoral list voted for (Article 70). Parliamentary mandates are distributed in proportion to the number of votes (Article 4(2)).

Each electoral list obtains the number of mandates which is in proportion to the number of votes received (Article 80), whereat this applies only to the electoral lists which obtained at least 5% of the total number of votes of the voters (Article 81 (1 and 2)).

The exception are the political parties of national minorities, which take part in the distribution of the mandates in the case of obtaining less than 5% of the total number of votes of the voters (Article 81(2)). The concept of a political party of a national minority is defined in the Article 3 **of the Law on Political Parties** (Official Gazette of the RS, No.36/09), according to which a political party of a national minority is a political party whose operation is particularly aimed at presenting and representing interests of a national minority, in accordance with the Constitution, Law and international standards, regulated by a constituent instrument, programme and statute of a political party.

The provision of the Article 82 of the Law on Election of National Assembly Members sets out that the Republic Electoral Commission distributes mandates of Members of Parliament, applying the system of a bigger quotient (so-called D'Hondt method).

Mandates are distributed in a way that the total number of votes which each individual electoral list obtained, is divided by numbers from one to 250 (Article 80(2)).

The received quotients are sorted by greatness, and 250 greatest quotients are taken into account. Every electoral list receives as many mandates as how many quotients it obtained (Article 82(3)).

In a case where two or more electoral lists received the same quotients on which the issuance of mandates is based, and there are no undistributed mandates left, the mandate shall be issued to the list which received bigger total number of votes (Article 82(4)).

Every voter, a candidate for the Member of Parliament, and an applicant of electoral list is eligible to file a complaint to the Republic Electoral Commission for violation of election law during elections or irregularities in the proposal procedure or election procedure, within 24 hours from the moment the decision was made, i.e. an action performed is considered irregular by the complainant, i.e. from the moment of the default (Article 95).

The Republic Electoral Commission makes a decision upon a complaint within 48 hours from the receipt of the complaint and submits it to the complainant and all other submitters of electoral lists. If the Republic Electoral Commission after the receipt of the complaint does not make a decision within established deadline, it will be deemed that the complaint has been adopted (Article 96).

Against every decision of the Republic Electoral Commission made after the complaint, a plea can be filed to the Administrative Court.

Instructions for Implementation of the Law on Election of National Assembly Members (“Official Gazette of the RS” No. 28/08 and 31/08) enacted by the REC, further regulates issues of: drawing up extracts from an electoral register, determining and arrangement of a polling station, work and composition of authorities for implementation of elections, submission of an electoral list, publication of aggregate electoral list, submitting electoral material to electoral committees before voting, submitting electoral material to the REC after voting, implementing elections on the territory of Autonomous Province of Kosovo and Metohija, standard for electoral material, use of languages and scripts, statistical data processing, domestic observers, foreign observers, positions of observers, funding for implementing elections, forms for implementation of individual electoral activities and keeping the electoral material after the implementation of elections.

The Law on Election of National Assembly Members sets out that the authorities for implementing elections are the Republic Electoral Commission and electoral committees.

Members of the Republic electoral Commission and their deputies are appointed every four years, and the members of electoral committees and their deputies at every election (Article 30(1) the Law on Election of National Assembly Members).

In accordance with the Article 33 of the Law on Election National Assembly, the Republic Electoral Commission in permanent composition consists of the Chairperson and sixteen members designated by the National Assembly of the Republic of Serbia at the proposal of the National Assembly of the Republic of Serbia, and in extended composition there is one representative of each submitter of the electoral list.

The Republic Electoral Commission has a secretary designated by the National Assembly of the Republic of Serbia from the rank of experts of their service, which participates in the work of the Commission without the right of making decisions.

The Republic Electoral Commission has one member, a representative of the republic organization responsible for the statistics, which participates in the work of the Commission without the right of making decisions.

The president, members of the Republic Electoral Commission and its secretary have deputies.

The president, members of the Republic Electoral Commission and their deputies have to be graduate lawyers.

In accordance with Article 35 of the Law on Election of National Assembly Members, working conditions of the Republic Electoral Commission are provided by the National Assembly of the Republic of Serbia.

The Rules of Procedure of the Republic Electoral Commission (Official Gazette of the RS, No. 28/08) regulates the issues of organization, way of work, decision making and other relevant issues for the work of the Commission.

The Electoral Committee in a permanent composition consists of the Chairperson and at least two members, and in an extended composition there is another representative of the submitter of the electoral list (Article 36(1)). Electoral Committee is designated at the latest 10 days before the date specified for holding elections (Article 36(3)). The Republic Electoral Commission sets out by a decision within 48 hours from making a decision on declaring the electoral list, which applicant of an electoral list meets requirements for designation of its representatives in an extended composition of the electoral committee (Article 36(4)). . The electoral committee implements voting directly at the electoral station, provides regularity and confidentiality of voting and states the results of voting at the electoral station (Article 37(1)).

The provision of the Article 88 of the Law on Election of National Assembly Members sets out that the mandate of a member of Parliament expires before the period he had been elected for:

1. by submitting resignation,
2. if he had been sentenced by a legal decision to an unconditional prison sentence for a period of at least six month,
3. if he has been deprived of legal capacity by a legal court decision,
4. by taking over work or functions which, according to this Law, are inconsistent with the function of the Member of Parliament,
5. by losing citizenship,
6. if the place of residence is no longer on the territory of the Republic of Serbia;
7. in the case of death of a member of Parliament.

The day of the termination of the mandate is asserted by the National Assembly of the Republic of Serbia at the first coming session after the receipt of the notice on reasons for mandate termination of the member of Parliament.

The provision of the Article 92 of the Law on Election of National Assembly Member lays down that if the mandate of a member of Parliament terminates before the expiry of the period he had been elected for, the mandate belongs to the political party of whose electoral list the member of Parliament whose mandate has terminated had been chosen from, and the mandate is issued to a candidate from the electoral list for whom the party did not receive a mandate (paragraph 2); if the

Rules of Procedure of the National Assembly (Official Gazette of the RS, No. 52/10) prescribes that the procedure for confirming the mandate of a Member of Parliament is performed at the first session of the National Assembly and during the meeting of the National Assembly for filling the vacant place (Article 197).

The provisions of the Article 198 of the Rules of Procedure of the National Assembly which regulate the procedure for mandate termination of a Member of Parliament prescribe that the Speaker of the National Assembly is informed about the reasons of mandate termination of the member of Parliament before the expiry of the period he had been elected for (paragraph 1); that the Member of Parliament submits its resignation in a written form to the Speaker of the National Assembly, through the portfolio of the National Assembly, who immediately submits it to the Members of Parliament and the competent committee; that the Member of Parliament is invited to the session of the competent committee on which his resignation is being considered (paragraph 2); that the competent committee considers the reasons for mandate termination of the Member of Parliament before the expiry of the period had been elected for, and submits a report about it to the National Assembly with the proposal that the National Assembly asserts the termination of the mandate to the Member of Parliament (paragraph 3); the Speaker of the National Assembly informs the state authority responsible for implementation of elections of Members of Parliament about the termination of mandate of a member of Parliament (paragraph 4).

Also, the provisions of the Article 199 of the Rules of Procedure of the National Assembly, which regulate the procedure of confirmation of the mandate of the Member of Parliament during the meeting of the National Assembly, prescribe that in the procedure of fulfilling the vacant place of the Member of Parliament, the competent committee considers the report of the state authority responsible for implementing elections for Members of Parliament on issuing the mandate to the newly elected Member of Parliament and the certificate of the election of the Member of Parliament for affirming the accuracy of identity of the data (paragraph 1); that if the competent committee finds that the data from the report of the state authority responsible for implementing elections for Members of Parliament are identical with the data from the certificate on the election of the Member of Parliament, it submits a report to the National Assembly about it, with the proposal to confirm the mandate to the newly elected Member of Parliament (paragraph 2); the National Assembly asserts the confirmation of the mandate to the newly elected Member of Parliament, immediately after the receipt of the report form the committee (paragraph 3).

The Constitution of the Republic of Serbia lays down that a Member of Parliament is free to, under conditions set out by the Law, irrevocably make his mandate available to the political party at whose proposal he had been elected to be a Member of Parliament.

The Law on Election of National Assembly Members sets out the issue of making the mandate of a Member of Parliament available to in the Article 92, but only in the context of termination of a mandate of a Member of Parliament before the expiry of the period he had been elected for.

Blank resignations are not regulated by the stated regulations, but are a part of praxis introduced by political parties. Since blank resignations are not a legal category, its abolition is not the issue of audit of legislation or repeal of provisions which regulate it, because they do not exist.

14. Please describe the provisions in place defining the persons having the right to vote in parliamentary, presidential and local elections and the arrangements regarding voters' registers.

The Constitution establishes that every citizen of the Republic of Serbia, of working and of legal age, has the right to elect and be elected. Upon becoming 18, an individual is of legal age. Suffrage is universal and equal, the elections are free and direct, by secret and personal vote.

The Law on Election of Members of Parliament lays down that the voting right includes the right of citizens to: elect and be elected; stand for Parliament and be nominated, decide on the nominated candidates and electoral lists; publicly pose questions to candidates, be informed in a timely manner, truthfully, completely and objectively on the programmes and activities of submitters of electoral lists and on the candidates on that lists. The Law stipulates that no one has the right to, on any ground, prevent or force citizen to vote, to call to account for voting and to ask from a person to state for whom he/ she voted or why he/ she did not vote. The identical provision can be found in the **Law on the Election of the President of the Republic** (*Official Gazette of RS*, no 111/07), as well as in the **Law on Local Elections** (*Official Gazette of RS*, no 129/07), which establishes the procedure for the election of council members in the units of local self- government. The Law on the Election of the President of the Republic establishes the right of every citizen of the Republic of Serbia, who is of working and of legal age and holds the citizenship of the Republic of Serbia, to elect and stand for elections for the President of the Republic. The Law on Local Elections establishes the right of every citizen of the Republic of Serbia, who is of working and of legal age, and with the dwelling residence on the territory of the unit of local self- government, to elect the council member of the local self- government unit. Both of these laws indicate the implementation of provisions of the Law on the Election of Members of Parliament on the basis of the provisions which regulate election right and electoral rolls.

The Law on Residence and Dwelling Place of Citizens ("*Official Gazette of RS*", number 42/77), defines the residence as the place in which the citizen lives with the intention to live in it permanently, while a dwelling place is the place in which the citizen temporarily resides, when not in his/ her own residence.

According to the Law on the Election of Members of Parliament , the voter, who is in custody or serving a prison sanction on the day of voting, should vote at the polling station of the Institution he/she is in. The voters, who are doing national military service or are on a military exercise, should vote at the polling station, which is the nearest to the army barracks in which they are doing their service or military exercise. The voters, with their residence abroad, vote in the diplomatic and consular missions of the Republic of Serbia, at the polling stations established by the Republic Electoral Commission.

The Law on Election of Members of Parliament stipulates that the general electoral roll in municipalities is in an electronic form, as the part of a unique connected system of the Republic of Serbia. Changes in electoral rolls on the territory of the municipality is conducted by municipal administration, as a commissioned task. Electoral roll is the

public document, maintained ex- officio and updated every year, by 31st March at the latest. A citizen has the right to access the electoral roll and the right to demand amendments (signing in, erasing from or amending electoral roll). A voter may be registered on the electoral roll at only one site. Voters, as well as persons, who become of legal age on the day of the elections, are allowed to join the electoral roll according to their place of domicile. Persons temporarily moved from their permanent dwelling place, i.e. residence (internally displaced persons), join the electoral roll in the place where they are registered with that status.

Voters with temporal residence abroad are registered on the electoral roll according to their last place of residence before leaving the country, i.e., the last place of residence of one of their parents. The register of voters with the residence abroad, and who are registered on the electoral roll, (so called Special Register of Voters Residing Abroad) is administered and updated, separately according to the states, by the Ministry responsible for administrative affairs. According to the Special Register, the competent Ministry, after scheduling of the elections, generates the Special Register for every foreign state and submits it to the Ministry of Foreign Affairs which, through the diplomatic consular missions of the Republic of Serbia, announces the scheduling of the election to the voters, election date and the manners to realise their suffrage. The registers of the voters are on display in diplomatic consular missions of the Republic of Serbia, and their copies are in the Ministry responsible for administrative affairs. The right of citizens to have an access to the register of voters and its copy, as well as the right to demand amendments to the Special Register are subject to the provisions of the Law on Election of Members of Parliament relating the right to have an access to electoral rolls and the right to request for amendments to electoral rolls. The voter who is not registered on the Special Register, and is registered on the regular electoral roll, may inform a consular diplomatic mission of Republic of Serbia, or the competent Ministry for administrative affairs, on his/her decision to vote abroad, 20 days before the date of the election at the latest.

Registration on the electoral roll and removal from that roll is done according to ex-officio, based on the data from birth and death registrars, other official registers, identification documents and through direct inspection, and may be performed on the request of the voter and based on other authentic evidence. An electoral roll consists of: ordinal number, person's name and surname, personal identification number, sex, year of birth, place of residence (street and house number, village, rural community, settlement), voter's place of temporary residence abroad, space for personal signature and space for a comment. When a municipal administration establishes that a person registered on the electoral roll has deceased or changed his/her residence so that he/ she no longer resides on the territory of the municipality, the person is erased from the electoral roll of that municipality. The Municipal administration which registers on its electoral roll a voter who has moved to the territory of its municipality, informs thereon the municipal administration on whose territory the voter was previously registered on the electoral roll. The persons who are deprived of professional competence by a legal court decision, cannot be registered on the electoral roll. When their professional competence is returned by a legal court decision, they may be registered on the electoral roll again.

The Law stipulates that the following day from the date of the scheduling of elections, the body competent for the electoral rolls informs the citizens that they have access to the electoral roll and that they may ask for registration, erasing, amendments or corrections to the electoral roll. Every citizen may apply with the body responsible for administration of the electoral roll to be registered on or for a correction or modification of the electoral roll if he/she or another citizen is not registered on the electoral roll, or is registered but does not have suffrage, or does not have suffrage on the territory of the municipality in which they are registered on the electoral roll, or if any of the data in the electoral roll are entered incorrectly. Ministry competent for administrative affairs monitors the implementation of the provisions of the law relating to electoral rolls 20 days before the day of the elections at the latest. The electoral roll is closed 15 days before the date of the elections at the latest, with the decision adopted by the body competent for the electoral roll. All municipal administrations are to submit the decision on the closing of the electoral rolls to the Republic Electoral Commission within 24 hours from the moment of the adoption of the decision. Based on the received decisions of municipal administrations, the Republic Electoral Commission announces the total number of voters in the Republic of Serbia in the *Official Gazette of the Republic of Serbia*. After the closing of the electoral roll, citizens and submitters of the concluded candidate lists may demand the court to adopt the decision on amending the electoral roll (registration and erasing of voters from the electoral rolls or amendment, correction and addition of the data in the electoral roll). The ruling of the municipal court on amendments to the electoral roll is implemented by the Republic Electoral Commission, taking into account only rulings of courts received no later than 48 hours before the date set for the holding of the elections, after which the total number of voters is established and published in the *Official Gazette of the Republic of Serbia*.

The Republic of Serbia adopted on December 2009, the **Law on Single Electoral Roll**, *Official Gazette of RS*, no104/09), the implementation of which starts two years after it enters into force, which is, 24th December 2011. The Law stipulates that as of the date it starts being implemented, **the provisions of the Law on the Election of Members of Parliament relating to administration of the electoral roll and Special Register of Voters Residing Abroad shall no longer be valid.**

The Law defines the single electoral roll as the public document with the unique register of citizens of Republic of Serbia with suffrage. It lays down that the electoral roll should be the electronic data base, modified according to the unique methodology of the Ministry competent for administrative affairs. The electoral roll includes: voter's name and surname, name of one of the parents, personal identity number, date and place of birth, sex, place of residence and address, unit of local self- government where the voter's place of residence is, foreign country where the voter's place of residence is, place of residence and the address of the voter abroad and place of residence for internally displaced persons.

The most important amendments in relation to the present system are as follows:

- after the concluding of the electoral roll until 72 hours before the date of the election, amendments to the electoral roll are made according to the decision of the Ministry competent for administrative affairs, and not according to a court decision.

- the voter is registered on the electoral roll according to his/ her place of residence, and his/ her dwelling place in the country may be entered as well, upon the voter's request ;
- the data on whether the voter will vote according to his/ her dwelling place in the country or the dwelling place abroad is also entered in the electoral roll. If, five days before the closing of the electoral roll at the latest, the electoral roll does not contain the data on whether the voter will vote according to his/ her dwelling place in the country, or dwelling place abroad, the voter may vote only according to his/ her place of residence;
- the voter who votes according to his/ her dwelling place in the country, or the dwelling place abroad, is not registered on the electoral roll for the polling station to which he/ she belongs according to his/ her place of residence;
- electoral roll is concluded by the decision of the Ministry competent for administrative affairs (instead of the authorities of the local self- government unit which, according to the Law on Election of Members of Parliament, make decisions on conclusion of the electoral roll for their territory). The Ministry uses the same decision for establishing the total number of voters in the Republic of Serbia, in each unit of local self- government and at every polling station;
- Special Register of Voters Residing Abroad will no longer exist, and the Ministry competent for administrative affairs will, according to the Law on Single Electoral Roll, enter into the electoral roll the data on the dwelling place of the voter abroad.

The Law stipulates that, the day after the scheduling of elections, municipal and city administrations inform the citizens to submit a request to the competent municipal, or city administration, five days before the conclusion of the electoral roll, for entering the data that in the upcoming election the voter will vote according to his/ her dwelling place in the country. It also stipulates that the day after the scheduling of elections, diplomatic consular missions of Republic of Serbia inform the voters with their dwelling place abroad, that they should submit a request to consular diplomatic mission of the Republic of Serbia to enter the data in the electoral roll on the fact that they will vote in the upcoming elections according to their dwelling place abroad, five days before the conclusion of the electoral roll at the latest.

The provisions of the Law are applied to the election for the president of the Republic and to the election for autonomous province and units of local self- government accordingly, as well as to the voting of the citizens on referendum.

The Minister competent for administrative affairs is legally bound to adopt guidance instructions establishing the procedure of uniting the present electoral rolls in the single electoral roll, according to the law on Single Electoral Roll, so that electoral rolls that are presently administered at the level of local self- government could finally be connected into a unique electronic database.

15. Please describe the overall framework for party and campaign financing, the rules guaranteeing its transparency and provide details on the monitoring of its implementation. How are addressed the 2009 GRECO recommendations on "Transparency of Party Finding". Do the existing reporting obligations under the Electoral Code for public funding of political parties during elections also cover

private funding sources? Please explain what mechanisms are in place for reporting private and public party financing funding.

The 2003 Law on Financing of Political Parties (*Official Gazette of RS*, No. 72/03, 75/03 – Corrigendum, 97/08, 60/09 – Constitutional Court) (hereinafter *the Law*) regulates financing of regular work of political parties and financing of election campaigns for election participants, sources of financing, records and methods of financial control of political parties.

Political parties may obtain funds from public and private sources for financing of their regular work and election campaigns.

Public sources for financing regular work of political parties are funds from the Budget of the Republic of Serbia (state budget), budget of the Autonomous Province of Vojvodina and local self-government unit budgets, whereas funds for financing election campaigns are additionally allocated in the budgets for the election year. Funds allocated from the budget for financing regular work may be obtained by those political parties that have their representatives in representative bodies, and funds for financing election campaign costs may be obtained by all nominators of registered election lists, or nominators of candidates.

Political parties may finance their regular work, or election campaigns, from private sources: membership dues, contributions, income from promotional activities of a political party, income from property of a political party and legacies. The amount of funds from private sources collected by a political party for financing regular work, except for funds from membership dues, may not exceed 100% of the funds received by the political party from the state budget, or 5% of total budget funds for the party not entitled to funding from the state budget, whereas the limit of funds from private sources for financing election campaigns amounts to 20% of the budget funds allocated for financing the election campaign costs.

The Law stipulates obligations of political parties to:

- keep accounting records of all income and expenditure, according to the origin, amount and structure, in line with the accounting regulations (the Law on Accounting and Auditing, *Official Gazette of RS*, No. 46/2006 and 111/2009)
- keep special records of contributions received and of its property and
- submit to the Anti-corruption Agency (hereinafter *the Agency*) financial statement for each year, with an opinion of an authorized auditor, along with reports on contributions exceeding RSD 6,000 and
- submit to the Agency reports on the funds collected and spent for the election campaign.

The function of control of financial statements of political parties has been delegated, by amendments to the Law, from the State Election Commission and the Parliamentary Finance Committee to the Agency that started operating on 1 January 2010.

In accordance with the Law, the Director of the Agency adopted a Rulebook on the Content of Records and Reports of Political Parties (*Official Gazette of RS*, No. 17/10). This Rulebook prescribes detailed rules regarding the content, manner of keeping, and submitting the records and reports on contributions referred to in the Law, along with

financial statement, report on property of political parties and on origin, amount and structure of funds collected and spent for an election campaign (from public and private sources), referred to in the Law on Financing of Political Parties.

With the purpose of conducting a control of the reports, the Agency is authorised to request documents, information, and data from political parties, banks and other legal entities, as well as from other state institutions.

Reports of political parties, or financial statements and reports on the funds collected and spent for an election campaign, are published in the Official Gazette of RS, on web sites of political parties and on the web site of the Agency, thus making them available for the public, and finance of political parties transparent.

At plenary session held on 29 September 2010, GRECO adopted 10 recommendations addressed to the Republic of Serbia regarding the financing of political parties, and the National Assembly of RS adopted them on 1 December 2010 and published them. The Republic of Serbia has a time limit of 18 months to implement the recommendations.

Bearing in mind the importance of transparency and control of finances of political parties and other political actors, the Government of RS established a working group, as early as in February 2010, for drafting the Law on Financing Political Activities. The working group was made up of representatives of the Ministry of Finance, Ministry of Justice, parliamentary political parties and the Anti-corruption Agency, and the Chairperson of the working group was the Director of the Agency. The working group finalised the Draft Law in the beginning of September 2010.

During the Law drafting process, the working group was primarily guided by the need for transparent financing and work of political parties, measures for suppression and prevention of corruption, and by legal provisions related to this issue in EU Member States. The result of their work was the Draft Law on Financing Political Activities that encompassed all the recommendations for Serbia adopted at plenary session of GRECO (29/09/2010). These recommendations ensured publicity of finances of political parties and other political entities, their financial discipline, and an effective control. What is more, the Draft ensures establishment of a legal framework which enables political actors to obtain funds in the amounts that are necessary for their work, simultaneously respecting limits that prevent prohibited political influence, and strengthening their capacities, which is one of the prerequisites for establishing professional human resources for performing executive functions. Final draft of the new Law on Financing Political Activities, which included all recommendations of the European Commission and the Venetian Commission of the Council of Europe entered, in the mid-December 2010, a formal process of considering the Law by the Government aimed at adopting it.

16. Please describe progress achieved to date in addressing the recommendations of the Office for Democratic Institutions and Human Rights in terms of depoliticising the administration responsible for organising elections, improving its functioning, establishment of rules for media coverage of campaigns and improving transparency in vote counting procedures.

The Law on Election of National Assembly Members sets out that parliamentary elections are implemented by the electoral administration (authorities for implementing elections) at two levels - the Republic Electoral Commission (hereinafter referred as: "REC") and electoral committees. The REC has overall responsibility for implementation of elections, and electoral committees directly conduct voting at the electoral station and assert the results of voting. These authorities are autonomous and independent, they work based on the law and regulations enacted by the law, and they are responsible for their work to the authority which designated them. Authorities for implementation of elections work in a permanent convocation and in extended composition until the end of elections. Decisions are made by the majority of the votes of the members. None political party or coalition can have more than half of the members in the permanent composition of all authorities for implementation of elections. Members of the REC and their deputies are designated every four years, and the members of electoral committees and their deputies at every election. Members and deputy members of the authorities for implementation of elections cannot be persons who are in a close kinship. The right to vote in the REC and electoral committee has only a member of the authority or, in his absence, a deputy. Function in these authorities terminates to the members of the authorities for implementation of elections when they accept to stand for a Member of Parliament.

The Republic Electoral Commission in a permanent composition consists of the Chairperson and sixteen other members designated by the National Assembly at the proposal of parliamentary groups in the National Assembly. In the extended composition, the composition of REC consists of one more representative of the submitter of the electoral list. The REC has a secretary designated by the National Assembly from the rank of experts of their service, which participates in the work of the Commission without the right of making decisions. The REC also has one member, a representative of the republic organization responsible for statistics, which participates in the work of the Commission without the right of making decisions. The president, members of the REC and their secretary have deputies which have to be graduate lawyers. The REC monitors the application and provides explanation referred to the application of the Law on Election of Members of Parliament, specially about the implementation of voting abroad, determines unique standards for electoral material, prescribes forms and rules for implementation of electoral actions set out by the Law, determines and publishes in the Official Gazette of the RS the number and the address of electoral stations, forms electoral committees and designates the Chairperson and members of electoral committees, determines the number of voting ballots for electoral stations, certifies them and together with verified certification from electoral register, in a form of a record, submits it to electoral committees, determinates electoral acts to be submitted, asserts whether the electoral list has been drawn up and submitted in accordance with the Law and declares it, makes decision on declaration of aggregate electoral list, determinates the ways of keeping and handling the electoral material, asserts and publishes the results of the election, determines the number of mandates which belong to each electoral list, submits the report to the National Assembly on implemented election, submits the data to the authorities in charge for collecting and processing statistical data and performs other activities provided by the Law. The REC makes the Rules of Procedure about its work.

The Electoral Committee, according to the Law on election of National Assembly Members, in a permanent composition consists of the Chairperson and at least two members, and in an extended composition there is another representative of the submitter of an electoral list. The Chairperson and the members of the electoral committee have deputies. The REC, within 48 hours from making a decision on declaring the electoral list, determines which submitter of the electoral list meets conditions for designation of its representatives in an extended composition of the electoral committee. Submitters of electoral lists can make an agreement to designate a joint representative for the Electoral Committee. The Electoral Committee implements voting directly at the electoral station, provides regularity and confidentiality of voting and states the results of voting at the electoral station, maintains order and performs other activities provided by the Law. More detailed rules on the work of Electoral Committee are prescribed by the REC. In a case of simultaneous elections of National Assembly Members and the President of the Republic, electoral committees formed to implement elections of National Assembly Members perform activities of electoral committees for the election of the President of the Republic.

When it comes to parliamentary elections held in 2008, **the Decision on Coordinated Implementation of All Elections Called on 11th of May 2008**. (“Official Gazette of the RS” No. 27/07 and 31/08) and **the Instructions for the Implementation of Law on Election of National Assembly Members (“Official Gazette of the RS” No. 28/08 and 31/08)**, delegated to the municipal and town electoral commission certain activities and tasks of technical nature, since the elections of National Assembly Members, elections of aldermen in the municipal and town assemblies, elections of aldermen in the Assembly of the City of Belgrade and the Assembly of the City of Nis and elections of aldermen in town assemblies on the territory of the city of Belgrade and the city of Nis were implemented at the same electoral stations by the unique electoral committees. Also, the Instructions give basis to the REC to authorise its member or a deputy member or more of them (so-called REC coordinators) to perform certain activities on behalf of the REC related to the organization and preparation for elections in the administration district. For Parliament elections held in 2008, the REC designated about 300 members and deputies for district coordinators in charge for monitoring the distribution of electoral material to the electoral committees and collection of that material by the electoral committee.

The Instructions specify that all the elections of the year 2008 shall be implemented by the unique electoral committees, which shall perform activities set out in the Law on Election of National Assembly Members and the Law on Local Elections and which shall in permanent composition consist of the president, six members and their deputies. The President, two members and three deputies of the electoral committee in the permanent composition are designated by the REC at the proposal of parliamentary groups in a proportion of their presence in the National Assembly on the day of calling elections. The total number of presidents, members and deputy members in the permanent composition of all electoral committees on the territory of a certain municipality, which are designated at the proposal of a certain parliamentary group, has to be in proportion with the presence of that parliamentary group in the National Assembly at the day of calling elections. It is specified that the REC determines the numerical display of measures for designation of members of the electoral committees in a permanent composition for every municipality. On the territory of the municipality,

i.e. the city where the political parties of **national minorities** hold majority of the Municipal Assembly, i.e. City Assembly, deputy of the Chairperson of electoral committee, three members and two deputy members of electoral committee in permanent composition designated by the REC at the proposal of parliamentary groups in a proportion to their presence in the National Assembly. The Chairperson of the electoral committee, three members and four deputy members of the electoral committee in the permanent composition are designated by the REC at the proposal of municipal electoral committee. Proposing the president, members and deputy members of the electoral committee, the municipal electoral commission is obliged to consider proposals of parliamentary groups in a proportion of their presence in the National Assembly on the day of calling elections. The number of presidents, members and deputy members which are proposed by political parties and citizens' groups in the permanent composition on of all electoral committees on the territory of a certain municipality, has to be in proportion with the presence of that parliamentary group in the National Assembly on the day of calling elections. The vice president, four members and three deputy members of the electoral committee in the permanent composition were designated by the REC based on the decision of municipal i.e. city electoral commission. Making decision on determining the vice president, four members and three deputy members in the permanent composition of electoral committee, municipal, i.e. city electoral committee was obliged to accept the proposals of parliamentary groups, i.e. political parties and groups of citizens which were present in the Municipal Assembly, i.e. City Assembly. The total number of vice presidents, members and deputy members in permanent composition of all electoral committees on the territory of a certain municipality, i.e. city which were designated at the proposal of the parliamentary group, i.e. political parties and citizens' groups, had to be in proportion with the presence of parliamentary groups i.e. political parties and groups of citizens in the Municipal Assembly on the day of calling elections.

In the city of Belgrade and in the city of Nis, the vice president, four members and three deputy members of the electoral committee in permanent composition were designated by the REC based on the decision of Electoral Commission of the City of Belgrade e.i. City Electoral Commission in Nis. Making decision on determining the vice president, four members and three deputy members in the permanent composition of electoral committee, Electoral Committee of the City of Belgrade and City Electoral Committee in Nis were obliged to accept the proposals of parliamentary groups, i.e. political parties and groups of citizens which were present in the Assembly of the City of Belgrade, i.e. the Assembly of the City of Nis. The total number of vice presidents, members and deputy members in permanent composition of all electoral committees on the territory of a certain municipality, which are designated at the proposal of the parliamentary group, i.e. political parties and citizens' groups, has to be in proportion with the presence of parliamentary groups i.e. political parties and groups of citizens in the Assembly of the City of Belgrade, i.e. the Assembly of the City of Nis, on the day of calling elections.

Electoral committees within institutions for serving prison sanctions were designated at the proposal of the Ministry of Justice, so that there is no person working in the Ministry of Justice or voting in the institution. Electoral committees abroad are designated at the proposal of the Ministry of Foreign Affairs, if possible from the rank of voters which reside abroad.

Extended composition of election committees consisted of representatives of the submitters of electoral lists, set out by the Law on election of National Assembly Members and the Law on Local Elections. Every submitter of the electoral list had to propose only one member and one deputy member for the extended composition of electoral committee. If the submitter of the electoral list did not propose the representative to the electoral committee in the certain deadline before the elections, the electoral committee continued to work and validly made decisions without the representative of that submitter from the electoral list. The right to propose members and deputy members in the extended composition of electoral committees had: political parties, party coalitions and groups of citizens which were the submitters of declared electoral lists for Members of Parliament, as well as political parties, party coalitions and groups of citizens which were the submitters of declared electoral lists for aldermen in the Municipal Assembly i.e., City Assembly, which did not submit electoral lists for Members of Parliament. On the territory of the city of Belgrade and the city of Nis, the right to propose members and deputy members in extended composition of electoral committee had: political parties, party coalitions and groups of citizens which were the submitters of declared electoral lists for Members of Parliament, political parties, party coalitions and groups of citizens which were the submitters of declared electoral lists for aldermen in the municipality assembly and which did not submit electoral lists for Members of Parliament and did not submit electoral lists for aldermen in the city assembly, as well as political parties, party coalitions and groups of citizens which were submitters of declared electoral lists for aldermen in the City Assembly, and did not submit electoral lists for Members of Parliament, nor electoral lists for aldermen in the City Assembly.

Improving transparency in the procedures of counting votes

Activities of the authority for implementation of elections are public. The Law requires that persons who monitor the activities of authorities for implementation of elections (domestic and foreign observers) are obliged to act in accordance with the rules prescribed by the REC.

Instructions for implementation of the Law on Election of National Assembly Members regulate more comprehensively the issues of monitoring the activities of the authorities for implementing elections by domestic and foreign observers: deadline for submitting the application, content of the application, attachments etc. The Instructions designate domestic organizations which have been registered for monitoring the elections and which want to monitor activities of authorities for implementing elections, to be domestic observers. Foreign observers are deemed to be interested representatives of foreign countries, international organizations and non-governmental organizations which want to monitor the activities of authorities for implementing elections. The decision on giving the approval to the observers (domestic and foreign) for monitoring the activities of authorities for implementing elections, is made by the REC, by majority of votes of the members in the permanent i.e. extended composition. The REC issues identity cards to domestic and foreign observers. The REC is obliged to the observers to which it allowed monitoring of elections to enable undisturbed monitoring of each electoral activity, and electoral committees are obliged to enable undisturbed monitoring of every electoral activity to the observers to which the REC had approved the monitoring of elections.

In the frame of the reform of Electoral Legislation the Ministry for Public Administration and Local Self-Government has prepared the draft of the Law on State Electoral Commission (hereafter referred as: Commission), by which present decision of forming the highest electoral body which is made of representatives of parties which participate in elections is conceptually abandoned and independent state authority for implementing elections is established. The Decisions proposed in the specified draft of acts have not been yet adopted by the Government and the Republic Assembly.

In order to provide higher democracy of elections, members of State Electoral Commission should be experts for electoral processes and not be subject to political influence at their work.

Rules on Incompatibility of Functions shall enable prevention of political and other influences on the work the members of the Commission. With the function of a Member of Commission it is incompatible to perform other public functions of professional activities, as well as performing other duties or work which might influence their independence. It is provided that the members of the Commission cannot participate in party activities and electoral promotions, or run a campaign for or against a candidate, i.e electoral lists or a campaign for or against making a certain decision on which citizens decide on referendum. Indirectly, the impossibility of political or other influence on the members of Commission is realized by the provided rule on a duration of a mandate (seven years), which excludes connecting the duration of a mandate to certain electoral cycle. The same goal is obtained by precisely determined rules on termination of the function of the members of the Commission, as well as prescribing the conditions for their election. The right to salary is also provided. The rule that the National Assembly does not determine the way of managing the work of the State Electoral Commission, but leaves the election of the Chairperson and the vice Deputy Chairperson of the Commission to the members of the commission, will additionally contribute to the independent work of the Commission. The important innovation that will contribute to the more professional work of other bodies for implementation of elections is the decision that the Commission implements education of the members of that bodies.

All mentioned proposed decisions have not been yet adopted by the Government and the Republic Assembly.

17. Please describe how parliamentary immunity is defined and applied.

A **Member of Parliament** enjoys immunity from the date of verification until the date of termination of an MP mandate.

The immunity of a Member of Parliament is regulated by Article 103 of the Constitution of RS, and it is elaborated by Article 38 of the Law on the National Assembly (*Official Gazette of RS*, No. 9/10, entered into force 27 February 2010) and the Articles 251-253 of the Rules of Procedure of the National Assembly (*Official Gazette of RS*, No. 52/10, entered into force 5 August 2010) regulates the procedure which is, upon the request of

a competent authority, implemented in the National Assembly related to the implementation of the immunity right of an MP.

Provisions of Article 103, paragraph 2 of the Constitution of RS lays down that a Member of Parliament may not be held criminally or in any other way liable in respect of opinions expressed orally or in writing or votes cast by them in the performance of his/her MP duties. Paragraph 3 of the same Article prohibits detention of a Member of Parliament and criminal or other proceedings be held against him/her in which prison sentence may be pronounced, without prior approval of the National Assembly, provided he/she is invoking his/her immunity. Paragraph 3 of the Article 103 of the Constitution reads: “A Member of Parliament invoking his/her immunity may not be detained, nor may he/she be subject to any criminal or other proceedings in which a prison sentence may be pronounced, without prior approval of the National Assembly.”

However, in case an MP is found in the act of committing a criminal offence for which the prison sentence longer than five years is stipulated, he/she may be detained without prior approval of the National Assembly, as referred to in Article 103, paragraph 4 of the Constitution. Article 103, paragraph 4 of the Constitution reads: “A Member of Parliament found in the act of committing a criminal offence for which the prison sentence longer than five years is stipulated, may be detained without prior approval of the National Assembly”.

A Member of Parliament who has not invoked his/her immunity, may be charged in criminal or other proceedings in which prison sentence may be pronounced, even without prior approval of the National Assembly (Article 38, paragraph 5 of the Law on the National Assembly), and the body conducting the proceedings against the MP informs the National Assembly on instituting the proceedings (Article 38, paragraph 6 of the Law on the National Assembly).

By means of majority vote of all MPs, the National Assembly decides on waiving the immunity of an MP invoking it, and on giving the immunity right to an MP who has not invoked his/her immunity (Article 38, paragraph 4 and 7 of the Law).

Chapter XII of the Rules of Procedure of the National Assembly, Articles 251 – 253 lay down the procedure of the Committee on Administrative, Budgetary, Mandate and Immunity Issues, as a competent working body, and the National Assembly, related to the request of a competent authority for waiving the immunity of an MP.

Requests to approve detaining an MP in custody and requests to approve instituting of criminal proceedings or other proceedings, in which a prison sentence may be pronounced, are submitted by the competent authority to the Speaker of the National Assembly who communicates it to the Committee for Administrative, Budgetary, Mandate and Immunity Issues. The Committee is obliged to submit its report, with a proposal of the decision, to the National Assembly.

Article 251 , paragraph 4 of the Rules of Procedure lays down that an MP is specially notified on the holding of a sitting of the Committee on Administrative, Budgetary, Mandate and Immunity Issues at which the issue of his/her immunity is being considered.

Article 252 of the Rules of Procedure stipulates that, acting on a proposal of the Committee on Administrative, Budgetary, Mandate and Immunity Issues, the National Assembly may establish the immunity of an MP who has not invoked his/her immunity, if it is required for the purpose of performance of MP's duties.

Article 253 of the Rules of Procedure stipulates that the approval for detaining in custody, or the conduct of criminal or other proceedings which may carry a prison sentence, relates only to the criminal offence for which the request was submitted.

During this mandate of the National Assembly (since June 2008) there have not been cases of waiving the MP immunity, nor establishing the immunity for an MP who has not invoked it.

In the same manner as MPs, the immunity is enjoyed by the following:

- the President of the Republic,
- The Prime Minister and Government members,
- Ombudsman and his/her deputies,
- Commissioner for the protection of equality,
- Judges of the Constitutional Court.

To the extent necessary for unobstructed performance of duties the immunity (the so called functional immunity) is enjoyed by the following:

- Member of the Council of the State Audit Institution,
- Commissioner for Information of Public Importance and Personal Data Protection,
- Judges,
- Members of the High Judicial Council,
- Public Prosecutor and Deputy Public Prosecutor,
- Members of the State Prosecutorial Council.

The National Assembly decides on the immunity of the following: The President of the Republic, Ombudsman, Commissioner for the Protection of Equality, members of the Council of the State Audit Institution, Commissioner for information of public importance and personal data protection, and the competent working body of the National Assembly decides on the immunity of the Public Prosecutor and members of the State Prosecutorial Council.

The Government decides on the immunity of the Prime Minister and Government members.

The Constitutional Court decides on the immunity of judges of the Constitutional Court.

The High Judicial Council decides on the immunity of judges and members of the High Judicial Council.

The Statute of the Autonomous Province of Vojvodina, Article 17 stipulates that a **Member of Parliament** may not be held criminally liable, detained or sentenced for the opinions expressed or votes cast by them at sittings of the Assembly and working bodies.

Pursuant to provisions of Article 37 of the Law on Local Self-Government (*Official Gazette of RS*, No. 129/07), a **councillor** may not be held criminally liable, detained or sentenced for the opinions expressed or votes cast by them at sittings of the Assembly and working bodies. Therefore, this provision envisages the protection of the councillor from criminal proceedings, detention or any form of sentence for the opinions expressed or votes cast by him/her at sittings of the Assembly and working bodies.

Government

18. Please provide a description of the structure and functioning of the government. Which is the legal basis for the structure and functioning of the government?

The Government exercises the executive power in the Republic of Serbia under Article 122 of the Constitution and in accordance with the system of division of power defined by the Constitution of the RS. The **composition of Government** is defined under Article 125(1) so that the Government is comprised of the Prime Minister, one or more Deputy Prime Ministers and Ministers. The powers of the Prime Minister are defined under Article 125(2), according to which the Prime Minister governs and coordinates the activities of the Government, secures balanced political functioning of the Government, coordinates the activities of the Members of the Government and presents the Government. The Law on Government is adopted under Article 135 of the Constitution.

As for the constitutional solutions relating to the Government, the Law on Government (*Official Gazette of the RS* No. 55/05, 71/05 – *corrigendum*, 101/07 and 65/08) regulates constitutional issues relating to the composition of the Government, incompatibility and the conflict of interests, position and the powers of the Prime Minister; it also regulates the issues related to the position and the powers of Deputy Prime Ministers, First Deputy Prime Minister- Vice Premier and ministers, under Article 10-14 of the Law, according to which:

- the Government is comprised of the Prime Minister, one or more Deputy Prime Ministers and competent ministers; the Government may also have Ministers without Portfolio; the number of Deputy Prime Ministers and Ministers without Portfolio is defined by the National Assembly at the time of the constituting of the Government and at the proposal of the candidate for Prime Minister (Article 10(1), (2) and (3));
- the Member of Government cannot hold other public functions in the state bodies, provincial bodies of administration, municipal bodies, local government, the government of the city of Belgrade, or perform activities incompatible with the duties of the Member of Government, create the possibility of conflict between the public and private interest; the Member of Government is obliged to abide by the regulations

defining the conflict of interest when performing public functions (Article 11(1) and (2));

- the Prime Minister leads and coordinates the Government, secures the unity of the political functioning of the Government, coordinates the activities of the Members of Government, presents the Government, summons and chairs its meetings; the Prime Minister may provide other Members of Government with binding instructions and special assignments, in accordance with the programme and the policy of the Government; a Member of Government may demand from the Government to decide whether the Prime Minister has exceeded his/her powers acting in this manner (Article 12(1), (2) and (3));

- the Deputy Prime Minister directs and coordinates the activities of state administration bodies in the areas defined by the Prime Minister; the Prime Minister may empower the Deputy Prime Minister to lead a project within the scope of several state administration bodies; as for other issues, the provisions of the Law relating to other ministers apply to the Deputy Prime Minister as well (Article 13(1), (2) and (3));

- the Prime Minister appoints one of Deputy Prime Ministers as the First Deputy Prime Minister – Vice Premier, substituting him/her in the periods of absence or inability with all the powers of Prime Minister, except for the powers relating to the election or dismissal of the Members of Government; the First Deputy Prime Minister – Vice Premier assists the Prime Minister in leading and directing of the Government, securing the unity of the political functioning of the Government and coordination of the activities of the Members of Government; as for other issues, the provisions of the Law relating to the Deputy Prime Minister apply to the First Deputy Prime Minister – Vice Premier as well (Article 13a(1), (2) and (3));

- the Minister may submit to the Government proposals relating to the defining of issues within the competence of the Government and the National Assembly and demand from the Government to take a position relating to the issues within his/her competence; the Minister is obliged to inform the Government regarding the issues significant for the conducting of policy and decision making of the Government; the Minister is responsible for the implementation of programmes and policies of the Government, decisions and measures he/she has taken or failed to take and the execution of obligatory instructions and special assignments defined by the Prime Minister (Article 14(1), (2) and (3)).

Under Article 26(1) of the Law on Government the Government takes decisions at sessions, by majority of votes of all the Members of the Government, whereas the manner of working and decision making of the Government as well as the acts adopted by the Prime Minister are defined in more detail by the Rules of Procedure of the Government in accordance with the Law (Article 26(3)). In accordance with the Law on Government, the Prime Minister and Deputy Prime Ministers have Cabinet Offices which perform expert and other work for their needs. The Cabinet Offices are governed by the Chiefs of Staff, who are appointed and dismissed by the Prime Minister, i.e. the Deputy Prime Minister (Article 27(1) and (3)).

In accordance with the Law on Government, the Government has the General Secretariat of the Government in charge of the performance of expert and other work for the needs of the Government, the scope of which is defined in more detail by the Decree and the Rules of Procedure of the Government, which is administered by the Secretary-General to the Government, appointed and dismissed by the Government upon the

proposal of the Prime Minister, and who is accountable to the Prime Minister and the Government (Article 29 and 30 of the Law). In accordance with the Law, the Government by issuing a decree establishes offices providing expert and technical assistance for its needs or the needs of all or some state administration bodies defining their organization and scope (Article 31(1)).

Under Article 33 of the Law on Government, the Government establishes permanent working bodies in order to provide opinion and give suggestions regarding the issues within the competence of the Government and so as to adjust the attitudes of state administration bodies prior to the considering of proposals at the session of the Government. The Government may also establish temporary working bodies in order to consider certain issues within its competence and so as to provide suggestions, opinions and expert opinions. The manner of the establishment of stated working bodies is defined, *inter alia*, so that permanent working bodies are established by the Rules of Procedure, whereas temporary working bodies are established by a decision defining their tasks and composition.

More detailed rules on the organisation and the manner of working of the Government are defined by the Rules of Procedure of the Government (“Official Gazette of the RS”, No. 61/06 – consolidated version, 69/08, 88/09, 33/10 and 69/10), **elaborating legal provisions regarding the organisation and the manner of working of the Government**. Under Article 7 of the Rules of Procedure of the Government of the RS as for the **manner of decision-making of the Government**: The Government works and takes decisions on the issues within its competence at Government sessions, taking decisions by the majority of votes of all the Members of Government (paragraph 1); in case the Government has an even number of members, a decision is adopted if at least the half of all the Members of Government vote in favour of it, provided the Prime Minister votes in favour of it as well (paragraph 2); in case the majority of the Members of Government is present when voting on the draft agenda, and nobody disputes its existence during the session, the majority of all the Members of Government is considered to have attended the session of the Government from its beginning until the end (paragraph 3); in well-justified cases and in cases of emergency, the Prime Minister may take decision that the session of the Government takes place even if not attended by a majority of the Members of Government, and allow absent Members of Government to vote by telephone or telefax (paragraph 4).

The Rules of Procedure of the Government of the RS also define **the issues relating to the work, that is the manner of work of the Government**, also relating to the **Government working bodies**, which are: permanent working bodies and temporary working bodies. Permanent working bodies are committees and commissions, which are established by the Rules of Procedure of the Government of the RS. Committees participate in the preparation for a session of the Government or consider the matters not to be resolved at the sessions of the Government, whereas commissions, as a rule, adopt individual acts or propose them to the Government (Article 9). The members of permanent working bodies are Members of Government. In addition to them, the members may also be state secretaries and government appointees to the state administration, whose duties fall within the competence of the working body (Article 10(1)). The Government appoints the president, vice-president and other members of permanent working bodies so that the Members of Government comprise a

majority (Article 10(2)). The president of a permanent working body is appointed amongst the Deputy Prime Ministers or ministers (Article 11(1)). The rules relating to the sessions and the decision-making of a permanent working body as well as expert, administrative and technical assistance provided to permanent working bodies by the General Secretariat of the Government, through the offices or the secretaries of permanent working bodies are also defined. (Articles 12 to 15).

The Government has **committees and commissions** in accordance with the Rules of Procedure of the Government of the RS.

Under Article 25(1) of the Rules of Procedure of the Government of the RS, the Government has the following **committees**:

- 1) Committee on Legal System and State Bodies;
- 2) Committee on International Relations;
- 3) Committee on Economy and Finance;
- 4) Public Services Committee.

Under Article 25(2) of the Rules of Procedure of the Government of the RS, the Government has the following **commissions**:

- 1) Administrative Commission;
- 2) Personnel Commission;
- 3) Housing Commission;
- 4) Commission to Determine Natural Disaster Damage;
- 5) Commission for the Allocation of Official Buildings and Business Premises.

The issues relating to the course of the session of the Government are defined by the Rules of Procedure of the Government of the RS. The Prime Minister summons the session of the Government in writing, as a rule, 24 hours prior to its beginning, whereas the Members of Government receive an invitation, draft agenda, minutes from the previous session, documents for the session and reports prepared by committees. Individuals invited to participate at the session receive only documents relating to the items of the draft agenda for which they have been invited to attend (Article 52). The Prime Minister chairs the session of the Government. In case of his/her absence or inability, the First Deputy Prime Minister – Vice Premier chairs the session (Article 53). The rules relating to the documents of the draft agenda, defining the agenda, adopting the minutes from the previous session, considering and deciding on the items on the agenda, as well as the voting rules are defined. The voting methods include a show of hands, a voice vote or another technically feasible method. The member of Government is entitled not to vote offering arguments for it, which is included in the minutes. Individual voting of the Members of Government is considered to be a strictly confidential official secret, unless the Prime Minister has decided otherwise (Article 59).

The issues relating to **the participation at the session of the government** are defined under Article 60 of the Rules of Procedure of the Government of the RS. Members of Government, Secretary-General to the Government, Head of the Republic Secretariat for Legislation and invited individuals attend the session of the Government. Invited

individuals may participate in the activities solely relating to the items on the agenda for which they have been invited. The Chief of Staff in the Prime Minister's Cabinet Office and the individuals employed in the General Secretariat of the Government may attend the session of the Government not having the right to participate in its activities. State Secretary, Secretary of the Ministry, Head of Administration Body in the scope of the Ministry and Assistant Minister accountable for the preparation of documents may take part at the session at the proposal of a Minister and having the consent of the Prime Minister, but solely during the consideration of an item on the agenda relating to which their presence is needed. The minister and Head of Republic Secretariat for Legislation notify in timely manner the Secretary-General to the Government that they will not be able to participate at the session owing to the business trip, illness or other justifiable reasons stating who of the state secretaries or assistants, i.e. deputies or assistants will substitute for them. As for the discussion at the session of Government, the duty of the Head of Republic Secretariat for Legislation is to sign up for debate having concluded from the documents or the debate that a draft or a proposal of an official document conflict with the Constitution or the Law in order to warn against possible discrepancies that may emerge in the legal system of the Republic of Serbia (Article 61).

The rules relating to the stenographic notes and audio recordings of the session are defined under Article 62 of the Rules of Procedure of the Government, whereas the rules relating to the taking, signing and maintaining the minutes from the session are defined under Article 63. Under Article 62 of the Rules of Procedure of the Government, *inter alia*, stenographic notes are taken at the session of the Government, the session of the Government is audio recorded, stenographic notes and audio recordings are considered to be a strictly confidential official secret, whereas the capacity of confidentiality is revoked by the Government (Article 62(1), (2) and (4)). Under Article 63 of the Rules of Procedure of the Government, *inter alia*, the minutes are taken on the course of the session of the Government. The minutes are signed by the Prime Minister and the Secretary-General. The minutes are maintained permanently. The Secretary-General is responsible for maintaining the minutes (Article 63(1), (3) and (4)).

The issues relating to the openness of Government activities to the public are defined by the Rules of Procedure of the Government of the RS. Pursuant to Article 93, *inter alia*, the activities of the Government are open to the public, the openness to the public is provided through press conferences, Internet presentations of the Government and state administration bodies, press releases and other information and telecommunication means (Article 93(1) and (2)). As a rule, the Government responds to all questions, initiatives and complaints sent to it through state administration bodies. The questions, initiatives and complaints sent to the Prime Minister are responded to by the General Secretariat in cooperation with competent state administration bodies. Under Article 96(1) of the Rules of Procedure of the Government, as a rule, journalists and other representatives of the public do not attend sessions of the Government.

19. Please provide a description of arrangements within the government for strategic planning and monitoring. Is there a government programme? How is it prepared, what is the time-line for its implementation and how is its implementation monitored?

GENERAL

The Secretariat-General of the Government has in the past several years, in the cooperation with experts from several European countries, analysed the situation in the area of strategic planning, monitoring and coordination of policies. Based on the shortcomings noted and the recommendations proposed on the work improvement and modernisation, i.e. strengthening the state administration capacities, and especially the capacities of the Secretariat-General of the Government which is in charge of the work concerned, the Secretariat-General has undertaken a series of measures and actions. Therefore, the policy definition and implementation process has been recognized as one of the key areas which need significant changes in order to enable the fulfilment of all the administrative criteria in the EU accession process.

Bearing in mind that work improvement in the area of strategic planning, monitoring and coordination of policies needs, as such, several years to be achieved and that after the introduction of the planning application, which has integrated all the state authorities that make their Work Plans, it could be concluded that a good basis for further improvement has been formed, but also that further efforts should be made in this direction in the next several years in order to harmonise the policy creation process with the EU demands and good practice standards. The Secretariat-General, for the abovementioned work, uses the funds provided by donors, and in this stage the funds have been provided by DFID, as well as the Swedish International Development Cooperation Agency which will be available by mid-2012 when the IPA funds are expected, since it is necessary to ensure continuity and final success in the area of strategic planning, monitoring and coordination of policies.

The Law on Government (*Official Gazette of the RS* No. 55/05, 71/05 – corrigendum, 101/07 and 65/08 – entered into force on 05/07/2005) stipulates that the Secretariat-General shall be responsible for expert and other tasks for the requirements of the Government. The Regulation on Secretariat-General (*Official Gazette of the RS* No. 79/05, 71/08, 109/09 – entered into force on 03/09/2005) establishes the Secretariat-General of the Government as a general Government service and envisages its scope of work.

The Secretariat-General of the Government provides administrative and technical support to the political level of the authority in charge of strategic planning, to the extent possible, bearing in mind its current capacities.

Pursuant to the provisions of the Rules of Procedure of the Government (*Official Gazette of the RS* No. 61/06, 69/08, 88/09, 33/10 and 69/10 – published on 18/07/2006), the Secretariat-General of the Government shall prepare the Annual Work Plan of the Government, monitor its implementation and draft the Annual Report on the Work of the Government. In performance of the abovementioned work, the Secretariat-General of the Government shall have a coordinating role. The Secretariat-General of the Government shall not perform the function of assessing the quality of legislation from the legal point of view, nor shall it verify its compliance with the EU *acquis*, but these tasks shall be performed by the State Secretariat for Legislation envisaged by the Law on Ministries (*Official Gazette of the RS* No. 65/08, 36/09 and 73/10 – entered into force

on 05/07/2008), as a special organisation and a Government service – European Integration Office, established by the Regulation establishing the European Integration Office (*Official Gazette of the RS* No. 126/07, 117/08, 42/10 and 48/10 – entered into force on 29/12/2007). Pursuant to the Regulatory Reform Strategy of the Republic of Serbia for the period 2008-2011, the Government has, through the Regulation on the Office for Regulatory Reform and Regulatory Impact Analysis (*Official Gazette of the RS* No. 89/10 – entered into force on 07/12/2010) established the Office for Regulatory Reform and Regulatory Impact Analysis as a Government service.

The majority of tasks regarding the horizontal coordination of policies in the Secretariat-General of the Government has been delegated to the Sector for planning, monitoring and coordination of policies and the EU integration process issues. Pursuant to its envisaged scope of work, the Sector for planning, monitoring and coordination of policies and the EU integration process issues performs the tasks regarding the introduction of a new framework for coordination of policies of all state authorities. The Sector has hitherto made a significant progress towards the improvement of policy definition and policy implementation control.

ANNUAL WORK PLAN OF THE GOVERNMENT

Pursuant to the provisions of Article 63 of the Law on State Administration (*Official Gazette of the RS* No. 79/05, 101/07 – entered into force on 24/09/2005), ministries and special organisations shall be obliged to make their annual work plans in order to have an Annual Work Plan of the Government prepared. The Rules of Procedure of the Government, provisions of Articles 76 and 77, defines in detail the manner in which the Annual Work Plan of the Government shall be adopted.

The provisions lay down that the Annual Work Plan of the Government shall establish the **goals and tasks** of the Government, as well as the goals and tasks of state authorities and the **expected results**; also, that the Annual Work Plan shall be based on annual work plans of state authorities drafted in compliance with the **medium-term planning methodology**. A state authority shall submit its annual work plan proposal for the following year, by 10 November of the current year. The Government shall adopt the Annual Work Plan for the following year by the end of December of the current year. The Government may, if need be, after the adoption of the Law on Budget of the Republic of Serbia, adopt a revised Annual Work Plan of the Government. The Secretariat-General of the Government, which is in charge of preparing the Annual Work Plan of the Government, shall cooperate with the Ministry of Finance and the State Secretariat for Legislation when performing this task.

The Secretary-General of the Government shall prepare the Instructions establishing the Annual Work Plan drafting methodology and procedure, as well as its structure. The Instructions shall be communicated to all ministries, special organisations and Government services.

The Instructions establishing the Annual Work Plan drafting methodology and procedure, as well as its structure, provide for a uniform approach for drafting all work plans of state authorities. The Instructions, from those for drafting the Annual Work Plan of the Government for 2006 to the latest ones, for drafting of the Annual Work

Plan of the Government for 2011, have been improved by increasing the volume and comprehensiveness of the data, and as regards the manner (methodology) of drafting and submitting the plans.

The Annual Work Plan of the Government is adopted taking into consideration the following:

- 1) Exposé of the Prime Minister of the Republic of Serbia which is submitted to the National Assembly of the Republic of Serbia;
- 2) Budget resources envisaged by the Law on Budget of the Republic of Serbia;
- 3) Ratified Stabilisation and Association Agreement (SAA);
- 4) National Programme for Integration with the European Union (NPI)
- 5) Priorities established in strategic documents, action plans and other documents.

The following objectives shall be realised by the Annual Work Plan of the Government:

- 1) Harmonisation of annual work plans of state authorities with strategic, programme and financial priorities of the Government;
- 2) Efficient, effective and timely planning and coordination of sessions of committees and the Government;
- 3) Improvement of accountability of the executive authority to the National Assembly and the public;
- 4) Achieving a realistic Government work planning framework.

The structure of the Annual Work Plan of the Government for 2011 is shown in tables, the contents of which are the following:

- The data on the state authority concerned
- Acts proposed by the Government to the National Assembly
- Acts adopted by the Government
- Regulations of state authorities, adopted by ministers
- Programmes/projects implemented by state authorities

Drafting methodology for The Annual Work Plan of the Government for 2011 is as follows:

Besides the Instructions of the Secretary-General of the Government establishing the Annual Work Plan drafting methodology and procedure, a Methodology Manual for submitting annexes for drafting the Work Plan of the Government and the Report on the Work of the Government, as well as Guidelines for Long-term Plans Development have been made for the purpose of a unique approach, efficiency and medium term work plans drafting.

The medium-term plans of state authorities are the basis for drafting of the work plans of state authorities for 2011, and the Work Plan of the Government for 2011. Application of this methodology and introduction of software application for submitting annexes for drafting the Work Plan of the Government for 2011, are significant steps in the reform process aimed at strengthening capacities of state authorities for strategic planning and coordination of policies.

This is the first phase in the integration of system parts in the area of planning and monitoring the results achieved, the final aim of which is the establishment of a unique planning model that would include networking of all state authorities, monitoring and

evaluation of strategic and operative plans and long-term goals, as well as the introduction of a comprehensive information system.

Networking of all state authorities in plan and report drafting process, and in this context, the establishment of state priorities, enables the harmonization with the budget drafting process. The methodology of medium-term planning has been developed and enhanced in the past several years and therefore it has been applied through the procedure of drafting annexes for the Annual Work Plan of the Government. However, as regards the planning system, there are still certain things to be improved and expanded by introducing the missing element of strategic planning and by modernizing the process of creation and adoption of public policies.

The Work Plan of the Government for 2011 contains data regarding goals, indicators, programmes, projects, programme activities, measures, and normative activities.

State authorities indicate the source of financing for each of the abovementioned activities separately, as well as the envisaged resources necessary for its realisation in 2011.

State authorities that are, pursuant to provisions of the Law on Ministries or a special law, authorized proposers of laws and other general acts that the Government proposes to the National Assembly; they are obliged to, based on the Instructions, include the title of each act in their work plans, as well as the data regarding the period in which the act was drafted, and whether the act concerned will be included in the Work Plan of the Government for 2011, and they are also obliged to define the priority level, elaborate whether the activity concerned is included in the National Programme for Integration with the European Union (NPI), provide a short act description and indicate when the act in question will be submitted to the Government for consideration and decision.

State authorities that are authorized proposers of laws adopted by the Government, introduce the same parameters in their work plans as the ones established for planning of Bills and other general acts that the Government proposes to the National Assembly.

Work plans of state authorities contain regulations elaborating certain provisions of legislation or Government regulations of general importance, permit or order certain manner of conduct in particular situations, or define manners in which certain provisions of laws or other regulations are implemented, for the adoption of which these state authorities are authorized pursuant to the provisions of the Law on State Administration. Furthermore, as regards the planning of these acts, the parameters that are used are the same as the ones used for proposals of laws and other general acts that the Government proposes to the National Assembly.

In the process of drafting the Annual Work Plan for the Government, state authorities communicate their work plans to the Secretariat-General of the Government, and during this process a constant communication is established between the Secretariat-General of the Government and state authorities through the persons who state authorities designate as contact persons. The cooperation is mutual and it lasts, at this level, until the Annual Work Plan of the Government proposal is submitted for further consideration and adoption.

The Government has been adopting Annual Work Plans since 2006, with the exception of 2008 for which the Work Plan was prepared but not adopted owing to pre-term parliamentary elections. In July 2009, the Government adopted a Revised Annual Work Plan after the adoption of the Law Amending the Budget Law of the Republic of Serbia for 2009, as a necessary measure aimed at alleviating negative effects of the global economic crisis in the Republic of Serbia.

ANNUAL REPORT ON THE WORK OF THE GOVERNMENT

Article 8(1) of the Law on Government stipulates that the Government shall supervise the work of state authorities, direct the state authorities in implementation of policy and execution of laws and other general acts and harmonise their work. In this regard, the Law on State Administration stipulates that the Government through its conclusions shall direct state authorities in implementation of policy and execution of laws and other general acts, shall harmonise their work and shall, for ministries and special organizations, determine time limits for passing legislation if the time limits are not prescribed by law or by the general act of the Government (Article 61 of the Law).

Article 63 of the Law on State Administration prescribes that at least once a year ministries and special organisations shall submit to the Government a report on their work which contains the description of the situation in the areas from their scope of work, information on execution of laws, other general acts and conclusions of the Government and on the undertaken measures and their effects. The Annual Work Plan of the Government shall be drafted based on annual work plans of state authorities. Article 36(1) of the Law on Government lays down that the Government shall submit a report to the National Assembly on its work in the past year, at the latest 60 days before submitting a proposal of the Budget Financial Statement of the Republic of Serbia.

Article 78 of the Government Rules of Procedure stipulates that the Government adopts an Annual Report on its Work, which is based on annual reports on the work of state authorities, and which estimates the realisation of the Annual Work Plan and other tasks performed outside the Work Plan.

The Secretary-General of the Government shall prepare the Instructions establishing the Annual Work Plan drafting methodology and procedure, as well as its structure.

Article 79 of the Government Rules of Procedure lays down that state authorities shall be obliged to submit their work report for the past year by 1 March of the current year, and the Government shall adopt the Annual Report for the past year by 1 May of the current year. Proposal of the Annual Report on the Work of the Government shall be prepared by the Secretary General, which is in charge of the task, in cooperation with the Ministry of Finance and the State Legislative Secretariat.

Besides the Report on the Work of the Government which is submitted to the National Assembly, Article 36 of the Law on Government lays down that upon the request of the National Assembly, the Government and every Government member shall report to it on their work

Article 86 of the Government Rules of Procedure lays down that the Secretary General of the Government shall keep records on time limits within which ministries and special organizations are, pursuant to law or general act of the Government, obliged to adopt regulations.

Article 87 of the Government Rules of Procedure lays down that if a ministry or a special organisation does not adopt a regulation within the time limits envisaged by law or Government act, the regulation concerned may be adopted by the Government provided that the failure to adopt the regulation could have detrimental effects on human life and public health, environment, economy or assets of high value. The Secretariat-General of the Government shall obtain Opinions of ministries determined by the Prime Minister, on whether there are conditions necessary for the Government to adopt the regulation and afterwards, prepare for the Government the proposal of an appropriate conclusion. If the Government estimates that the conditions for adoption of the regulation concerned exist, it determines ministries that shall, in cooperation with the State Secretariat for Legislation, prepare for the Government the regulation proposal.

Secretariat-General of the Government, i.e. its organizational unit – Sector for Planning, Monitoring and Coordination of Policies and the EU Integration Process Issues performs the supervision of the work of state authorities, above all by monitoring whether in the process of drafting annual work plans and reports on work, Instructions of the Secretary-General of the Government are consistently implemented, whether the strategies adopted by the Government are implemented, whether the time limits established by the work plan are respected and evaluate the results of their work by establishing to what extent the work plan has been applied. The final goal that the Secretariat-General of the Government should achieve in its report for 2010 is to obtain all assumptions so that the report would precisely indicate to what extent state authorities have harmonised their individual policies with the adopted strategies, to what extent they have implemented the necessary measures and activities, to what extent the time limits have been respected and what indicators they have used for measuring their work results.

20. How is the legislative programme of the government prepared and monitored?

The Government shall propose to the National Assembly laws, budget and other general and individual acts as provided for in Article 3 of the Law on Government. State authorities which are, according to the provisions of the Law on Ministries or other special law, authorized proposers of laws and other general acts that the Government proposes to the National Assembly, prepare those acts in form of drafts and submit them to the Government for consideration and decision. Preparation procedure for proposals of laws, public debate, obtaining opinions of competent bodies, considerations at Government standing committees sessions and at Government sessions, as well as other issues, are regulated by the Government Rules of Procedure. If the Government approves of the draft act, it submits it to the National Assembly in the form of a proposal.

The structure of the Government annual work plan enables supervision of the work of state authorities from several aspects, and in the area of their legislative activities as

well. The Secretary-General of the Government establishes, in the Annual Report on the Work of the Government, to what extent has the Government Work Plan been complied with, as well as the occurrence of activities that have not been planned.

Pursuant to provisions of Articles 39a and 40 of the Government Rules of Procedure, the authorized proposers shall be obliged to, together with a draft law, submit the following:

- regulatory impact analysis which contains explanations and assumptions regarding what group of subjects will be influenced by the provisions of the law and in what manner, what expenses will the implementation of the law generate for the citizens and economy (especially for small and medium enterprises), whether positive effects of the law can justify the expenses ensued by it, whether the law supports establishment of new businesses on the market and market competitiveness, whether all stakeholders have had an opportunity to express their opinion on the proposal for a law and what measures will be taken during implementation of the law in order to achieve what has been envisaged by the proposal; in case the proposer estimates that, along with the draft law, regulatory impact analysis should be submitted, the proposer is obliged to explain it separately;
- annex listing all the regulations and general acts by which the law will be executed, as well as time limits within which regulations and general acts must be adopted;
- Statement on Compliance with EU Rules and Table of Compliance of Regulations with EU Rules, on forms determined by a special Government act (Statement on Compliance with EU Rules and Table of Compliance of Regulations with EU Rules are submitted together with proposal of a decision on harmonizing the regulations of the Republic of Serbia with EU rules);
- Statement regarding the strategic document of the Government (strategy, action plan, etc.) with which the act being proposed has been harmonized, as well as a statement on whether the draft law has been envisaged by the Annual Work Plan of the Government, which, in case the act has not been envisaged by the Annual Work Plan of the Government, contains an explanation of the reasons for the necessity of considering the act in question.

The Secretariat-General of the Government ensures that the obligations of the authority laid down in the given provisions of the Government Rules of Procedure are met, and during the budget year, the Secretariat-General of the Government monitors whether and to what extent state authorities act in compliance with the Work Plan of the Government for the year in question.

The procedure of supervising the work of state authorities and drafting of the Annual Report on the Work of the Government is described in the answer to the question No. 19.

21. What types of legal acts exist? How and by whom are they adopted? How are they prepared? What forms of consultation are used, both inside the government (inter-ministerial coordination) and outside (stakeholders)? What mechanisms exist to monitor the effective implementation of legal acts by public bodies (e.g. reporting requirements, inspections)?

Pursuant to the Constitution of the Republic of Serbia (Article 123), the Government: determines and exercises the policies, enforces the laws and other general acts of the National Assembly, adopts the decrees and other general acts for enforcing the laws, proposes to the National Assembly the laws and other general acts and gives the opinion on them when submitted by some other proposer, directs and coordinates the work of the state administration and monitors its work, as well as performs other jobs provided for by the Constitution and the Law. Pursuant to Article 107 of the Constitution, the Government is an authorized proposer of laws, other regulations, and general acts, besides the other proposers authorized by the Constitution, and pursuant to Article 99(1)(11) of the Constitution, the Government is an authorized proposer of the budget and closure of accounts of the Republic, adopted by the National Assembly, on the proposal of the Government.

The Law on Government (*Official Gazette of the RS* No. 55/05, 71/05 – *corrigendum*, 101/07 and 65/08) prescribes that the Government determines and exercises the policy of the Republic of Serbia within the Constitution and the laws and other general acts of the National Assembly, as well as enforces the laws and other general acts of the National Assembly by adopting general and individual legal acts and taking other measures (Article 2(1) and (2)), proposes to the National Assembly the laws, budget and other general and individual acts (Article 3), represents the Republic of Serbia as a legal person and exercises therein the rights and obligations that the Republic of Serbia has as a founder of public undertakings, establishments, and other organizations, unless laid down otherwise by the Law (Article 4), manages the property of the Republic of Serbia, unless laid down otherwise by the Law (Article 5).

With regards to exercising the constitutional and legal competencies of the Government pertaining to enforcement of the laws and other general acts of the National Assembly, or adoption of the decrees and other general acts for enforcing the Law, or with regards to the acts adopted by the Government, the Law on Government prescribes (Articles 42 to 45) **the types of the acts adopted by the Government**, namely: **regulations, rules of procedure, general decision, specific decision, conclusion, memorandum on budget¹, development strategy, and declaration.**

The Government, pursuant to the Law on Government, elaborates a relation regulated by the Law by means of a **regulation**, in accordance with the purpose and objective of the Law (Article 42(1)). The Government adopts **Rules of Procedure** by means of which, in accordance with this Law, it prescribes the governing principles, manner of functioning and decision-making pertaining to the Government (Article 42(2)). The Government uses a **general decision** to found public undertakings, establishments, and other organizations, to take the measures of general importance, and to decide on other matters for which it is laid down by the Law or a decree that the Government regulates them by means of a general decision (Article 43(1)). The Government decides on appointments and removals, in administrative matters and other matters of individual

¹ The Law on Amendments and Modifications of the Law on Budgetary System (*Official Gazette of the RS* No. 73/10), due to the essential modification with regards to passing to the so-called “programme budget”, introduces the act – “Fiscal Strategy Report” (Article 2(1)) instead of the act – “Memorandum on Budget and Economic and Fiscal Policy”. Pursuant to the provision of Article 43(1) of the mentioned Law, this modification shall apply from 1 January 2011.

importance, by means of a **specific decision** (Article 43(2)). When it does not adopt other acts, the Government adopts **conclusions** (Article 43(3)).

Besides the mentioned ones, the Government also adopts the following types of acts: **development strategy**, **memorandum on budget** and **declaration**. Pursuant to Article 44 of the Law on Government, the Government adopts a **memorandum on budget**, which contains basic objectives of the public finance policy and macroeconomic policy, while by means of a **development strategy** the Government determines the situation in the field of competence of the Republic of Serbia and the measures to be taken for its development (Article 45(1)). A **declaration** expresses the position of the Government on some matter (Article 45(2)).

The Law on Government prescribes that decrees, general decisions, rules of procedure, memorandum on budget and specific decisions are published in the *Official Gazette of the Republic of Serbia*, while other acts of the Government and the Prime Minister may be published in the *Official Gazette of the Republic of Serbia*, if it is laid down by this Law or other regulation, or if it is decided so by the Government at their adoption (Article 46). The types of the acts adopted by the Prime Minister are laid down by Article 4 of the Government's Rules of Procedure (*Official Gazette of the RS* No. 61/06 – consolidated version, 69/08, 88/09, 33/10, and 69/10), according to which the Prime Minister adopts general and specific decisions, where the decisions of the Prime Minister are published in the *Official Gazette of the Republic of Serbia*.

In relation to exercising the competencies of the Government in proposing and adopting the acts, the Government's Rules of Procedure lay down **who has the right to propose the material for the Government's session**. Pursuant to the provisions of Article 35 of the Government's Rules of Procedure, the right to propose the material for the Government's session belongs to the **state administration authority dealing with the matter which the material pertains to (the proposer)**, and the proposer is obligated to prepare and propose the material in the procedure prescribed by these Rules of Procedure (paragraphs 1 and 2). Article 36 of the Government's Rules of Procedure prescribes that the proposer submits the material to the Government through the Government's General Secretariat, whereas public undertakings, establishments, and other organizations submit the material through the ministries whose scope they fall within, and the proposal of the acts for the Government is prepared by the ministry.

With regards to the acts the adoption of which falls under the Government's competency, as well as with regards to the acts proposed by the Government, and adopted by the National Assembly, the Government's Rules of Procedure regulate the **procedure of preparation of acts** in detail. Article 37 of the Government's Rules of Procedure prescribes the **form in which the proposer prepares the act, or submits it to the government (draft or proposal)**, so that: the proposer prepares the Law and the other acts proposed by the Government to the National Assembly and to the President of the Republic in form of draft, and the Government accepts the draft act by determining the proposal of act, which it then forwards to the National Assembly or to the President of the Republic (paragraph 1); the proposer prepares the decree, decision, memorandum on budget, development strategy, declaration and conclusion, as the acts adopted by the Government, for the Government in form of proposal (paragraph 2); the provisions of these Rules of Procedure regarding preparation of draft laws apply accordingly to other

acts proposed by the Government to the National Assembly and the President of the Republic (paragraph 3). The provisions of Article 38 of the Government's Rules of Procedure lay down **the content of the laws and proposals of acts**, so that: the draft law and the proposal of decree or decision of the Government are prepared and submitted to the Government in form of legal provisions with explanation, and the provisions of draft law and proposals of decrees should also contain the time limits within which the regulations and other general acts for enforcing laws and decrees are adopted (paragraph 1); the proposal of decision is prepared and submitted to the Government with pronouncement and explanation (paragraph 2); the proposals of the memorandum on budget, development strategy and declaration should contain the explanation of all the necessary matters, and analyses, reports, information, proposals of international encounter platforms, proposals of bases for concluding international agreements and similar materials, besides the explanation, should also contain the conclusion which is proposed to the Government (paragraph 3).

The Government's Rules of Procedure lay down (Article 39) **what the explanation of the draft law and the proposal of decree or decision of the Government should contain**:

- 1) constitutional or legal basis for adopting the act;
- 2) reasons for adopting the act, and among them especially: problems which should be solved by the act, objectives achieved by the act, considered possibilities for solving the problem without adopting the act and the answer to the question why adoption of the act is the best way of solving the problem;
- 3) explanation of basic legal institutes and individual solutions;
- 4) estimate of financial means necessary for enforcing the act;
- 5) general interest for which retroactive effect is proposed, if the draft law contains provisions with retroactive effect;
- 6) reasons for urgent adoption of the law, if the urgent procedure has been proposed for adoption of the law;
- 7) reasons for which it is proposed that the act enters into force prior to the eighth day as of the date of publishing in the *Official Gazette of the Republic of Serbia*.
- 8) review of the provisions of the act in force which are modified or amended (it is prepared by crossing off the part of the text which is modified, and by entering the new text in capital letters).

Pursuant to Article 39a of the Government's Rules of Procedure, along with the draft law and the proposal of decree the proposer submits the Declaration of Harmonization of Regulations with the Regulations of the European Union, in form of enclosures, in the forms provided for by the separate act of the Government, and the Declaration of Harmonization of Regulations with the Regulations of the European Union and the Table of Harmonization of the Regulations with the Regulations of the European Union are also submitted with the proposal of the decision by which the harmonization of the regulations of the Republic of Serbia with the regulations of the European Union is performed (paragraphs 1 and 2). Also, along with the draft law and the proposal of decree or decision, the proposer submits, in form of enclosures, the declaration stating which strategic document of the Government (strategy, action plan, etc.) the proposed act has been harmonized with, as well as the declaration stating whether the draft law, or the proposal of decree or decision is projected in the annual agenda of the Government,

which, in case the act has not been projected in the annual agenda of the Government, also contains the explanation of the reasons indicating necessity of considering this act (paragraph 3).

Article 40 of the Government's Rules of Procedure lays down that the proposer, along with the draft law, also submits the **analysis of effects of the law**, containing the following explanations: who and how will be influenced by the decisions in the law, what costs will the application of the law create for the citizens and the economy (especially for small and medium enterprises), whether the positive consequences of adopting the law are such to justify the costs to be created by it, whether the law supports creation of new undertakings in the market and whether it supports market competition, whether all the stakeholders have had the opportunity to declare themselves regarding the law and which measures will be taken at applying the law in order to realize what is intended by adopting the law (paragraph 1). If the proposer estimates that it should not enclose the analysis of effects of the law along with the draft law, it is obligated to explain it separately (paragraph 2). Also, the proposer, along with the draft law, submits the enclosure stating the regulations and other general acts by which the draft law is enforced and the time limits within which the regulations and other general acts should be adopted (paragraph 3).

The Rules of Procedure prescribe the obligation of the proposer to hold the **public discussion** (Article 41(1)) in the preparation of the law which significantly changes the regulation of some matter or which regulates the matter of particular interest for the public, where there is a possibility prescribed to hold the public discussion in the preparation of the development strategy as well (Article 41(4)).

In the procedure of preparation of the acts whose adoption falls under the competence of the Government, or which are proposed by the Government to the National Assembly, the Government's Rules of Procedure prescribe the obligation of the proposer to obtain the **opinions of the competent authorities** in the procedure of preparation of the material for the Government's session, and there are also the prescribed time limits for giving such opinions Pursuant to Article 46 of the Government's Rules of Procedure:

- 1) with regards to the draft law, proposal of decree, decision, memorandum on budget, development strategy, declaration and conclusion, the proposer obtains the opinions of the Republic Secretariat for Legislation and Ministry of Finance.
- 2) with regards to the draft law and proposal of decree or proposal of decision by means of which the harmonization of the regulations of the Republic of Serbia with the regulations of the European Union is performed, the proposer also obtains the opinion of the European Integration Office, especially on that whether the Declaration of Harmonization of Regulations with the Regulations of the European Union and the Table of Harmonization of the Regulations with the Regulations of the European Union are filled in properly; the opinion of the European Integration Office on the development strategy proposal is also obtained.
- 3) if the act regards the foreign relations of the Republic of Serbia, the proposer obtains the opinion of the Ministry of Foreign Affairs, if the act regulates criminal acts, commercial offences or infringements, or if it establishes or withdraws jurisdiction or prescribes jurisdiction *ratione materiae* of the courts – the opinion

of the Ministry of Justice, or if the act regards the protection of property rights and interests of the Republic of Serbia – the opinion of the Republic Attorney's Office;
4) the opinions are also obtained from the state administration authorities whose scope is connected with the matter which the act is related to;

Article 48 of the Government's Rules of Procedure prescribe the manner of submitting the material to the Government, through the Government's General Secretariat, as well as that the proposer is obligated to submit to the Government's General Secretariat the material harmonized with the objections from the obtained opinions which it esteemed as acceptable, the opinions it obtained and the report from public discussion if it was held, where it is obligated to declare itself in writing regarding all the objections which were not accepted by it. The material should be put in order from the language and style point of view. With regards thereto, when it comes to the acts proposed by the Government, and adopted by the National Assembly, the competent authorities, at preparing the acts, have an obligation of adhering to the Unique Methodology Rules for Making Regulations (*Official Gazette of the RS* No. 21/10), adopted based on Article 8 of the Law on National Assembly (*Official Gazette of the RS* No. 9/10). With regards to the regulations adopted by the Government, or the State administration authorities, the Methodology for Making By-Law Acts applies, adopted by the Government's Conclusion on adopting the Methodology for Making By-Law Acts (*Official Gazette of the RS* No. 75/10), based on Article 61(1) of the Law on National Assembly (*Official Gazette of the RS* No. 79/05, and 101/07) and Article 43(3) of the Law on Government.

In relation to the Government's authorizations with regards to performing the supervision in relation to the State administration authorities, the Law on Government, in accordance with Article 123(5) of the Constitution – which lays down that the Government performs supervision over the work of the State administration authorities, prescribes the **Government's powers towards the State administration authorities in performing supervision over the work and acts of the state administration authorities**. Pursuant to the provisions of Article 8 of the Law on Government, the Government supervises the work of the state administration authorities, directs the state administration authorities in enforcing policies and exercising laws and other general acts and coordinates their work (paragraph 1); if the state administration authority does not adopt a regulation, it is adopted by the Government, in case that non-adoption of the regulation would cause consequences harmful to human lives or health, the environment, economy, or property of higher value (paragraph 2), and the Government may declare void or annul the regulation of the State administration authorities which is in contradiction to the law or regulation of the Government and to determine a time limit for adopting a new regulation (paragraph 3).

22. What mechanisms exist for inter-ministerial coordination? Specifically, what mechanisms exist to link strategic planning and budgeting, in each Ministry, at governmental level?

Existing rules and procedures envisage the mechanism of consultations. The authorized proposer is obliged to ask the competent authorities for their opinion and to obtain their consent for submitting the act concerned to the Government for consideration and decision. Civil servants of the authorized proposers, who perform normative tasks,

constantly consult the employees who in the competent state authorities perform quality control of their proposals.

Tasks regarding the analysis of the regulations proposed by ministries and special organizations are also performed by the newly-established Government service – Office for Regulatory Reform and Regulatory Impact Analysis which, upon request of the proposer, delivers a pre-opinion on the need for the regulatory impact analysis, on regulatory impact analysis intended for public debate, as well as on the completeness of the contents of the submitted impact analysis. The Office will assist the proposers in establishing mechanisms for regulatory impact analysis and monitoring during the implementation of regulations. Office's duties also encompass collecting and processing initiatives of businesses, legal entities and citizens for amending inefficient regulations at the state level, as well as submitting the initiatives for amending inefficient regulations to competent proposers of the regulations. The Office conducts training of civil servants performing regulatory impact analysis and analyses institutional and human capacities for implementation of the regulatory reform.

Meetings between ministries are, although not envisaged as obligatory, kept as frequently as necessary.

Provisions of the Article 19 of the Government Rules of Procedure lay down that joint sessions of Government standing working bodies may be organised, as well as joint sessions of committees aimed at considering issues of importance for two or more committees. Article 20 of the Government Rules of Procedure lays down that when a Committee considers a draft law on verification of international agreements, representatives of the Ministry of Foreign Affairs and a representative of the state authority whose scope of work includes the issues regulated by the international agreement concerned, shall participate in the work of the committee as representatives of proposers.

By constantly improving the strategic planning model, the Secretariat-General of the Government controls, in the Government Work Plan drafting process, whether state authorities have envisaged the necessary financial resources for the planned activities. This model develops standards and methodology for implementation of the strategic and operative planning process of the Government and its connection with the budget preparation process in the Ministry of Finance. Simultaneously, the Ministry of Finance carries out reforms within the Budget Sector and the Macroeconomic Analysis Sector in order to effectively and functionally connect the strategic planning process and the process of drafting the budget, which actually means that the combination of "top-down" and "bottom-up" approaches is used for the planning. It has been envisaged to use this kind of approach in cooperation with the Ministry of Finance in several phases. Currently, in the Budget Memorandum there are projections of revenues and expenditures that could be useful for state authorities when planning financial resources, and with these projections state authorities can realize their policies. State authorities realise the abovementioned policies through programmes, projects and activities for which they are obliged to indicate the necessary financial resources.

In addition to the abovementioned, the Law on Budget System (*Official Gazette of the RS* No. 54/09) also envisages the connection between strategic priorities of the

Government and proposals of new policies and financial resources. This Law introduces the medium-term planning and the medium-term expenditure framework which encompasses priorities of public policies, both existing and new ones. Article 31 of the Law on Budget System regulating the budget calendar, stipulates that state authorities submit to the Ministry of Finance their proposals for establishing priority financing areas. The proposals include data on existing and new policies that the state authority concerned intends to implement during the forthcoming medium-term period. Based on these proposals, the Ministry of Finance proposes a list which it submits to the Government for the purpose of final adoption of priority financing areas, including national investment priorities for the budget year and the forthcoming two fiscal years. After a public debate on the priorities concerned has been finalised, the Ministry of Finance drafts a Budget Memorandum which, besides the medium-term projections of macro-economic and fiscal aggregates and indicators, as well as aims and guidelines of the economic and fiscal policy, also contains data on other policies and structural reforms, priority financing areas and the proposed new policies and a medium-term expenditure framework.

23. What structures exist to ensure the coordination of European Integration issues? How is the compatibility of planned legislation with the EU *acquis* and with international obligations been verified and monitored? Which body is responsible for such verification? Please explain.

Structure of institutions dealing with European Integration

In accordance with the proclaimed strategic aim of EU membership, Serbia has, in the past several years, continuously established and strengthened administrative structures and capacities dealing with the European Integration process.

The central coordination body for European Integration issues is the Serbian European Integration Office (previously called Office for EU Accession), whose functions and duties are stipulated in the Regulation establishing the European Integration Office (*Official Gazette of RS* No. 126/07, 117/08, 42/2010, 48/2010).

The Serbian European Integration Office is a Serbian Government service. Position and competences of the Service are stipulated in the Regulation on Government Services (*Official Gazette of RS*, No. 75, of 26 August 2005). A Government service is established to perform expert, technical tasks or tasks common for ministries and special organisations. The Serbian European Integration Office is headed by its Director. The Director of the service is appointed by the Government for a five-year period, upon a proposal of the Prime Minister or Secretary General. The Director of the service is a civil servant in position, which enables the fulfilment of one of the main principles in the work of public administration related to professionalism and political neutrality of civil servants in performance of public administration tasks. The Director of the service, who is responsible to the Prime Minister, has the same authorities in the management of the service as minister in the management of a ministry. The Director of the service is responsible to the Government and the Prime Minister.

The establishment and scope of work of the Serbian European Integration Office are proscribed by the Regulation establishing the European Integration Office (*Official Gazette of RS*, No. 126/07, 117/08, 42/2010, 48/2010). The scope of work of the Serbian European Integration Office (hereinafter: SEIO) is referred to in Article 2 of the abovementioned Regulation and it reads: "The Office shall perform expert, administrative and operative tasks and tasks for the needs of the Government related to the coordination of activities of ministries, special organizations and Government services by the Government referring to: coordination, monitoring and reporting on the EU accession and association process; coordination of negotiations with the EU; coordination of implementation of the Stabilisation and Association Agreement (SAA) and of the work of bodies whose establishment is stipulated by the SAA; coordination of preparation of strategic documents related to the EU accession process; coordination of cooperation between state authorities with the European Commission and other expert EU bodies, and expert and technical coordination in the accession and association process with the EU Member States, candidate countries and potential candidate countries, in cooperation with and notifying to the Ministry of Foreign Affairs; stimulating and screening the harmonisation of regulations of the Republic of Serbia with the European Union regulations and standards, as well as information of the European Union and the public thereupon; assistance to ministries and special organizations in the process of legal harmonisation with the European Union legislation; participation in coordinating activities for planning and use of European funds, grants and other forms of foreign development aid; monitoring the realisation of obligations by ministries and special organisations in the EU association and accession process; coordination of translation and preparation of national version of EU legislation and translation of legislation of the Republic of Serbia into one of the official EU languages; informing the public and promotion of activities related to the EU accession and association process; cooperation, through the Ministry of Foreign Affairs, with the Mission of the Republic of Serbia to the European Union in the accession and association process; organisation of trainings on EU issues in cooperation with other state authorities and Government services.

SEIO cooperates with the Ministry of Foreign Affairs and other competent state authorities when considering the issues related to defining the needs and provision of experts for diplomatic Missions of the Republic of Serbia to the European Union in all stages of European Integration.

SEIO also performs other activities in the domain of European Union accession and association as delegated to it by the Government."

Organigramme of SEIO is given in the Annex.

Work of the Serbian European Integration Office is guided by principles of the European Administrative Space. In line with principles of openness and transparency, SEIO endeavours to make its activities visible and known to wide public. Furthermore, SEIO is currently cooperating with a large number of NGOs, academic institutions and representatives of professional organisations. SEIO has thus far signed Memoranda of Understanding with four state universities (Belgrade, Novi Sad, Nis and Kragujevac), two institutes (Institute of Comparative Law and Institute of Economic Sciences), the

Serbian Chamber of Commerce and 88 NGOs, and the Memorandum of Cooperation with the *Beta* news Agency in realising the project Eur.Activ.rs.

Moreover, in performance of tasks related to European integration, SEIO cooperates with the 'European Affairs Fund' of the Autonomous Province of Vojvodina. SEIO provides a significant contribution to strengthening capacities of provincial authorities, to creation of joint projects with regional and other European partners related to the use of EU pre-accession funds, and to the cooperation with key European and international institutions in promoting European values.

Coordination of the implementation of the Interim Trade Agreement (ITA)

With the purpose of monitoring the implementation of this Agreement, an Interim Committee has been established with five sub-committees responsible for monitoring certain parts of ITA. Members of the body are representatives of the European Union and the Republic of Serbia. Co-chairperson of the Committee is, on behalf of the Republic of Serbia, Deputy Prime Minister for European Integration, and the Committee Secretary is, on behalf of the Republic of Serbia, the Director of the Serbian European Integration Office (SEIO). Co-chairpersons of sub-committees are, on behalf of the Republic of Serbia, State Secretaries of those Ministries which are for the most part competent for tasks of the sub-committees, and the sub-committees' secretaries are, on behalf of the Republic of Serbia, representatives of the Serbian European Integration Office (SEIO). This way, SEIO ensures the monitoring of all activities related to the ITA implementation.

Establishment of new state authorities in the integration process

In order to implement new stages of integration process and more complex tasks, , several inter-sectoral bodies were founded in October 2007, with the aim to establish better mutual communication and greater commitment to the process of harmonisation with the EU legislation (Decision on the Establishment of the Coordination Body for the EU Accession Process, *Official Gazette of RS*, 95/2007, 5/2010) The newly-established bodies are the following:

- The Coordination Body for the EU Accession Process (hereinafter: the Coordination body) - the body which considers all European integration issues and coordinates the work of state authorities. Members of the Coordination Body are: Prime Minister, Deputy Prime Minister for European Integration and Minister for Science and Technological Development; First Deputy Prime Minister and Minister of the Interior; Deputy Prime Minister and Minister for Economy and Regional Development; Minister for Foreign Affairs; Minister for Finance; Minister for Justice; Minister for Agriculture, Forestry and Water Management; Minister for Trade and Services; Minister for Environment and Spatial Planning; Minister for Infrastructure. Director of SEIO participates in the work of the Coordination Body.
- Expert Group of the Coordination Body (hereinafter: Expert Group) - headed by the Director of SEIO and composed of heads of working groups (35 sub-groups of the Expert Group) at the level of State Secretaries, comprising the main body for horizontal coordination of the EU accession process. Meetings of the Expert Group are convened and organised by SEIO.

- Sub-groups of the Expert Group (35) - which will actually be working groups for the negotiations as a key mechanism for coordination of various areas of the EU *acquis*, and the division, competences and composition of the sub-groups basically match the negotiation chapters. Each sub-group is responsible for harmonisation with the EU *acquis* related to a certain chapter. With the purpose of ensuring responsibility, each sub-group is headed by a State Secretary from the line ministry which is predominately competent for the area of the specific chapter. Besides the Head, his Deputy, Secretary and Deputy Secretary are also appointed for each sub-group. Meetings of the sub-groups are convened and organised by the ministry responsible for the sub-group. With the purpose of comprehensive coordination, a representative of SEIO participates in the work of each sub-group.

European Integration Units – composed of coordinators for EU affairs in ministries and other state authorities, who are constantly in contact with representatives of SEIO, thus enabling easier coordination of the European integration process.

Meetings of the Coordination Body and Expert Group have been held on regular basis in line with obligations in the EU integration process, and relevant issues related to the European integration process have been considered therein, the work in the preceding period has been analysed, and guidelines and instructions have been provided for the administration of its work within the European integration process.

Council for European Integration

With the purpose of achieving the widest possible social consensus in the integration period, which would include not only the representatives of state institutions but also the representatives of relevant NGOs, in 2002 the Government established the Council for European Integration; pursuant to the Decision (*Official Gazette of RS*, No. 14/2002, 42/2005, 52/2007 of 9 June 2007), the Council is composed of the Prime Minister and all Ministers, Chairperson of the European Integration Committee of the National Assembly, Counsellor of the President of the Republic, representative of the Government of the Autonomous Province of Vojvodina, National Coordinator of the Regional Cooperation Council, representatives of religious organisations, representatives of national minorities, a representative of the Serbian Chamber of Commerce, a representative of the Serbian Academy of Sciences and Arts, representatives of universities and scientific institutes established by the Republic, representatives of NGOs dealing with European integration issues, representatives of competent trade unions and associations of employers, established for the territory of the Republic of Serbia, and Director of the Serbian European Integration Office. The tasks of the Council are the following: monitoring the realisation of the National Strategy of Serbia for EU Accession (hereinafter: EU Accession Strategy), suggesting guidelines aimed at improvement of the EU accession process of the Republic of Serbia; proposing measures for the establishment of a general national consensus on the EU accession process of the Republic of Serbia; and performance of other technical and advisory activities which improve efficiency of work of the Government and other state institutions in the EU accession process of the Republic of Serbia. Sessions of the Council are convened by the Prime Minister, and SEIO prepares the material and acts as a secretariat of the Council.

Thus far, nine sessions of the Council have been held at which Conclusions focused on enhancement of the European integration process have been adopted through the dialogue among all the participants. Although the Conclusions, together with recommendations addressed to the Government, are not obligatory, they provide points of agreement and further incentive for the integration of relevant state institutions and social actors.

The National Assembly of the Republic of Serbia

The European Integration Committee considers plans, programmes, reports and information on the EU Stabilisation and Association Process, monitors the implementation of the EU Accession Strategy, proposes measures and launches initiatives for accelerating the realisation of the EU Accession Strategy within the competences of the National Assembly, proposes measures for the establishment of a general, national agreement on Serbia's association with the European institutions, develops international cooperation with parliamentary committees of other countries and parliamentary institutions of the European Union.

Supervision of the approximation of the envisaged legislation in Serbia to that of the Community

In 2003, the Statement of Compliance of draft laws, other regulations and general acts with the EU *acquis* was introduced in the legislative procedure of the Government. The Statement of Compliance was, at the time, the only instrument for the assessment of compliance in the Government procedure.

Furthermore, in 2004 the provisions relevant for the approximation of the existing legislation in Serbia to that of the Community were introduced in the Rules of Procedure of the Government. Namely, the Rules of Procedure stipulated that together with a draft law, the proposer should submit to the Secretariat General of the Government a Statement of Compliance of the draft law with the EU legislation, in the form adopted by the Government, or a statement that there were no EU regulations on the issues regulated by the draft law.

In accordance with the obligations related to approximation of legislation, as referred to in Article 72 of the SAA, the Government adopted on 13 May 2010 a Decision Amending the Rules of Procedure of the Government (*Official Gazette of RS*, No. 33/10) and the Conclusion on Forms and Methodology Instructions for filling in the instruments for the approximation of the national legislation of the Republic of Serbia to the EU *acquis* (*Official Gazette of RS*, No. 34/10).

In accordance with the adopted acts, state authorities, or proposers of laws for the Government, are obliged to fill in the instruments for the harmonisation of legislation: the Statement of Compliance and the Table of Concordance of national legislation with that of the European Union, in line with the methodology instructions and on the form referred to in the abovementioned Conclusion of the Government. This obligation has been applied since 1 June 2010 for the draft law, and since 1 July 2010 for the proposal of the Regulation, i.e. proposal of the Decision on the approximation of national legislation of the Republic of Serbia to that of the Community. (Annex: adopted forms of instruments for the harmonisation of legislation).

Pursuant to Article 27 of the Law on Government (*Official Gazette of RS* No. 65/08 and 36/09), the ministries shall, *inter alia*, within their competences ensure the approximation of national legislation to that of the European Union.

In line with the adopted amendments of the Government Rules of Procedure, the proposer delivers an opinion of SEIO on the draft law and proposal of the regulation, or proposal of the Decision on the approximation of national legislation with that of the European Union, notably as to whether the instruments for harmonisation of legislation have been filled in properly. Opinion of the Serbian European Integration Office should also be obtained concerning the proposal of the Development Strategy, as of 1 June 2010.

Instruments for harmonisation of legislation

Table of Concordance is a method of demonstrating, in chart form, the conformity of provisions (drafts, proposals) in a regulation with provisions of an EU regulation (Secondary Community law) which is the subject of the analysis. The aim of this instrument is to enable precision, quality and efficiency of harmonisation process, and to be performed in accordance with a plan, by precise matching of provisions of EU legislation with provisions of national legislation.

Unlike the Statement of Compliance which matches regulations with sources of primary and secondary legislation relevant for their normative contents without considering the details, the Table of Concordance shows the conformity of concrete provisions of a regulation with provisions of a concrete secondary source of the EU *acquis*.

One table is made for one secondary EU regulation. The table is made by a state authority, in line with the abovementioned form, or another authorised regulation proposer responsible for drafting legislation and monitoring the compliance of the existing regulation.

Table of Concordance is filled in while developing a draft or a proposal of the regulation, and provisions of the EU regulation are placed in the first column. The second column is gradually filled in with provisions of the regulation while it is being drafted. The table is used while drafting a regulation and it is filled in and upgraded for the purpose of drafting a regulation or analysing the compliance of an existing regulation.

The system of adoption of regulations harmonised with the EU *acquis* in the National Assembly of RS

The Rules of Procedure of the National Assembly stipulate a system of verifying the compatibility of law proposals with the EU *acquis*. Namely, Article 151, paragraph 3 prescribes that every law proposal in its rationale must contain a Statement of Compliance of the law proposal with the EU *acquis* and a Table of Concordance of the law proposal with the EU *acquis*.

In case the rationale of the law proposal does not contain the abovementioned, the law proposal shall not enter the procedure due to formal reasons. In such case, the Speaker of the National Assembly, pursuant to Article 153 of the Rules of Procedure of the National Assembly, may require from the proposer to harmonise the law proposal with the provisions of the Rules of Procedure, i.e. require the Statement and Table of Concordance to be submitted.

Since the adoption of the Rules of Procedure of the National Assembly on 28 July 2010, the Government, or the competent ministries and other proposers of laws have also, along with a law proposal, submitted the Statement and Table of Concordance.

Even before the adoption of the new Rules of Procedure, consideration of law proposals from the aspect of their compliance with the EU *acquis* had been within the competences of the European Integration Committee, and this task was introduced by the amendments to the Rules of Procedure of the National Assembly on 30 May 2003, when this Committee was established. The European Integration Department was established having the same idea in mind. However, owing to the fact that the Government was not legally bound to submit the abovementioned documents since then until the adoption of the new Rules of Procedure, the compliance with the EU *acquis* was verified exclusively on the basis of the rationale of a law proposal. As a rule, the text of the rationale contained parts in which it was stated to what extent the law proposal was harmonised with the EU *acquis* (it was frequently expressed in percentages).

After the adoption of the new Rules of Procedure of National Assembly of RS i.e. after establishing the obligation to submit the Statement and Table of Compliance, a real prerequisite was created for monitoring, on the parliamentary level, the compliance of the national legislation with the EU *acquis*. For now, however, the European Integration Committee considers law proposals only in principle and not in detail. For the purpose of introducing this practice, which would introduce a quality control of the compliance of national legislation with the EU *acquis*, it would be pivotal to reduce the frequency of considering laws by urgent procedure, especially when important system laws are concerned. The introduction of this practice also demands further strengthening of research and analytic professional and human resource capacities of the National Assembly support service, especially of the European Integration Department.

Compliance of legislation with international obligations

Compliance of the planned legislation with international obligations is stipulated by the Law on Ministries (*Official Gazette of RS*, No. 65/08, 36/09, 73/10, Article 28:

“Ministries, within their competences, perform the following activities of the state administration relating to the conclusion and implementation of international treaties: propose initiatives for a procedure of negotiations on and conclusion of international treaties with other countries and international organisations; propose topics and platforms for negotiations and propose the composition of the delegation participating in the negotiations; prepare drafts of international treaties and perform tasks for the delegations participating in negotiations, aimed at the conclusion of the treaties; submit a report to the Government, during the negotiations; prepare draft laws on ratification of international treaties; conclude administrative treaties on the implementation of international treaties, based on powers provided by them; apply the ratified international treaties and concluded administrative treaties”.

Annex:

- Organisational Chart of the Serbian European Integration Office
- Form of the Statement of Compliance of the national legislation with the EU *acquis*
- Form of the Table of Concordance of the national legislation with the EU *acquis*
- Decision on the establishment of the Council for European Integration
- Decision on the establishment of the Coordination Body for the EU Accession Process
- Structure of Bodies for the implementation of the SAA and Structure of Mechanisms for the Coordination of NPI Development, Answers to the Questionnaire, and the EU Accession Negotiations
- Decision on establishment of the Fund “European Affairs” AP Vojvodina

24. Please provide a summary description of your preparations for decentralised implementation and for conferral of management accreditation under the IPA instrument including the institutional set-up. (Please take note of specific questions on components III, IV and V in chapters 11 and 22).

Preparations for decentralized implementation and transfer of competences regarding the management of EU funds to the Republic of Serbia are carried out on the basis of the Plan of Activities for Establishing Decentralized System for the EU Fund Management in the Republic of Serbia, adopted pursuant to the Government Conclusion 05 No. 48-1759/2008-2 as of 24 April 2008, and on the basis of the Roadmap for the Introduction of a Decentralized System of EU Fund Management (DIS Roadmap) for IPA components I and II and/or III and IV, the preparation of which is within the authorization of the Competent Accrediting Officer.

At present, the process of establishing the system for financial management and control for IPA components I, II, III and IV is in the third stage of the Roadmap – i.e. in the gap plugging stage – the establishment of systems and procedures, appropriate organizational structures, building human resource capacities through the employment and training, development of accreditation packages. Based on the relevant Roadmaps, accreditation packages for the first 4 IPA components are expected to be delivered to the European Commission towards the end of 2011, upon determining the compliance of the built system with EU demands.

Preparations for the transfer of management competences related to IPA component 5 – rural development, are carried out at the same rate and the delivery of accreditation packages is also expected towards the end of 2011.

For a more detailed answer, see the answers to questions 31 and 32, Chapter 22 and answer to question 7, Chapter 11.

25. What systems are in place to monitor implementation of policies and laws and to receive feedback?

Please, read the answer to the question no. 56

26. What is the current structure of local government? Please describe the local electoral system.

The legal frame for functioning and improving the system of the local self-government in the Republic of Serbia, established by the Constitution of the Republic of Serbia, on principles and in accordance with accepted provisions of the European Charter on Local Self-Government, (which was ratified by the Republic of Serbia in 2007) the Law on Local Self-Government, the Law on Territorial Organization of the Republic of Serbia, the Law on Local Elections, the Law on the Capital City and the Law on Financing Local Self-Governments.

The right of citizens to province autonomy and local self- government, realized directly or through its freely elected representatives, is guaranteed by the Article 176 of the Constitution of the Republic of Serbia, while functioning of authorities of units of local self-government, their competence, territorial organisation, electoral system and financing are regulated by the following the laws:

- The Law on Local Self-Government (“Official Gazette of RS” No. 129/07),
- The Law on Territorial Organisation of the Republic of Serbia (“Official Gazette of RS” No. 129/07),
- The Law on Local Elections (“Official Gazette of the RS” No. 129/07 and 34/10- decision of the CC);
- The Law on Capital City (“Official Gazette of RS” No. 129/07),
- The Law on Financing Local Self- Governments (“Official Gazette of RS” No. 62/06),
- The Law on Establishment of Competences of the Autonomous Province of Vojvodina (“Official Gazette of RS” No. 99/09)

Local self-government as the right of citizens to manage public activities of direct, common and general interest for local population, directly and through freely elected representatives in units of local self- government as well as the right and ability of authorities of local self-government to manage activities, in the frame of the Law, and manage public work for which they are in charge, and of interest for local population, is defined in the Article 2. of the Law on Local Self-Governments. The same Law regulates the units of local self-governments, criteria for their establishment, competence, authorities, monitoring their acts and work, protection of local self-government and other relevant issues for realization of rights and duties of units of local

self-government. Local self-government is realized in municipality, town and the city of Belgrade.

A municipality is a basic territorial unit in which local self-government is realized, which is free to independently execute all rights and duties through its authorities, within its competence, which has at least 10.000 inhabitants.

A city is a unit of local self-government regulated by the Law, which represents economic, administrative, geographical and cultural centre of broad area and has more than 100.000 inhabitants. A city performs competences of a municipality, as well as other competences and activities appointed to it by the Law.

Municipal authorities are the municipal assembly, the president of the municipality, municipal council and municipal administration.

Municipal Assembly is the highest authority of a municipality which performs basic functions of local government, established by the Constitution, law and statute. Municipal Assembly consists of aldermen elected by citizens at direct elections, secret voting, in accordance with the law and the statute of the municipality. Aldermen are elected every four years and have the right to protect the mandate, including judicial protection, realized by adequate application of the law regulating protection of electoral right in electoral procedure. Municipal Assembly consists of the Speaker of the Assembly which is elected from the rank of aldermen, for the period of four years, by secret voting, by the majority of total number of aldermen of the municipality. The essential innovation introduced by the law is that the Assembly performs election of executing municipal authorities, which eliminates the jeopardy that the representative body and the carrier of executive power are in coalition, which was a common case in previous period and therefore it presented instability for the entire system.

Executive municipal authorities are the president of a municipality and municipal council. The president of the Assembly is chosen by Municipal Assembly from the group of aldermen, for the period of four years, by secret voting, by the majority of total number of aldermen of the municipality. Municipal council consists of the president of the municipality, deputy president of municipality and members of municipal council which number is determined by the statute of the municipality and which is elected by the Municipal Assembly, for the period of four years, by secret voting, by the majority of total number of aldermen of the municipal.

Municipal administration is an authority of a municipality, formed as one unique body, but also municipal administrations for individual regions with more than over 50.000 inhabitants can be formed.

City authorities are the City Assembly, the mayor, city council and city administration. City authorities perform work provided by the Law on Local Self-Government for municipal authorities, as well as other work set out by this Law and the Statute of the city.

Territory of territorial units and other relevant issues for territorial organization of the Republic of Serbia are regulated by the Law on Territorial Organization of the Republic

of Serbia. This Law prescribes that the territorial organization of the Republic of Serbia consists of municipalities, towns and the city of Belgrade, as well as territorial units and autonomous provinces as a form of territorial autonomy.

The system of local self-government in the Republic of Serbia, pursuant to this Law, includes 150 municipalities, 23 towns and the city of Belgrade, as a special territorial unit, i.e. 174 units of local self-government in total.

Financing of a local self-government, as well as the conditions and a procedure under which the units of local self-governments can be indebted are regulated by the law. The unit of a local self- government has its own property independently managed by authorities of the unit of local self-governments in the accordance with the law. Budget funds and of units of a local self-government are provided from source and assigned income, transfers, earnings based on borrowings and other income and earnings regulated by the law.

In order to explain electoral system on a local level, it is necessary to note that the valid Law on Local Elections (**Official Gazette of the RS, no 129/07**) is based on proportional electoral system, which comparing to other electoral system has an advantage to faithfully reflect the pulse of electoral body and provides to all submitters of electoral persons (political parties, their coalitions and groups of citizens) equal chances to receive proportionally as many alderman seats as many votes they received in elections. Within this meaning, the Law has kept certain solutions from the Law on Local Elections from 2002, but contains relevant innovations in the part relating to candidacy and mandate distribution, with the application of certain corrective methods in the stage of candidacy and during the distribution of mandates, in order to avoid favoritism of political parties, party coalitions and groups of citizens which have relatively small support of electoral body.

As far as mandate distribution is concerned, eliminatory electoral census, i.e. electoral threshold increases from 3% to 5% and thereby reduces the possibility to allow entrance to the Assembly to those political factors which are not significantly supported by the population. Such a census does not refer to political parties and coalitions of national minorities, with the view to enable the members of national minorities to be proportionally present in the assemblies of the units of local self-governments inhabited by the population of a mixed national composition.

The Constitution of the Republic of Serbia regulates that the units of local self-government inhabited by the population of a mixed national composition, are allowed a proportional presence of national minorities in assemblies, in accordance to the law. In a proportional electoral system, such a proportion is easier to achieve, whereat for the parties of national minorities and their coalitions in mandate distribution applies the so-called natural threshold – a number of won votes, without applying eliminatory census as a requirement for participating in the mandate distribution.

The Law provides the distribution of mandates by applying the system of the biggest quotient (D'Hondt system), which is usually applied for mandate distribution according to the Law on Election of National Assembly Members ("Official Gazette of the RS")

No. 35/00, 57/03- Decision of the CCRS, 72/03- other Law, 75/03- correction of the other Law, 18/04, 101/05- other Law, 85/05- other Law and 104/09- other Law).

In the same way, the Law provides legal protection of a passive electoral right in a postelectoral period i.e. for the period of the mandate of the municipal unit of local self-government. Therefore, a legal protection in case of illegal depriving or issuing mandates of the aldermen in this stage, which also serves for realizing stabile local government and better functioning of local authorities.

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27. Is there an association of municipalities and which are its functions and its administrative capacity?

In the Republic of Serbia there is a Standing Conference of Towns and Municipalities - a national association of local authorities, founded on Belgrade on 21st and 22nd of April 1953, named "The Regular Conference of Cities and City Municipalities of the FNRJ", and since December 2003, after numerous social and political changes that have happened in the meantime, changing the Statue, the organization changes its name into "Regular Conference of Cities and Municipalities". Also, at that time, it was determined that the members of the RCCM are the cities and municipalities of Serbia.

This is an independent, non-party, social organization where cities and municipalities voluntarily associate for joint cooperation, exchange of experiences and joint actions, with the view of realizing common interests stipulated by the Statute of the Regular Conference of Cities and Municipalities, by the Law and other acts.

The work of the Conference is performed in all aspects of life and work, relevant for local communities, and particularly:

- They organize exchange of experience and other forms of cooperation, determine and take positions on issues of common interest and cooperate with the authorities and organizations pursuing the same goals,
 - discuss current issues of protection, development and improvement of local self-government,
 - improvement and development of public services concerning utility, urbanism, healthcare, social protection, education, culture, environment protection etc.
 - establish working programmes and take measures for their implementation,
 - note proposals for changes or enacting regulations and measures of public authorities,
 - learn about praxis in the country or abroad in relevant fields for local self-government,
 - cooperate with international and national organizations of local authorities and foreign cities and municipalities,
 - assist each other in implementation of their tasks.

Bodies of the RCCM are the Assembly, Presidency and Monitoring Committee. The members of RCCM, i.e. representatives of municipalities and cities in the Republic of Serbia are elected to be the members of these bodies. General Secretary manages the work of professional service of the RCCM, and it assures that overall work of the Conference is in accordance with the laws, regulations, Statue and other acts of the Conference. General Secretary is designated by the Assembly for the period of four years.

In professional departments of the RCCM, there are 35 clerks permanently employed, and in the Sector for Membership Services, which includes the Consulting Centre, Training Centre and Support Centre for enhancing local capacities, there are 10 clerks

employed. Additional number of co-operators and experts is engaged in the realization of certain projects.

28. Is there a clear delimitation of powers between the central and the local government level? Explain.

The Constitution of the Republic of Serbia (“Official Gazette of RS” No. 98/06) it is provided for that the Republic of Serbia regulates and provides:

1. sovereignty, independence, territorial integrity and security of the Republic of Serbia, its international position and relation with other countries and international organizations;
2. Realisation and protection of freedoms and rights of citizens; constitutionality and lawfulness; procedure at courts and other state bodies; responsibility and sanctions for violation of freedoms and rights of the citizens regulated by the Constitution and for violation of the law, other regulations and general acts; amnesty and pardons for crimes;
3. territorial organization of the Republic of Serbia; system of local self-government
4. defence and security of the Republic of Serbia and their citizens; measures in a case of emergencies
5. system of crossing a border and the control of traffic of goods, services and travels abroad; position of foreigners and foreign legal entities;
6. unique market, legal position of economic operators; system of performing certain economic and other activities; stockpiles, monetary, bank, foreign currency and custom system; economic relations with foreign countries; system of credit relationships with foreign countries, tax system;
7. ownership and obligations and protection of all forms of properties.
8. system in the domain of working relationships, protection at work, employment, social insurance and other forms of social security; other economic and social relationships of general interest;
9. sustainable development; system of protection and enhancement of the environment, protection and enhancement of flora and fauna; production, traffic and transport of weapons, poisonous, combustible, explosive, radioactive and other dangerous substances;
10. system in the field of healthcare, social protection, veterans and invalids protection, children care, education, culture and protection of cultural goods, sports, public information; system of public services;
11. control of legality of availability of resources to legal persons; financial audit of public resources; collecting statistical and other data of general interest
12. development of the Republic of Serbia, policies and measures for encouraging equal development of individual parts of the Republic of Serbia, including the development of underdeveloped areas; organisation and utilization of a space; scientific technological development;
13. regime and safety in all kinds of traffic;
14. holidays and medals of the Republic of Serbia;
15. financing and realisation of rights and duties of the Republic of Serbia, determined by the Constitution and Law;
16. organisation, competence and work of republic authorities;

17. other relations of interest for the Republic of Serbia, in accordance with the Constitution

The Constitution of the Republic of Serbia provides for the right of the citizens for province autonomy and local self-government, realised directly or through their freely elected representatives.

Autonomous provinces are autonomous territorial communities founded by the Constitution where the citizens realize the right to province autonomy. The Republic of Serbia has an Autonomous Province Vojvodina and Autonomous Province Kosovo and Metohija.

Autonomous Provinces, in accordance with the Constitution and its Statute, regulate competence, election, organization and work of the authorities and services they found.

The Constitution of the Republic of Serbia provides that the Autonomous Provinces, in accordance with the Law, regulate relevant issues in the domains of:

1. spatial planning and development;
2. agriculture, aquaculture, forestry, hunting, fishing, tourism, catering, spas, sanatoriums, protection of the environment, industry and trades, land, inland waterways and railway transport and settling roads, organizing fairs and other economic events;
3. education, sports, culture, health and social protection and public informing at the level of province.

Autonomous provinces assure the realisation of human and minority rights in accordance with the law; determine symbols of the province and the way of their usage; manage province property in a way provided for by the law; in accordance with the Constitution and the Law, they have source income, provide resources to the units of local self-government for performance of conferred activities, bring their budget and final financial statement.

The Law on Establishment of Competences of the Autonomous Province of Vojvodina ("Official Gazette of RS" No. 99/09), sets out the competence of the AP Vojvodina and regulates other relevant issues for the position of the AP Vojvodina. Pursuant to this Law, the AP Vojvodina has been entrusted with certain tasks of spatial planning, regional development and construction of objects; agriculture; animal husbandry and veterinary; aquaculture; forestry; hunting and fishing; tourism; catering; spas and sanatoriums; protection of the environment; activities of founding the Province Institution for protection of nature; National Park Fruska Gora; certain tasks in the domain of industry and trade; land, inland waterways and railway transport; organizing fairs and other economic events; education (preschool and primary school education and upbringing; secondary school education and upbringing; high school education; pupils' and students' standard; informal education of the adults; education of national minorities); tasks in the domain of sports; culture, protection of cultural goods; cinematography and film art; endowment, funds and foundations; library activities, publishing publications; health and social protection (legal protection of the family and custody, social care for children; special protection of mother and child; pension insurance; veteran and invalid protection, etc); public information at province level; science and technological development; employment, economy and privatization;

mining and energetic; local self-government; competence in other domains (official usage of language and alphabet, Bar Exam, state professional exam, etc).

The Constitution sets out that the activities of public administration are performed by Ministries and other bodies of state administration regulated by the Law. Tasks of public administration and the number of ministries is determined by the law. Internal organization of Ministries and other bodies of public administration and organization is prescribed by the Government.

State Administration Act (“Official Gazette of RS” No. 79/05, 101/07 and 95/10), prescribes that the public administration consist of ministries, administrative authorities within the ministries and special organization.

Certain tasks of public administration can be conferred by the law to the provinces, municipalities, cities and the city of Belgrade, public enterprises, institutions, public agencies and other organizations. No one can be conferred to the participation on forming policies of the Government, while tasks of inspection supervision can be conferred only to the organ of autonomous province, municipality, cities and the city of Belgrade. Although the State renounces the part of its competence, it allows that certain tasks of public administrations are performed by others instead of the authorities of public administration, the Government and the authorities of public administration keep liability to perform entrusted activities due of which they have special monitoring authority over the bodies to which the activities of state administrations have not been entrusted.

Relations between the authorities of public administration and autonomous provinces are based on cooperation and notification in the frame of the Constitution, law and other general acts.

Ministries follow constitutionality and lawfulness of decisions made by autonomous provinces within their scope. Ministries monitor constitutionality and lawfulness of general acts made by autonomous provinces within original scope. If the ministry in charge deems that the general act of the autonomous province which has been enacted in the original scope is not in accordance with the Constitution, law, or other regulations and general acts, it is obliged to propose to the Government to terminate that general act from executing and initiate a procedure of estimation of its constitutionality and lawfulness.

Also, if the province authorities do not execute the general act of the autonomous province, the ministry in charge orders province authorities to take measures necessary to execute the general act within 30 days maximum. If the province authority does not respect the order of the ministry, the ministry may assign another authority of the autonomous province to execute the general act or may take over the execution of the general act itself, within 120 days maximum.

Concerning the activities of public administration which are assigned to the authorities of autonomous province, the authorities of public administration have all competence which they have for other carriers of public competence while monitoring their work.

Delimitation of competencies between different levels of government, according to the Constitution of the Republic of Serbia, and in the accordance with the principle of subsidiarity, provides that the units of local self-governments are competent for issues which can be realised, in an appropriate way, within one unit of local self-government, and autonomous provinces for the issues which can be realised, in an appropriate way, within an autonomous province, where the Republic of Serbia is not competent. What are the issues of republic, provincial or local interest is determined by law.

The system on local self-government in the Republic of Serbia is regulated by **The Law on Local Self-Government** ("Official Gazette of RS" No. 129/07), This law regulates completely and systematicompetitiony the relevant issues for the system of local self-government. Particularly important is the fact that this law regulates a wide independent scope of units of local self-government which creates conditions for enhancing processes of decentralization. The system set out by this law is completely harmonized with the European Charter on Local Self-Government which has been signed and ratified by our country.

The purpose of the process of decentralization is not in the simple deprivation of competence of central authorities and in transferring the competence on local authorities. This process has its meaning if it provides quality satisfaction of daily needs of citizens, whereat it is logical that these needs are best satisfied by the local authorities, which are the closest to citizens.

The Constitution of the Republic of Serbia provides that the municipality, through its authorities:

1. regulates and provides implementation and development of utility activities;
2. regulates and provides utilization of construction land and business space;
3. occupies with construction, reconstruction, maintenance and utilization of local roads and streets and other public objects relevant for the municipality; regulates and provides local transport;
4. occupies with meeting the needs of citizens in domains of education, culture, health and social protection, children protection, sports and physical education.
5. occupies with development and improvement of tourism, trades, catering and commerce;
6. occupies with protection of the environment, protection from natural and other disasters; protection of cultural goods relevant for the municipality;
7. protection, improvement and utilization of agricultural land;
8. Performs other activities stipulated by the law

A municipality independently, in accordance with the law, makes its budget and final financial statement, urban plan and development programme of the municipality, establishes symbols of the municipality and their usage.

The municipality is responsible for realisation, protection and improvement human and minority rights and public informing in the municipality.

The municipality independently manages municipal property, in accordance with the law.

The municipality, in accordance with the law, prescribes offenses for violation of municipal regulations.

Based on legal frame set out in the Constitution, the Law on Local Self-Government provides the following competence of municipalities:

The municipality, through its authorities, in accordance with the Constitution and the law:

- 1) adopts programmes of development;
- 2) adopts urban plans;
- 3) adopts budget and balance sheet;
- 4) determines the rates of source income of the municipality, as well as the ways and indicators for determining the amounts of local taxes and fees;
- 5) regulates and provides implementation and development of utility activities (water purification and distribution, purification and drainage atmosphere and waste water, production and supply with vapour and hot water, regular town and suburban transport in road traffic, cleanliness maintenance in the towns and settlements, maintenance of depot, arranging, maintenance and usage of market places, parks, green, recreational and other public spaces, public parking lots, public lightning, arranging and maintenance of graveyards, funerals etc.), as well as organizational, material and other conditions for their implementation;
- 6) occupies with maintenance of residential buildings and safety of their utilization and sets out the amount of fee for maintenance of residential buildings;
- 7) implements the procedure of eviction of illegally settled persons in apartments and common rooms in residential buildings.
- 8) adopts programmes of arranging construction land, regulates and provides execution of arranging and utilizing construction land and determines the amount of the fee for arranging and utilization of construction land;
- 9) adopts programmes and implements projects of local economic development and is responsible for improvement of general frame for contribution in the unit of local self-government.
- 10) regulates and provides utilisation of business space of which it manages, specifies the amount of fee for the usage of business space and monitors the usage of the business space;
- 11) occupies with for the protection of the environment, provides programmes of usage and protection of natural values and programmes of protection of environment, i.e. local action and rehabilitation plans, in accordance with strategic documents and its interests and specifications and establishes a special fee for protection and improvement of the environment;
- 12) regulates and provides implementation of activities which are related to construction, rehabilitation and reconstruction, maintenance, protection, usage, development and management of local and uncategorized roads, as well as streets in the settlement;
- 13) regulates and provides special conditions and organisation of taxi transport of passengers;
- 14) regulates and provides organisation of transport in a regular navigation executed in the territory of the municipality, determines the part of the shore and water space where hydro facilities can be constructed and vessels set;
- 15) forms stockpiles and determines their volume and structure, with the consent of competent ministry, for satisfying the needs of local population;

- 16) establishes institution and organizations in domains of primary education, culture, primary health protection, physical education, sports, children protection and tourism, monitors and provides their functioning;
- 17) establishes institutions in the domain of social protection and monitors and provides their functioning, issues permissions for commence of work of institutions of social protection founded by other legal and natural persons, asserts the meeting of requirements for providing services of social protection, lays down norms and standards for implementation of activities of the institutions whose founder sets out regulations on rights in social protection and performs the activities of state custodian;
- 18) organizes implementation of work related to the protection of relevant cultural goods for the municipality, encourages the development of cultural and artistic creativity, provides means for financing and co-financing programmes and projects in the domain of culture, relevant for the municipality and creates terms for the work museums and libraries and other cultural institutions, which have been founded by it.
- 19) organizes protection from natural and other disasters and fire protection and creates terms for their elimination, i.e. mitigation of their consequences;
- 20) provides basis of protection, usage and arrangement of agricultural field and is responsible for their implementation, specifies erosive areas, is responsible for usage of meadows and decides on transforming of the meadow into another culture;
- 21) regulates and specifies the way of usage and management of springs, public wells and fountains, regulates water management conditions, issues water management consents and water management permissions for the object of local relevance;
- 22) occupies with and provides conditions for maintenance, usage and improvement of the area with natural medicinal properties;
- 23) encourages and occupies with for development of tourism on its territory and determines the amount of residential tax;
- 24) occupies with the development and improvement of catering, trade and commerce, determines working hours, places for performing certain activities and other working conditions;
- 25) manages the property of the municipality and uses means in the state property and is responsible for its maintenance and increase;
- 26) regulates and organizes implementation of the work related to keeping and protection of domestic and exotic animals.
- 27) organizes implementation of activities of legal protection of its rights and interests;
- 28) forms bodies, organizations and services for the needs of the municipality and specifies their organisation and work;
- 29) assists the development of different forms of self-assistance and solidarity with persons with special needs as well as persons who are essentially in unequal position with other citizens and encourages activities and provides help to organizations of invalids and other social humanitarian organizations in its territory;
- 30) encourages and helps the development of the cooperatives;
- 31) organises services for legal help to the citizens;
- 32) occupies with realisation, protection and improvement of human rights and individual and collective rights, members of national minorities and ethnic groups;

- 33) specifies languages and scripts of national minorities which are in official use on the territory of the municipality;
- 34) occupies with public informing of local relevance and provides conditions for public informing in Serbian language and languages of national minorities which are used in the territory of the municipality, establishes TV and radio stations for informing in languages of national minorities which is in official use in the municipality, and also for informing in the language of national minorities which are not in official use, when such informing represents the achieved level of minority rights;
- 35) prescribes offenses of violations of municipal regulations;
- 36) forms inspection services and performs inspection supervision over the implementation of regulations and other general acts form the competence of the municipality;
- 37) regulates organisation and work of peace councils;
- 38) regulates and provides usage of names, emblem and other features of a municipality;
- 39) performs other tasks of direct interest for citizens, in accordance with the Constitution, law and the Statute.

Certain tasks of state administration can be conferred by the law to all or certain municipalities with the view of more efficient, rationale realisation of rights and obligations of citizens and satisfaction of their needs of direct interest for life and work. Municipality performs certain activities as conferred, such as inspection in the domain of education, healthcare, protection of the environment, mining, trade of goods and services, agriculture, aquaculture and forestry and other inspections in accordance with the law. A city performs competences of a municipality, as well as other competences and activities of public administration, assigned to it by the Law. A city, in accordance with the law, forms community police, performs and organises performing of tasks of the community police. The Statute of the city may provide that in the territory of the city, two or more town municipalities may be formed. The Statute of the city regulates tasks from the city competence implemented by the town municipalities. The position of the city of Belgrade is regulated by the special law.

29. Which administrative and/or judicial structures at national level are responsible for supervising the local government? Has there been any strengthening of these structures recently?

The units of local self-government, criteria for their establishment, competence, bodies, supervision over their acts and work, protection of local self-government and other relevant questions for realization of rights and duties of units of local self-government are regulated by the Law on Local Self-Government.

Relations between republic, territorial autonomy bodies and bodies of the units of local self-government

Bodies of the Republic, territorial autonomy and bodies of the units of local self-governments cooperate in accordance with the Constitution, law and other regulations, in order to realise its rights and duties.

Bodies of the Republic and territorial autonomy monitor lawfulness of the work and acts of the bodies of the units of local self-government, in accordance with the Constitution and the law. Competent bodies of the units of local self-government is bound to timely submit requested data, records and documents to the authority of the Republic i.e. autonomous province, which monitors lawfulness of the work and acts of the bodies of the units of local self-government. The president of the municipality i.e. the secretary of the municipal Assembly, in a case that the work and acts of municipal assembly is monitored, is responsible for submitting requested data, records and documents.

The bodies of the Republic and territorial autonomy, executing their competence:

- 1) inform the bodies and services of the units of local self-government, at their own initiative or at their request, about the measures they take, or intend to take to implement the law and other regulations, about the protection of the constitutionality and lawfulness, appearances that violate them and measures for their remedy, about the realisation of the right of citizens to local self-government, and about other issues of direct relevance for realisation of the system of local self-government and the work of the bodies of the local self-government unit;
- 2) provide professional help to the bodies and services of the unit of local self-government related to implementation of their work, particularly in conducting the information system and informatisation of the tasks performed by the bodies and services of the unit of local self-government;
- 3) request for reports, data and notifications about work performance in the frame of rights and duties of the unit of local self-government, and other issues relevant for realisation of the role and work of the bodies of the Republic and territorial autonomy in the scope of local self-government;
- 4) perform other activities in accordance with the law and other regulations.

The Government is obliged to terminate the implementation of the general act of the unit of local self-government, which it regards not to be in accordance with the Constitution or the law, by the decision which enters into force at the moment it is published in the "Official Gazette of the Republic of Serbia".

The decision on termination of the implementation cease to have effect if the Government within five days from publication of the decision does not initiate a procedure for estimation of constitutionality and lawfulness of the general act.

The Ministry in charge i.e. the bodies of territorial autonomy initiate a procedure to assess constitutionality and lawfulness of the statute, regulations or other general act of the units of local self-government at the Constitutional Court, if it deems that the act is not in accordance with the Constitution, law or other republic i.e. province regulations.

When the Ministry in charge for the work of local self-government i.e. competent bodies of territorial autonomy deem that the general act of the bodies of the unit of local self-government is not in accordance with its statute, it shall notify the assembly of the unit of local self-government to take adequate measures.

If the municipality of the unit of local self-government does not act according to the proposals of stated bodies, the ministry competent for activities of local self-government initiates a procedure at the competent court and at the same time proposes to the Government to terminate the implementation of the controversial act, until the decision of the court.

If the Ministry in charge for the work of local self-government i.e. competent bodies of territorial autonomy finds that individual act of the bodies, i.e. service of the of the unit of local self-government, against which the court protection has not been provided, is not in accordance with the law or other regulation, i.e. decision or other general act of the unit of local self-government, it proposes to the municipal assembly of the unit of local self-government to revoke or annul such an act.

If the Assembly does not act within one month after the proposal of the stated bodies, the Ministry in charge for the work of local self-government revokes or annuls the act the controversial act.

The assembly of the unit of local self-government can be dismissed if:

- 1) The assembly does not hold sessions for more than three month;
- 2) does not elect the president of the municipality and municipal council within the month from the constitution of the assembly of the unit of the local self-government or from the day of its resolution i.e. resignation
- 3) does not adopt the statute or the budget within the deadline set out by the law.

The Decision on dismissal of the assembly of the unit of local self-government is made by the Government, at the proposal of the ministry competent for the work of local self-government, i.e. competent bodies of the territorial autonomy

The Speaker of the National Assembly competitions elections for the aldermen within two months from the entrance into force of the decision on dismissal of the assembly of the unit of local self-government. The mandate of the aldermen at these elections lasts four years.

Until the Constitution of the Assembly and election of executive bodies of the unit of local self-government, all current and exigent work in the competence of the assembly and executive bodies of the unit of local self-government, is performed by the temporary authority of the unit of local self-government, consisting of the president and four members. The temporary authority of the unit of local self-government is formed by the Government by the decision, considering political and national composition of the dismissed assembly of the unit of local self-government.

If in the unit of local self-government, elections for aldermen are not implemented or if after the implementation of the elections, the assembly is not constituted in accordance with this law within two months from the publication of the results of the election, The Government designates the temporary authority to perform current work and exigent activities from the competence of the assembly and executive bodies of the unit of local self-government.

The Speaker of the National Assembly is obliged to make a decision on a competition of new elections for the assembly of the unit of local self-government within two

months from the day the elections were supposed to be implemented i.e. the assembly of the unit of the local self-government to be constituted. The mandate of the aldermen elected at these elections lasts until the expiry of the mandate of the aldermen of the assembly of the unit of local self-government elected at regular elections.

The Law on Organisation of Courts ("Official Gazette of RS", nos. 116/2008, 104/2009 and 101/2010) in Article 29, envisages the competence of the Administrative Court to arbitrate in administrative disputes, as well as to carry out activities stipulated in the Law, and Article 30 specifies the competence of the Supreme Court of Cassation for decision on extraordinary legal matters stated to the decisions of courts in the Republic of Serbia and other matters stipulated in the law. The Supreme Court of Cassation decides on the conflict of competences between the courts if the other court is not competent for decision-making, as well as on transfer of competences between the courts in order to facilitate proceedings or due to other reasons. In Article 31, the Supreme Court of Cassation defines the principal legal approaches due to unique judicial implementation of law, considers implementation of law and other regulations and functioning of courts, appoints the judges of the Constitutional Court, grants opinion on candidate for the president of the Supreme Court of Cassation and performs other competences specified in the law.

The competence and composition of the Administrative and Supreme Court of Cassation is stipulated in Articles 8 and 9 of the Law on Administrative Disputes ("Official Gazette of RS", no. 111/2009). The Administrative Court settles the administrative dispute, makes decision in the council of three judges, unless stipulated differently in the law. The Supreme Court of Cassation makes decision in the proceedings for reassessment of the judicial decision against the Administrative Court and the request for repeating of the procedure.

Pursuant to the Law on Local Self-Government ("Official Gazette of RS", No. 129/07), the judicial authorities are competent to examine the local self-government authority acts in the stipulated procedure. The Administrative Court is competent for conduct of administrative disputes and acting in respect of claims and appeals to administrative acts.

30. Is there a detailed plan for transfer of powers to local governments? Please provide a description of the situation to date and plans for further decentralisation, where appropriate.

After democratic changes, adopting the Law on Establishment of Competences of the Autonomous Province and the Law on Local Self-Government (2002), an important pace has been made towards decentralization. These laws regulate the entire set of activities which are in the domain of rights and responsibilities of the autonomous provinces and local self-government (municipalities and cities), which primarily means that their right is to regulate independently, by their prescriptions certain issues of interest for the citizens living and working in their territory, in accordance with the Constitution and laws of the Republic of Serbia, and to independently implement passed prescriptions. These laws have been improved in accordance with the Constitution of the Republic of Serbia from 2006, and the European Charter on Local Self-Government and

nowadays the Law on Establishment Competences of the Autonomous Province of Vojvodina from 2009 (Official Gazette of the RS, No. 99/09) and the Law on Local Self-Government from 2007 (Official Gazette of the RS, No. 129/07) are still in force.

Decentralization, as one of the basic principles and goals is stated in the Strategy of the Reform of Public Administration in the Republic of Serbia from 2004 and elaborated by the Action Plan for implementing the stated strategy for the period from 2009 to 2012, adopted by the Government of the Republic of Serbia in July 2009.

Action Plan provides for acceleration of the process of decentralization through establishment of the Platform for Coordination with the participation of all interested parties and adoption of the Strategy on Decentralization in the Republic of Serbia, which is supposed to be realised in the fourth semester of 2010.

Another contribution to the realisation of the goals is the programme “Strengthening Local Self-Government in Serbia, Stage 2” which, after the successful implementation of the joint initiative of the European Commission and European Council “Strengthening Local Self-Government in Serbia, Stage 1”, aims to build up and consolidate achieved results in the domain of legal and institutional reforms.

Strengthening Local Self-Government in Serbia, Stage 2 is a joint initiative of the European Commission and European Council worth EUR 2,2 million implemented from the funds of the IPA 2007.

- The specific objective of the Programme is to provide support to central and local authorities in Serbia to further elaborate the strategy of decentralization and apply legal and institutional reforms in the domain of local self-government in Serbia.
- General objective of the Programme is to establish an effective system of local self-government in order to promote good governance and more effective service provision to the citizens.
- Realisation of the Programme commenced on 29th of April 2009 and shall last three years.

Activities at this programme include:

1. Consolidation of legal and institutional frame of the local self-government;
2. Strengthening financial arrangements for local self-government and support for fiscal decentralization;
3. Establishing mechanisms of cooperation and support for development of strategy for decentralization;
4. Increasing the participation of citizens at the local level and rising awareness on issues from the domain of the work of the administration.

Among the activities in this project for the process of decentralization, the most important is – to establish mechanisms of cooperation and support development of the strategy for decentralization. In this regard, it is noted the decentralization can be implemented successfully only through the implementation of the strategy which includes all relevant actors at central and local level. This programme tends to achieve constructive role in connecting key partners through establishing coordinational

platform for cooperation. The activities are directed to achievement of the following goals:

- establishing a platform for decentralization, including ministries and other relevant institutions,
- formulation of fully developed strategy of decentralization for Serbia,
- improving the mechanisms of cooperation and coordination between central and local levels of administration.

31. Please elaborate on the issue of fiscal decentralisation. How are fiscal competences shared between central and local government in terms of ensuring that local governments have the funds needed to fulfil their responsibilities? Have measures been taken to strengthen the financial management capacity of the municipalities? Explain. (Please see also question under Economic criteria.)

Fiscal decentralisation

The status, competences and finance system of local self-governments in the Republic of Serbia are regulated under the Constitution of the Republic of Serbia and systemic laws: the Law on Territorial Organisation of the Republic of Serbia, the Law on Local Self-Government and the Law on Local Self-Government Finance. The status of local self-governments in the Republic of Serbia has been significantly changed and improved in the period between 2001 and 2010, through appropriate reforms in the process of democratisation and decentralisation of the state. A review of changes, current situation and possible directions is provided in the following text.

1) Number and size of local self-government units

The territorial organisation of the Republic of Serbia is regulated by the Constitution of the Republic of Serbia and the Law on Territorial Organisation of the Republic of Serbia. Pursuant to the Constitution of the Republic of Serbia, two autonomous provinces (the Autonomous Province of Vojvodina and the Autonomous Province of Kosovo and Metohija), municipalities, towns and the City of Belgrade shall constitute separate territorial units.

Pursuant to the Law on Territorial Organisation of the Republic of Serbia, there are 141 municipalities, 23 towns and the City of Belgrade.

Table 1 - Number and size of local self-government units in Serbia (2001 census)

Number	SGU – according to the number of inhabitants	Number of LSGUs	Average area in km ²	Number of inhabitants	Average number of inhabitants	%
1	up to 20,000 inhabitants	61	338	852,716		9.1%
2	20,000 – 30,000 inhabitants	30	476	734,504		7.8%
3	30,000 – 50,000 inhabitants	32	527	1,253,844		13.4%
4	50,000 – 70,000 inhabitants	19	533	1,123,504		12.0%
5	70,000 – 100,000 inhabitants	2	489	173,590		1.8%

Number	SGU – according to the number of inhabitants	Number of LSGUs	Average area in km ²	Number of inhabitants	Average number of inhabitants	%
6	over 100,000 inhabitants	6	522	743,844		7.9%
	municipalities - total	150	440	4,882,002	32,547	52.0%
7	towns	23	126	2,926,393	127,234	31.2%
8	City of Belgrade	1	3,222	1,576,124	1,576,124	16.8%
	total	174	506	9,384,519	53,934	100.0%

As the table shows, the average local self-government unit in the Republic of Serbia has 53,934 inhabitants and occupies an area of 506 km², which means that the average size of local self-government units in the Republic of Serbia is larger, compared to the majority of European states. Over the past period, there were several proposals for the establishment of a larger number of smaller local self-government units in order to allow closer involvement of citizens, but these proposals have not been accepted, since it would threaten the financial independence and autonomy of local self-governments.

2) Competences of local self-governments

Pursuant to the new Constitution of the Republic of Serbia, the *autonomous provinces* have the following competences:

- competences the Republic of Serbia legally delegates to autonomous provinces out of its competences;
- they prescribe the regulation and competences of their bodies and public services independently, in accordance with the Constitution and their Statutes;
- in accordance with the Law, they regulate matters of provincial interest in the following fields:
 - spatial planning and development;
 - agriculture, water management, forestry, hunting, fishery, tourism, hospitality, spas and health resorts, environmental protection, industry and crafts, road, river and railway traffic and road reconstruction, organisation of fairs and other economic events;
 - education, sports, culture, health care, social welfare and public information at the provincial level;
- they are in charge of exercise of human and minority rights, in accordance with the Law;
- they manage provincial assets;
- they have original revenues, provide local self-government units with funds for the performing of delegated tasks, adopt their own budget and annual financial statement. Their budget shall amount to at least 7% of the budget of the Republic, bearing in mind that three sevenths of the established budget shall be used for financing capital expenditures.

Pursuant to the new Constitution of the Republic of Serbia, *municipalities* have the following competences:

- they regulate and provide for the development of public utility activities;

- they regulate and provide for the use of urban construction land and commercial property;
- they are in charge of reconstruction, maintenance and use of local roads and streets, as well as other public facilities of municipal interest;
- they regulate and provide for local transportation;
- they are in charge of fulfilling the needs of citizens in the fields of:
 - education,
 - culture,
 - health care and social welfare,
 - protection of children,
 - sports and physical education;
- they are in charge of development and improvement of tourism, crafts, hospitality and trade;
- they are in charge of the protection:
 - of environment,
 - against natural and other disasters,
 - cultural heritage of municipal interest;
- they are in charge of the protection, improvement and use of agricultural land;
- they adopt their own budget and annual financial statement, urban development plan and municipal development programme, and establish the symbols of the municipality and their use independently, in accordance with the Law.
- they manage municipal assets autonomously, in accordance with the Law
- municipalities prescribe offences pertaining to violation of municipal regulations, in accordance with the Law.

The competences of towns are equal to the competences of municipalities; however, other competences can be legally delegated to them.

The status of the City of Belgrade, as the capital of the Republic of Serbia shall be regulated under the Law on the Capital, as well as the Statute of the City of Belgrade.

Competences of municipalities and towns are regulated in more detail under the Law on Local Self-Government, as well as the relevant sectorial laws.

3) Local self-government finance system

1. Development of the finance system

The development of the local self-government finance system over the period of the past ten years is presented chronologically for several characteristic periods.

1.1. Finance system in the period 2001-2004

The reform of the local self-government finance system conducted in the period 2001-2004 was based on the assessment that the amount of the total revenue at the disposal of local self-governments is insufficient in respect of the competences of local self-governments established by the Constitution and Law.

In the period considered, the finance system was changed in terms of increasing the revenues of local self-government units by the following actions: increase of their share in shared taxes, assignment of new taxes which belonged to the Republic budget in the previous period, introduction of the wage fund tax, as a local tax, and by other changes within the framework of local self-government revenues. All these changes pertaining to the amount of revenues were implemented, whereas the scope of competences local self-government units need to finance was not increased.

Table 1 - Effects of the finance system reform on the amount of the total revenue of local self-governments
(in dinars)

	Municipalities - towns	Per capita revenue (*)		Index
		2000	2003	
1	up to 200,000 inhabitants	2,306	4,212	182.7
2	20,000 - 30,000	2,416	4,502	186.4
3	30,000 - 50,000	2,660	4,663	175.3
4	50,000 - 70,000	2,893	5,314	183.7
5	70,000 – 100,000	3,236	5,581	172.5
6	over 100,000	3,420	6,788	198.4
7	Municipalities total	2,858	5,270	184.4
8	Towns	8,473	17,817	210.3
	TOTAL	4,583	9,124	199.1

(*) Amounts are given in fixed prices

The most significant results of the implemented reforms can be seen from the data presented above:

- In the period considered, the real value of funds available to local self-governments were approximately doubled (index 199), whereas the scope of their competences remained the same.
- All municipalities and towns marked an absolute real growth in their total revenue.
- Disparities between larger and smaller local self-government units regarding the amount of disposable funds increased. Compared to the base year of 2000, the increase in the total revenue of municipalities amounted for 84% on average, whereas in municipalities with over 100,000 inhabitants, this increase was about 98%. This increase was even higher in towns, amounting for approximately 110% (index 210). The increased disparity between developed and developing municipalities and towns regarding the amount of disposable funds was the direct consequence of their increased share in revenues earned from shared taxes, the amount of which directly depends on the amount of fiscal capacity, which is of course significantly higher in developed local self-government units.

1.2. Finance system in the period 2005-2006

In this period, changes in the local self-governments finance system were subject to the direct influence of changes in the tax system. Namely:

- Wage fund tax was abolished as of 1 July 2004. This tax was a direct revenue of local self-government units and amounted for approximately 20% of the total revenue of local self-government units;
- Sales tax was replaced with value added tax as of 1 January 2005. The revenue earned from sales tax amounted for approximately 27% of the total revenue of local self-government units. Unlike sales tax, the total amount of revenue earned from value added tax belongs to the Republic budget, so local self-government units were left without this revenue.

Therefore, local self-government units lost 47% of their total revenue, which needed to be compensated for by appropriate changes in the local self-government finance system. The lost revenues were compensated for by the virtue of assigning to local self-government units 40% of the amount of wage tax collected on the territory of the local self-government unit. Municipalities and towns where 40% of wage tax was not sufficient to compensate for the lost revenues were granted compensation transfers in the amount of the lost revenues which had not been compensated for by the assignment of wage tax.

1.3. Assessment of the finance system in the period 2001-2006

In the period considered, a significantly higher level of autonomy of local self-governments was ensured due to the local self-government finance system reform, and their ability to exercise their competences established by the Constitution and Law increased to a much greater extent, compared to the situation before, due to:

- doubling the amount of real revenues for the same scope of competences, which provided sufficient amount of funds for the funding of local self-government competences established by the Constitution and Law;
- Increasing the share in shared taxes and direct revenues, and simultaneous decreasing the share of transfers in the total revenue of local self-governments;
- all transfers remained non-earmarked by nature, so local self-governments were able to use them freely, according to their needs;
- local self-governments were granted participation in the creation of local self-government finance system.

From the formal point of view, the following observations could be listed as basic disadvantages:

- The Law on Local Self-Government, as a systemic law did not regulate the methodology for the establishment of the total amount of transfers by individual self-government units;
- the Law did not define precisely the types of transfers (general transfer, equalisation transfer...), nor did it provide for earmarked transfers (for capital investments, for delegated tasks etc.)
- the system ensured a significant but still insufficient decrease in disparities between individual local self-government groups and units (horizontal equalisation);

The aforementioned observations regarding the establishment of the total amount of transfers and their distribution among individual local self-government units should be

interpreted conditionally. Such statement is supported by the fact that when establishing the amount of transfers and their distribution among individual local self-government units:

- the total amount of transfers is established by indexing the amount of transfers of the previous year to the gross domestic product growth.
- The Ministry of Finance was regularly submitting to municipalities and towns tables with detailed presentation of the methodology and calculation of the amount of transfers by individual municipalities and towns, on the basis of legally established criteria, ensuring thus complete transparency.

2. Current local self-government finance system

The current local self-government finance system was prepared in the period 2005-2006, in full cooperation with the Standing Conference of Towns and Municipalities (SCTM). The current system was designed to be harmonised with the European Charter of Local Self-Government and the Proposals of the Committee of Ministers of the Council of Europe pertaining local self-government finance. The finance system is regulated under the Law on Local Self-Government Finance, which entered into force on 1 January 2007.

General objectives

During the preparation of the Law on Local Self-Government Finance, participants of the working group agreed on 4 priority objectives. These are the following:

1. transparency, stability and predictability of the local self-government finance system
2. improvement of the level of horizontal equalisation
3. strengthening the fiscal autonomy of local self-governments
4. institutionalisation of the cooperation between local self-governments and the central Government

2.1 Transparency, stability and predictability of the system

Transparency and predictability of the system is ensured by a legal decision, which fixes the share of the total amount of non-earmarked funds in the gross domestic product and regulates in detail the methodology and formulae for the calculation of transfers to local self-government units.

2.2 Improvement of the level of horizontal equalisation

Serbia belongs to the group of countries with explicit disparities among the level of economic development of individual regions and local self-government units. It is supported by the data that before the equalisation, the difference between the fiscally richest and fiscally poorest local self-government unit, regarding the amount of their revenues, was about 16 times. The finance system of local self-government units valid until 2006 inclusive managed to reduce these differences to a still high 9.6 times. The current finance system has managed to reduce these differences to approximately 6 times.

2.3 Strengthening the fiscal autonomy of local self-governments

The Law provides that property tax shall be original revenue of local self-governments. Local self-government units levy this tax by their own decision, and establish the tax rate within the limits prescribed by the Law on Property Tax. This increased significantly the amount and share of direct revenues in the total revenue of local self-government units.

Another extremely important element of this process is the establishment of the Local Tax Administration, which responds to the demands of a large number of local self-government units to collect their revenues independently. The Law provides for a two-year transitional period for local self-government units to take over part of the Republic Tax Administration, along with equipment, data bases and the appropriate software.

2.4 Institutionalisation of the cooperation between central and local governments

The goal of the institutionalisation of cooperation between central and local governments is to ensure lasting and meaningful cooperation between local and central governments, regarding all issues pertaining to the status and finance of local self-governments. The Law provides for the establishment of the Commission for Local Self-Government Finance, a joint body of the Government of the Republic of Serbia and SCTM, i.e. local self-governments. The Commission has a total of 10 members, 5 of them elected by the Government of the Republic of Serbia, whereas the other 5 are elected by SCTM upon the proposal of its members. Besides the 10 members, the Commission has also a Commission Chairman, elected by the Government of the Republic of Serbia.

The role of the Commission is to analyse the local self-government finance system, the vertical and horizontal equalisation of the system, and to provide proposals for its improvement. An extremely important task of the Commission is to monitor the enforcement of the Law on Local Self-Government Finance and the calculation of transfers to local self-government units.

3 Basic elements of the current local self-government finance system

In comparison with the previous finance system, the largest changes have been defined in the section pertaining to the establishment of the amount of transfers and their distribution among individual local self-government units.

3.1 Establishment of the total amount of transfers

The total amount of transfers is established as a certain percentage of the gross domestic product (1.7%). In the calculation of the total amount of non-earmarked transfers, the latest available data on the level of gross domestic product shall be used.

Transfer types

The current local self-government finance system defines 2 basic groups of transfers:

1. Non-earmarked transfers
2. Earmarked transfers

3.1.1 Non-earmarked transfers

Within the framework of non-earmarked transfers, several subtypes of transfers are defined, and each of them has to fulfil its basic purpose.

3.1.1.1 Equalisation transfer

Equalisation transfers are granted only to local self-government units with an average amount of revenues earned from shared taxes per capita which is less than 90% of the average of all municipalities.

Within the framework of the total amount of transfers established, funds necessary for this type of transfers are established by priority. The amount of this transfer by individual municipalities is calculated according to the discrepancy in the part of revenues earned from shared taxes, but not from original revenues. A stimulating component has thus been introduced into the system, since transfers of a certain local self-government unit are not reduced in case it realizes increased original revenues on the basis of additional tax efforts. Also, local self-government units are not stimulated to decrease their original revenues deliberately, since they do not receive additional transfers for the amount of original revenues decreased in such manner.

3.1.1.2 Compensation transfer

Compensation transfers are granted to local self-government units, which could not be compensated for the revenues lost due to changes in tax legislation in any other manner. Compensation transfers compensate for part of the losses caused by the abolition of wage fund tax and sales tax, as well as all other losses in local self-government revenues caused by the reduction of the rate of wage tax, absolute rights transfer tax, inheritance and gift tax.

Considering that the aforementioned losses are of permanent nature, compensation transfers are of permanent nature, as well. The amount of compensation transfers are valorised each year, according to the inflation growth rate.

3.1.1.3 Transitional transfer

Unlike compensation transfers, transitional transfers are of temporary nature. This type of transfer enables local self-government units to harmonise their expenditures with the amount of their revenues reduced due to the decrease in transfers, in a transitional period of 3 years.

In the second and third year, the amount of the transitional transfer is decreased by 50% each year and adjusted according to inflation growth.

3.1.1.4 General transfer

General transfers are granted to all local self-government units on the basis of criteria and methodology stipulated by the Law on Local Self-Government Finance.

The amount of the general transfer is the difference between the total amount of non-earmarked transfers established and the funds necessary for equalisation transfers, compensation and transitional transfers. This amount constitutes the funds for generals and it is distributed according to the following criteria:

- 65.0% is allocated according to the number of inhabitants;
- 19.3% according to the area;
- 4.56% according to the number of classes in elementary schools;
- 2.0% according to the number of classes in secondary schools,
- 6.0% according to the number of children in kindergartens;
- 1.14% according to the number of buildings of elementary schools;
- 0.5% according to the number of buildings of secondary schools;
- 1.5% according to the number of buildings used for the protection of children.

The aforementioned standards are established on the basis of the real structure of local self-government expenditures.

Each local self-government unit is granted the same amount of transfers by each category (per inhabitant, per area unit, per class in elementary and secondary school, per child in kindergarten, per building of elementary and secondary school and used for the protection of children).

3.1.1.5 Transfer redistribution

In order to ensure acceptable ratios between the amount of funds of the fiscally richest and fiscally poorest local self-government units, appropriate redistribution has been introduced into the local self-government finance system.

Regarding methodology, the redistribution is performed by subsequent reduction of the amount of transfers calculated, only in local self-government units where the average amount of per capita shared taxes exceeds 50% of the average of all local self-government units (index 150). This condition is fulfilled only by the 2 largest self-government units (Belgrade and Novi Sad).

The transfer reduction amounts for 40% of the amount above the average. These funds are allocated according to criteria and methodology established for the allocation of general transfers. Funds of the aforementioned redistribution are allocated to all local self-government units, except for the donors of the funds.

3.1.2 Earmarked transfers

Earmarked transfers represent an innovation in the local self-government finance system, in the sense that they have been legally defined for the first time. The Law regulates the types of earmarked transfers, as well as the obligations of the competent ministries regarding the establishment of criteria and methodology for their distribution among individual local self-government units.

The reasons for the introduction of earmarked transfers in the local self-government finance system are the following:

- to provide for the financing of delegation of new competences to the local self-government level;
- to provide a possibility for the participation of the Republic budget in the financing of particular projects and programmes at the local self-government level.

The Law establishes the following types of earmarked transfers:

1. Function transfers
2. Specific earmarked transfer

The Law provides that the amount of earmarked transfers is established by the competent ministries. In the process of drafting the Memorandum of the Government of the Republic of Serbia, the competent ministries shall submit to the Ministry of Finance:

- criteria and norms for the establishment of the amount of earmarked transfers,
- statistical data on the basis of which the particular calculation of transfers is made,
- the amount of earmarked transfers by individual local self-government units.

3.1.2.1 Function transfers

Local self-government units may use function transfers for financing expenditures pertaining to a certain function, which they were granted the transfer for (for example: elementary education, or secondary education, or health care...).

If a certain function is delegated to the local self-government level, the amount of this transfer is calculated on the basis of data on the overall expenses of performing the relevant function at the level of the Republic of Serbia, in the year prior to its delegation to the local self-government level.

3.1.2.2 Specific earmarked transfer

In regard to the use of specific earmarked transfers, the purpose is defined more specifically compared to function transfers. Local self-government units may use specific earmarked transfers only for a specifically defined purpose pertaining to one of the functions, which the funds were allocated for.

3) Vertical system equalisation

The table presents a series of data for the period 2000-2008 regarding the share of revenues realized by local self-government units (municipalities and towns) in the gross domestic product.

in million dinars

Year	Revenues in current prices	GDP	GDP share
1	2	3	4
2000	13,341	397,656	3.40%
2001	30,433	783,897	3.90%
2002	55,319	1,020,116	5.40%
2003	68,682	1,171,563	5.90%
2004	86,769	1,431,313	6.10%
2005	99,392	1,750,000	5.70%
2006	132,516	2,153,900	6.20%
2007	156,020	2,320,761	6.72%
2008	179,112	2,790,900(*)	6.42%

(*) Estimate

In order to assess properly the share of local self-government unit revenues in the gross domestic product, one should bear in mind the scope of competences of the local self-government, as well as the fact that the scope of competences did not significantly change in the period considered. The presented data series show the results of the reforms implemented in the local self-government finance system; the disposable revenues doubled in the first 4 years, after which the amount of revenues was stabilized.

4) Horizontal system equalisation

The Republic of Serbia belongs to the group of countries with explicit disparities in the level of development, and thus disparities regarding fiscal capacity between certain local self-government units and groups. In the following tables, municipalities are grouped according to the number of inhabitants. Data for the City of Belgrade are presented, and regarding towns, the table shows separately the old and new towns, according to the new Law on Territorial Organisation. The data are presented as relative amounts, as a certain percentage of the average of all municipalities and towns.

no	Groups	Relative to the average of all LSGUs (2008)		
		Direct revenues (%)	Shared Republic taxes (%)	total
1	2	3	4	5
1	Municipalities with up to 20000 inhabitants	46.5	48.2	47.3
2	Municipalities with 20-30,000 inhabitants	42.0	52.5	47.3
3	Municipalities with 30-50,000 inhabitants	42.6	54.6	48.7
4	Municipalities with 50-70,000 inhabitants	48.4	71.0	59.8
	MUNICIPALITIES	44.5	55.7	50.1
5	New towns with less than 100,000 inhabitants	47.4	78.0	62.8
6	New towns with more than 100,000 inhabitants	65.7	83.4	74.7
7	Old towns	188.9	137.5	163.0
	TOWNS	92.9	96.2	94.5
8	CITY OF BELGRADE	224.8	196.5	210.6
	TOTAL (MUNICIPALITIES AND TOWNS)	100.0	100.0	100.0

Disparities in fiscal capacities can be seen from the data on revenues earned from shared Republic taxes (column 4). The data are mutually comparative, regarding that taxes are levied on the same base and according to the same rate on the entire territory of the Republic, as well as that they are collected by the Republic Tax Administration on the entire territory of the Republic, so local self-government units have no direct influence of any kind on the amount of these revenues and on the different amounts of per capita realization. The table shows that there is a high level of correlation, i.e. certain regularity in the amount of these revenues, which, by rule, increase as the size of local self-government unit increases.

Besides the level of fiscal capacity, the amount of realized original revenues depends to a great extent on the policy and decisions of local self-governments. Note that smaller local self-government units, which also have lower fiscal capacity, try to increase their revenues by increasing the burden of tax payers.

The following table shows the effects of the equalisation system, using the example of 2008.

no.	Groups	Relative to the average of all LSGUs (2008)		
		Direct and shared revenues (%)	Non-earmarked transfers (%)	Total (%)
1	2	3	4	5
1	Municipalities with up to 20,000 inhabitants	47.3	110.6	62.3
2	Municipalities with 20-30,000 inhabitants	47.3	94.9	58.5
3	Municipalities with 30-50,000 inhabitants	48.7	90.9	58.6
4	Municipalities with 50-70,000 inhabitants	59.8	76.0	63.7
	MUNICIPALITIES	50.1	93.8	60.4
5	New towns with less than 100,000 inhabitants	62.8	79.3	66.7
6	New towns with more than 100,000 inhabitants	74.7	82.6	76.6
7	Old towns	163.0	95.1	147.0
	TOWNS	94.5	84.9	92.3
8	CITY OF BELGRADE	210.6	138.6	193.5
	TOTAL (MUNICIPALITIES AND TOWNS)	100.0	100.0	100.0

The equalisation of the amounts of revenues realized is performed by granting transfer funds from the Republic budget, particularly via equalisation transfers, which reduces the discrepancies in the level of fiscal capacity up to the level of 90% of municipality average. The decreasing tendency of the per capita amount of transfers is clearly obvious in municipalities, and it is in reciprocal proportion to the level of fiscal capacity. The increasing tendency of the amount of transfer funds in towns is mainly the result of compensation transfers, which are allocated only to the most developed municipalities and towns in order to compensate them for revenues lost permanently due to changes in tax legislation (tax abolition, tax rate reduction etc.), which could not be compensated for in any other manner. The greatest losses of this kind were caused to the City of Belgrade itself, which resulted in a high amount of transfers on the basis of compensation transfers.

5) The structure of local self-government revenues

The Law establishes three basic categories of revenues:

- Original revenues – which are established by the decision of local self-government units, whereby they set the base, or the rate, or both. These revenues include property tax, fees (administration fees, utility fees, sojourn

fees) and charges (the most important of which are the construction land development and construction land usage charge) and self-contribution fee.

- Shared revenues – legally established by the Republic of Serbia; local self-governments do not have any influence on the base and rate on the basis of which these revenues are collected. The share assigns a certain share of these revenues to local self-governments. The share of local self-governments prescribed by Law is 40% in the wage tax and 100% in all the other shared taxes (agriculture tax, private business tax, absolute rights transfer tax, inheritance and gift tax...)
- Transfers from the budget of the Republic of Serbia

no.	BASIC REVENUE CATEGORIES	Revenue structure (%)		
		2006	2008	Difference
1	2	3	4	5(4-3)
1	Shared revenues	53.10%	38.09%	15.01%
2	Transfers	17.00%	24.71%	7.71%
3	Direct revenues	29.90%	37.20%	7.30%
	TOTAL	100.00%	100.00%	0.00%

The table shows the structure of revenues for two years, 2006 – the year preceding the current system, and 2008 - a year when the effects of the global financial and economic crisis on budget revenues were not noticeable yet.

The table indicates very large structural disparities in the amount of basic revenue categories. The share of shared revenues decreased due to the policy of relieving the tax burden by reducing taxes. The other reason is that the status of property tax was changed, so that it became direct revenue of local self-governments, instead of shared revenue, which significantly increased the share of direct revenues in the total revenue structure.

The share of transfers in the total revenue increased mainly due to the allocation of compensation transfers, which compensate for a proportional part of losses of local self-government units caused by changes in tax legislation. The current finance system has increased the scope of transfers in every municipality, in the poorest municipalities it has been increased more than 3 times, whereas their total budget has increased up to 50% (index 150).

Local self-government units plan their revenues and expenditures and adopt their budgets independently. In that sense, they plan and distribute all three aforementioned categories of revenues independently. Under the Law on Budget System and in accordance with the budget calendar, local self-government units shall be aware of the amount of transfers in the course of preparation of their draft budget, i.e. as of 1 October, when the Government of the Republic of Serbia passes its Memorandum,

which contains the amount of transfers to be allocated to individual local self-government units.

6) Structure of local self-government expenditures

The expenditure structure of local self-governments is presented according to economic and functional classification, for 2008 - a year when the effects of the global financial and economic crisis were not too noticeable.

Table: The expenditure structure of municipalities and towns in 2008 - economic classification

no.	EXPENDITURES	Expenditures – relative to the average (%)			
		municipalities	towns	Belgrade	All LSGUs
1	2	3	4	5	6
1	Expenditures on employees	29.9	25.6	13.1	21.5
2	Use of goods and services	29.3	26.5	22.9	25.8
3	Use of fixed assets	0.0	0.0	0.0	0.0
4	Interest repayment	0.8	0.5	0.6	0.6
5	Subsidies	9.8	14.1	17.8	14.5
6	Donations and transfers	4.8	4.7	4.1	4.5
7	Social welfare costs	2.2	2.1	3.1	2.6
8	Other expenditures	5.9	5.3	2.9	4.5
9	Budget execution reserve funds	0.1	0.0	0.0	0.0
	TOTAL RUNNING EXPENDITURES	82.9	78.8	64.5	73.9
10	Fixed assets expenses	15.2	16.7	34.5	23.8
11	Supplies	0.0	0.0	0.0	0.0
12	Natural assets	0.4	2.5	0.1	0.9
	TOTAL EXPENSE ON NON-FINANCIAL ASSETS	15.6	19.2	34.6	24.7
13	Principal repayment	1.4	1.3	0.8	1.1
14	Procurement of financial assets	0.1	0.7	0.0	0.2
	TOTAL EXPENDITURE ON LOAN REPAYMENT AND PROCUREMENT OF FINANCIAL ASSETS	1.5	2.0	0.8	1.4
	TOTAL	100.0	100.0	100.0	100.0

At the level of all local self-government units, the share of running expenditures in the total expenditure is 74%, whereas capital expenditures, including loan repayment, represent 26%. The presented structure varies significantly by individual local self-

government units, i.e. by municipalities, towns and the City of Belgrade, as the result of objective factors, but mainly as the result of disposable funds. In the expenditure structure, funds for loan repayment are still at a low level, due to relatively low level of indebtedness, but also due to the duration of the grace period.

Table: The expenditure structure of municipalities and towns in 2008 - functional classification

in %					
no.	EXPENDITURES	Expenditures – relative to the average			
		municipalities	towns	Belgrade	All LSGUs
1	2	3	4	5	6
1	General public services	33.3	21.4	18.1	23.3
2	Public order and security	0.2	0.3	0.1	0.2
3	Education	10.1	9.2	6.1	8.1
4	Health	0.8	1.1	0.9	0.9
5	Social welfare	9.8	11.5	10.6	10.7
6	Culture, religion, associations and organisations	11.4	12.4	5.6	9.2
7	Housing and utility matters	18.8	19.5	31.3	24.3
8	Economic matters	12.1	18.1	26.2	19.9
9	Environmental protection	3.4	6.4	1.1	3.4
	TOTAL	100.0	100.0	100.0	100.0

7) Local self-government borrowing

Until 2005, the borrowing of local self-government units was regulated under the Law on Budget System. Local self-governments could take loans for capital investments in amounts up to 20% of their current revenues realized in the previous years. In addition, local self-government units could take loans from the Republic budget for overcoming liquidity problems, which they had to repay by 30 November of the current year.

The Law on Public Debt has liberalized the borrowing of local self-governments. Local self-government units may take loans for financing current liquidity deficit caused by non-harmonised movement of revenues and expenditures during the budget year, under the condition that they have to repay the total amount of the loan granted on this basis by the end of the budget year. During the budget year, this kind of loan is limited to 5% of the total amount of revenues realized in the previous year. The amount of this loan cannot be refinanced or transferred to the following budget year.

Local self-government units may take long-term loans, but only for purposes pertaining to financing or refinancing capital investment expenditures. The total amount of loans on this basis is limited to 50% of the total amount of current revenues realized in the previous year. In addition, the amount of the principal and interest, which is due every year on unsettled long-term loans, is limited to 15% of the current revenues of the local

self-government unit realized in the previous year. The decision on borrowing is passed by the competent authority of the local self-government, upon the previously obtained opinion of the Ministry of Finance, which the Ministry shall submit within a period of 15 days.

The amendment of the Law on Public Debt in the end of 2009 enabled local self-government units to exceed the prescribed limits of borrowing under the following conditions: that it is a long-term loan with a repayment period of over 5 years and that 2/3s of the current surplus realized exceeds the annuity repayment limit. In this manner, the needs of the most developed municipalities and towns are met without threatening the sustainability of the system.

Besides, local self-government units may also issue securities. Local self-government units have not exercised this right yet.

The Law on Budget System adopted in 2010 provides also for certain fiscal rules for the local self-government level, which stipulate that fiscal deficit at the local self-government level may occur only as the result of public investments. The amount of the local self-government fiscal deficit in a certain year shall not exceed 10% of its revenues in that year. In exceptional cases, a possibility of exceeding the fiscal deficit limit is also provided for, but only on the basis of an application for exceeding the limit approved by the Ministry of Finance.

8) Local self-government finance in the period 2009-2010 and in the forthcoming period

In 2009, the gross domestic product, as well as budget revenues of the Republic of Serbia and budget revenues of local self-governments drop due to the consequences of the global economic crisis. Within the framework of expenditure adjustments in the budget of the Republic of Serbia, the amount of appropriations were decreased at almost every level, which included the reduction of transfer funds to local self-government units from 40.7 billion dinars to 25.7 billion dinars, i.e. by 15 billion dinars. This led to a suspension, exceptionally for 2009, of the provision of the Law on Local Self-Government Finance regulating the establishment of the total amount of non-earmarked transfers granted to local self-government units from the Republic budget, under which the total amount of non-earmarked transfers is 1.7% of the GDP. This reduction was executed through the rebalance of the budget of the Republic of Serbia for 2009.

Under the 2010 Law on Budget, the amount of non-earmarked transfers to local self-government units remained at the level as of 2009, i.e. a reduced amount compared to the amount provided for under the Law on Local Self-Government Finance.

In the 2011 draft budget of the Republic, the applied policy is gradual restoration of the amount of transfers to the level provided for under the Law on Self-Government Finance, i.e. the amount which would be significantly higher than the existing scope of transfers in 2010, but which would also be sustainable (The amount of non-earmarked transfers to local self-government units would be increased by approximately 23.8%, compared to 2010). Fiscal rules established under the Law on Budget System should also be considered, according to which the target annual fiscal deficit will amount for

1% in the medium term, which will require significant adjustments within the Republic budget, particularly in terms of expenditures. On the basis of the above, adequate negotiations between the central and local governments will have to be conducted in 2011, which should lead to the establishment of a new sustainable amount of non-earmarked transfers to local self-government units, as well as other amendments to the Law on Local Self-Government Finance based on experience gained from its implementation in the previous period.

32. When the fiscal impact of the implementation of new legislation is prepared, is the impact on the budget of municipalities identified and taken into account? Explain how.

In accordance with Article 48 of the Law on Budget System (*Official Gazette of RS*, No. 54/09 and 73/10), the exposition of a law or other regulation submitted to the Government or the competent executive authority of the local government, for the purpose of preparing the proposed text of the law, and/or its adoption, shall contain an estimate of financial effects that the law or other regulation will have on the budget. The estimate shall contain information on whether the proposed law or other regulation increases or decreases the budget revenues and proceeds or expenditures and outlays for the relevant budget year, as well as for the following two fiscal years. In addition, under Article 52 of the Law on Public Administration (*Official Gazette of RS*, No. 79/05 and 101/07), in case public administration tasks are legally delegated to local self-government units, funds for the execution of the delegated public administration tasks shall be provided from the budget of the Republic of Serbia.

33. How are the political boundaries of the municipalities regulated and defined? Explain.

Territory of territorial units and other issues relevant for territorial organization of the Republic of Serbia are regulated by the Law on Territorial Organization of the Republic of Serbia (*Official Gazette of the RS*, No. 129/07). This Law prescribes that the territorial organization of the Republic of Serbia consists of municipalities, cities and the city of Belgrade, as well as territorial units and autonomous provinces as a form of territorial autonomy.

Territory of the municipality, cities and the city of Belgrade includes all inhabited places making the composition of these units of local self-government. Borders of the units of local self-government are established by the borders of related inhabited places entering their composition.

Founding new units of local self-government, merging, cancellation and change of the territory of the existing units of local self-government is regulated in accordance with criteria provided for by the law which regulates local self-government, after the council referendum held on the territory of one of these units of local self-government.

Names of municipalities and cities, names of settlements, as well as the ways of their change are also regulated by the law.

In order to allow the review to the inhabited places consisting of territory of the municipality, cities and the city of Belgrade, the record is kept on inhabited places in accordance with the law.

34. How is the state property, including real estate, distributed between central and local government? Which structures are responsible for the management of state property?

(Please refer to questions in chapter 4 on the state capital.)

The Law on Assets Owned by the Republic of Serbia (*Official Gazette of RS* No. 53/95, 3/96, 54/96 and 32/97) in force provides only the property of the Republic of Serbia (state property), whilst the autonomous province and the unit of local governments have right of use over immovable property, conferred on them by the Government of the Republic of Serbia. A new Law on Public Property which is in the course of preparation, will regulate the public property in accordance with the Constitution of the Republic of Serbia in force, and establish the right of property of the autonomous province and unit of local self-government over immovable property. The Law on Public Property is planned to be adopted during 2011.

According to The Law on Assets Owned by the Republic of Serbia, disposition of state-owned immovable property within the meaning of this Law includes acquisition of immovable property by the state, alienation of immovable property owned by the state, allocation of immovable property for use and mortgage of immovable property. The competence to decide on disposition of state-owned immovable property is, depending on the form of disposal and the user concerned, divided between the Government and the competent authority designated by the regulation of the autonomous province or local self-government unit or the public service body, subject to the consent of the Republic Directorate for Property. Public enterprises are established with the aim to manage public property of general interest, such as forests, waters, railways, roads and others. In some cases, in addition to the republic public enterprises, there is also a public enterprise managing certain kinds of property within the territory of the autonomous province (e.g. waters, forests). The Law on Public Enterprises and Activities of Public Interest (*Official Gazette of RS* No. 25/00, 25/02, 107/05 and 108/05) specifies the powers of Government in respect of these enterprises.

35. Which administrative structures are responsible to carry out local-self government reform?

In the document representing the basis of the reform process, the Strategy of the Reform of Public Administration in the Republic of Serbia, decentralization is set as one of key domains to be covered by the changes.

Whereas for implementation of decentralization has been chosen a combined model, where there is a significant transfer of competences from central authorities of state administration to local self-government, providing sufficient independence to the local self-government, whereat the delegation of other activities (assigning), but not their

devolution (transfer) provides an opportunity for the local self-government to gradually become more capable and stronger for more independent acting and protects citizens from insufficiently capable and insufficiently responsible local self-government.

Noting the stated, for the effective decentralization the engagement of all participant of that process is needed. Carriers of the activities in that huge reform project are primarily units of local self-government because they will be the main beneficiary of the achieved results. Beside local authorities, republic authorities certainly have a big role, among which are specially noted the Ministry for Public Administration and Local Self-Government and Ministry of Finance, in addition to the active role of other authorities, and support of Standing Conference of Towns and Municipalities.

36. Are municipalities consulted in any formal way in the context of preparation of legislation which will either affect them or in which they will be involved in the implementation?

The Law on Local Self-Government provides more ways of cooperation between the units of local self-government and authorities of the Republic of Serbia and territorial autonomy.

Thus, authorities and services of the units of local self-government, executing their competence: provide to the authorities of the Republic and territorial autonomy initiatives for regulating relations relevant for local self-government and taking measures relevant for resolving issues from the domain of rights and duties of the unit of local self-government; submit complaints and provide proposals related to the act of the authorities of the Republic and territorial autonomy; ask opinion of the competent authority of the Republic and territorial autonomy related to the application of the law and other regulations of direct influence to the development and realisation of local self-government and of the work of the authorities of the unit of local self-government and to participate, independently or through their associations in the preparation of laws and the regulations which content is specially relevant for realisation and development of locals self-government.

Participation of units of local self-government in preparation of regulations which content is relevant for their functioning and for which application they are responsible, is realised in the procedure of drafting the law in different ways. Primarily, during the public discussion, it is possible to submit proposals, remarks, opinions and considerations related to the regulation to be drafted, and, in addition, dependent on the relevance of the regulation, smaller or bigger number of meetings is organized working groups are formed (with the representatives of local authorities), roundtables are held where opinions are exchanged and proposals presented for increasing the quality of the future regulation, etc.

All stated contributes to transparency and democracy of the procedure of drafting regulations, which at the very beginning provide higher level of its legitimacy and acceptance by citizens and all the persons who are to apply this regulation.

37. Please provide a description of the structures and bodies of the state administration of Serbia including independent agencies, specifying the source of their financing (state budget or other), their mission, an organisation chart, the number of their statutory positions and the number of current employees and their functions.

The Law on Public Administration (“Official Gazette of RS” No. 79/05, 101/07 and 95/10), prescribes that the public administration consist of ministries, authorities of administration in the composition of ministries and special organizations formed by the law whose scope is regulated by the law.

1.1. State Administration Bodies

Ministries are formed for work of public administration in one or more mutually connected domains. Ministries are formed by **Act on Ministries** (“Official Gazette of RS” No. 65/08 and 36/09 and 73/10), namely : Ministry of Foreign Affairs, Ministry of Defence, Ministry of Interior; Ministry of Finance; Ministry of Justice; Ministry of Agriculture, Forestry and Water Management; Ministry of Economy and Regional Development; Ministry of Mining and Energy, Ministry of Infrastructure; Ministry of Public Administration and Local Self-Government; Ministry of Trade and Services; Ministry of Science and Technological Development; Ministry of Education; Ministry of Youth and Sport; Ministry of Health; Ministry of Telecommunications and Information Society; Ministry of Work and Social Politics; Ministry of Environment and Spatial Planning; Ministry of Culture; Ministry for National Investment Plan; Ministry for Kosovo and Metohija; Ministry of Religion; Ministry for Diaspora and Ministry of Human and Minority Rights.

Ministry can have one or more of administration bodies in its composition (**administrative authorities within the Ministry**). Administrative authorities within the Ministry are formed for executive i.e. inspective and related professional activities if their nature and volume demand greater independence from the independence of a sector in the Ministry. The Administrative authorities within the Ministry can obtain a feature of a legal entity when it is regulated by the law. There are three types of Administrative authorities within the Ministry – administration, inspectorate and directions. **Administration** is formed for executive and related inspective and professional activities, **inspectorate** for inspective and related professional activities, and **directorate** for professional and related executive work which are usually related to economy. The Administrative authority within the Ministry performs its work from its scope independently. However, the minister directs the work of the Administrative authorities within the Ministry and drafts regulations from his scope and represents the Administrative authorities within the Ministry in the Government and National Assembly. Power over bodies of state administration, referring to the Administrative authorities within the Ministry, are realised by the Government and National Assembly, through ministries which constitutes the body. The bodies of administration are, for example, Tax Administration, Custom Administration, Lottery Games Administration, Treasury Administration, Public Debt Administration, Administration for Prevention of Money Laundering; Free Economic Zones Administration; Foreign Exchange Inspectorate within the composition of the Ministry of Economy; Labour Inspectorate, Gender Equality Administration, Administration for Safety and Health at Work, in the

composition of the Ministry of Work and Social Politics; Veterinary Administration, Plant Protection Administration, Forest Administration, Administration for Agricultural Payments, Administration for Agricultural Land, Republic Waters Directorate and Direction for National Referent Laboratories, in the composition of Ministry of Trade and Services. Administrative authorities within the Ministry can be formed by the Law on Ministries and special laws regulating certain domains, e.g. Treasury Administration is formed by the Budget System Law, Administration for the Prevention of Money Laundering is formed by the Law on Prevention of Money Laundering and Finance Terrorism, and they are the bodies of administration in the composition of the Ministry of Finance; Veterinary Administration, Plant Protection Administration are the bodies in the composition of the Ministry of Agriculture, Forestry and Water Management, and are formed by the Act on Ministries.

Special organization is formed for professional and related executive activities which nature demands greater independence from the independence of a body in the Ministry. Types of special organizations are **secretariat and institutions**, and other special organizations can be formed with a different name, by the law. **Secretariat** is formed for professional activities, relevant for all types of bodies of public administration and related executive activities, and **institutions** for activities which demand an application of special methods and knowledge, and related activities. Special organization can obtain a feature of a legal entity when it is regulated by the law. Special organizations can be formed by the Act on Ministries and special laws. Special organizations formed by the Act on Ministries are: Republic Secretariat for Legislation; Republic Development Bureau; Statistical Office of the RS; Republic Hydrometeorological Service of Serbia; Republic Geodetic Institute; Republic Property Directorate of The Republic of Serbia; Republic Institute for Informatics and Internet; Mine Action Centre; Intellectual Property Office; Inland Waterways Maintenance and Development Agency “Plovput”; Geomagnetic Institute; Social Insurance Bureau; Special organizations can be formed by special law, like: Republic Seismological Institute formed by the Law on Republic Seismological Institute (Official Gazette of the RS, No. 71/94); Railway Directorate, formed by the Law on Railways (Official Gazette of the RS, No. 18/05), Restitution Directorate formed by the Law on Returning (restitution) of the Property to Churches and Religious Communities (Official Gazette of the RS, No. 46/06); Refugees Commissariat, formed by the Law on Refugees (Official Gazette of the RS, No. 18/92, Official Journal of the SRY, 42/02 – decision of the FCC and Official Gazette of the RS, No. 30/10).

Bodies of the public administration perform activities of the public administration, namely: participating in forming Government’s policy; monitoring, execution of laws, other regulations and general acts; solving administrative matters; activities of inspective monitoring; developmental and other professional work.

Ministry and special organizations draft rulebooks, orders and instructions. **Rulebook** elaborates certain provisions of laws or regulations of the Government. **Order** orders or prohibits certain behaviour in a certain situation of general relevancy. **Guidelines** regulates the way bodies of public administration and holders of public power perform certain provisions of laws and other regulations.

Rulebooks, orders and instructions are published in the Official Gazette of the Republic of Serbia.

Ministries and special organizations can draft regulations only when they are explicitly empowered by the law or regulation of the Government. Ministries and special organizations are not eligible to determine their own or somebody else's competence, by regulations, or establish rights and obligations to natural or legal persons, which have not been established by the law.

By the Decision on Administration for Joint Services of the Republic Bodies ("Official Gazette of RS" No. 67/91, 79/02 and 13/04) The Government formed **the Administration for Joint Services of the Republic Bodies** which performs certain professional, technical and other joint activities for the needs of National Assembly of the Republic of Serbia, the President of the Republic of Serbia, the Government of the Republic of Serbia, Constitutional Court of Serbian Ministries, special organizations and judicial authorities of the Republic, taken by special agreements. Administration for Joint Services of the Republic Bodies does not perform the activities from the Article 2 of this Regulation for those republic bodies which, due to particularity of their tasks and activities performed, and accommodation conditions, have their own services for executing these activities.

The Government founds **services** by regulation for professional and technical activities for its needs or for activities which are common for all or a few bodies of public administration and prescribes their structure and scope. Services of the Government apply regulations on management, way of work, financing and working relationships in the bodies of public administration. Professional and the activities for the needs of Government are performed by the Secretariat-General of the Government, which is occupied with implementation of the acts of the Government, preparation of the sessions of the government and helps the President of the Government in other activities of the Government.

1.2. Management

Ministry is **managed by the minister**, which represents the Ministry, draws up regulations and decisions of administrative and other individual matters, decides on other issues from the scope of the Ministry. The Minister is responsible to the Government and National Assembly for the work of Ministry and situation in all fields of the scope of the Ministry. Ministry can have one or more **state secretaries** which assist the Minister within the power assigned by the Minister. They are responsible to the Minister and the Government for their work. The Minister cannot empower the state secretary to draw up regulations and to vote at the sessions of the Government. When the Minister has more state secretaries, he empowers one of them to replace him/her while he/she is absent or prevented. State secretary is appointed and dismissed by the Government at the proposal of the minister and its duty terminates with the termination of the duty of the minister.

Minister Assistant manages circled domain of work of the Ministry for which the sector is formed. He/she is responsible to the minister for his/her work. Minister

Assistant is appointed by the Government, for the period of five years, at the proposal of the Minister.

Ministry Secretary assists the minister managing personnel, financial, informational and other matters as well as harmonising internal units of the ministry. If the Minister decides that the Ministry should have a secretary, he/she submits the proposal about his/her appointment. The Government appoints a secretary of the ministry for the period of five years.

Special Adviser of the Minister is appointed by the Minister and he/she, upon the order of the Minister, prepares proposals, draws up opinions and performs other activities for the Minister. The Minister can appoint not more than three special advisors. The rights and obligations of the Special Adviser of the Minister are regulated by the contract, according to general rules of civic law, and the fee for his work is regulated according to the criteria identified by the Government.

The Director manages the Administrative authorities within the Ministry and he/she is responsible to the Minister for his/her work. The Director resolves in administrative matters from the scope of the body in composition and decides on rights and duties of the employees in the **Administrative authorities within the Ministry**. He is appointed by the Government, for the period of five years, at the proposal of the Minister. **Administrative authorities within the Ministry** can have one or more Director Assistants which are appointed by the Government at the proposal of the Minister, for the period of five years.

The Director manages special organization The Director of the special organization is responsible to the Government for his work. He/she is appointed by the government, for the period of five years, at the proposal of the Prime Minister. The Director of special organization can have a Deputy Director, appointed by the Government, for the period of five years, at the proposal of the Director. Special organization has one or more **Director Assistants** who are responsible to the Director for their work. The Director Assistant is appointed by the Government, for the period of five years, at the proposal of the Director.

Services of the Government are conducted by the **director** who is responsible to the Prime Minister or General Secretary of the Government. The Director of the Services of the Government is responsible to the Prime Minister and is appointed by the Government at the proposal of the Prime Minister – e.g. Human Resources Management Service, European Integration Office, Media Cooperation Bureau. Other directors of Services of the Government are appointed by the Government at the proposal of the General Secretary of the Government – e.g. Airplane Service of the Government. The Director of Service is appointed by the Government, for the period of five years, and he/she has a status of a civil servant at the position. The director of the Service can have **a deputy and assistants**, if it is provided for by the Regulation by which the service has been founded and these two persons have the status of a civil servants in appointed positions, appointed by the Government, for the period of five years, at the proposal of the Director of the Service.

At the head of Secretariat-General of the Government there is a **Secretary-General of the Government** appointed and dismissed by the Government at the proposal of the Prime Minister. His/her mandate terminates with the termination of the mandate of the Prime Minister, by resignation or dismissal.

1.3. Organizational structure and a maximum number of the employees

According to the **Regulation on Principles for Internal Organization and Systematization of Jobs in ministries, special organizations and services of the Government** ("Official Gazette of RS" No.81/07- cleaned text and 69/08) internal arrangement and systematization of jobs is performed.

Internal units can be **basic, special and specific. Sector** is a basic organizational unit formed for activities which represent circled domain of work in the Ministry, special organization, Secretariat-General of the Government for common activities of the republic bodies. In a sector, **departments, sections and groups** can be formed. **Secretariat is an organizational unit** and can be formed only in a Ministry. **Minister's Office** is formed for implementation of advisory and protocol activities, activities for public relations, and administrative-technical activities which are relevant for minister's work. Employment in the minister's office is established for a limited time, at most for the duration of the Minister. Total number of civil servants and general service employees in the office of every minister is determined by the Government. **Chief of the Office** manages the office, who is responsible to the Minister for its work and the work of the Office.

A body is obliged to determine a sector for implementation of the activities of **European integrations**, if these activities are not directly included in the scope of the body, and it is usually a sector which scope is most connected with the European integrations.

Independent executor is a civil servant or general service employee whose working place is out of all internal units, since, due to the nature of his work he cannot be aligned with any of internal units. His/her direct superior is a manager of the body.

The Rulebook on Internal Organization and Systematization of Jobs, enacted with the respect of the principles provided for in the stated Regulation on Internal Organization and Systematization of Jobs, determines the organization and the number of systemized jobs in every body. The Rulebook is enacted by the manager of the body, with the consent of the Government. The Rulebook cannot enter into force before the consent of the Government.

Activities of public administration can be as well performed out of the seat of the body of public administration in **the administrative district**. Formation of administrative districts, their names, areas and seats are regulated by the Regulation on Administrative Districts (Official Gazette of the RS, No. 15/06) and are further described within the question number 30.

The Law on Maximum Number of Employees in Public Administration (Official Gazette of the RS, No. 104/09) lays down the maximum number of employees in

republic administration (in the bodies of public administration, public agencies and organizations for mandatory social insurance), whereat the provisions of this Law are not applicable to the Ministry of Interior, Ministry of Defence, Security Informational Agency and Administration for Serving Prison Sanctions as a body of administration in composition of the Ministry of Justice, in whose bodies the maximal number of employees is determined by the new acts on systematization of jobs after enacting the specified law. In the frame of the set number of maximum number of employees for unlimited time in the republic administration, stated by the law, which can not be bigger than 28.400 employed, **The Decision on Number of Employees in Bodies of Public Administration, Public Agencies and Organizations for Mandatory Social Insurance** (Official Gazette of the RS, No. 109/09, 5/10 and 89/10) sets out the maximum number of employees for unlimited time in the bodies of public administration, public agencies and organizations for mandatory social insurance.

1.4. Number of systemized working places and a number of currently employed in the bodies of Public Administration

Spreadsheet of the number of systemized working places and the number of employed in the bodies of Public Administration

Ordinal number	Body		Employed for unlimited time NOVEMBER 2010			
			Positions	Civil Servants at executive jobs	General service employees	Total
		Number of jobs of civil servants and general service employees according to the Rulebook on Internal Organization and Systematization of Jobs on the day 06/12/2010				
	MINISTRIES					
1	Minister for Foreign Affairs;	980	5	881	90	976
2	Ministry of Defence;	109	3	79	1	83
3	Ministry of Finance;	271	13	163	7	183
	Customs Administration	2539	8	2354	86	2448

	Tax Administration**	6367	15	5954	181	6150
	Lottery Games Administration	20	1	18	1	20
	Treasury Administration**	984	7	909	24	940
	Tobacco Administration	20	2	18	0	20
	Administration for the Prevention of Money Laundering	25	1	24	0	25
	Foreign Exchange Inspectorate	70	1	66	0	67
	Free Economic Zones Administration	10	2	5	0	7
	Public Debt Administration	25	2	19	0	21
4	Ministry of Justice;	89	5	62	6	73
	Administration for Serving Prison Sanctions	4807	1	4249		4250
	Directorate for Management of Seized Assets	30	3	11	3	17
5	Ministry of Agriculture, Forestry and Water Management	62	4	63	1	68
	General Inspectorate for Agriculture, Forestry and Water Management	280	3	305	0	308
	Veterinary Administration	383	2	374	2	378
	Plant Protection Administration	33	1	30	0	31
	Republic Waters Directorate	25	1	22	1	24
	Forest Administration*	16	1	16	1	18
	Administration for Agricultural Payments	70	6	23	0	29
	Administration for Agricultural Land	23	1	8	0	9
	Directorate for National Referent	55	1	8	0	9

	Laboratories					
6	Ministry of Economy and Regional Development	311	11	285	4	300
	Directorate of Measures and Precious Metals	120	3	111	4	118
7	Ministry of Mining and Energy	112	6	59	8	73
8	Ministry of Infrastructure**	189	7	146	6	159
9	Ministry of Public Administration and Local Self-Government	81	8	69	2	79
10	Ministry of Trade and Services	575	6	551	1	558
	Republic Directorate for Commodity Reserves	96	2	88	6	96
11	Ministry of Science and Technological Development	46	5	35	4	44
12	Ministry of Education	349	8	316	9	333
13	Ministry of Youth and Sports	50	4	36	2	42
14	Ministry of Health	312	4	278	4	286
	Administration for Biomedicine		3	1	0	4
15	Ministry for Telecommunications and Information Society	45	5	32	1	38
16	Ministry of Labour and Social Policy	166	6	141	12	159
	Gender Equality Administration	7	1	5	1	7
	Labour Inspectorate	285	2	274	6	282
	Administration for Health and Safety at Work	10	1	8	1	10
17	Ministry of Environment and Spatial Planning	341	7	297	28	332

	Environmental Protection Agency	29	2	24	1	27
18	Ministry of Culture	56	5	46	0	51
19	Ministry for National Investment Plan	37	3	29	2	34
20	Ministry for Kosovo And Metohija	80	5	52	20	77
21	Ministry of Religion	15	1	12	0	13
22	Ministry for Diaspora	32	3	27	1	31
23	Ministry of Human and Minority Rights	38	5	30	1	36
SPECIAL ORGANIZATIONS						
24	Republic Secretariat for Legislation	45	6	22	2	30
25	Republic Statistical Office	485	7	443	22	472
26	Republic Hydrometeorological Service of Serbia	688	7	492	98	597
27	Republic Geodetic Institute	2685	8	2370	36	2414
28	Republic Property Directorate of The Republic of Serbia	77	5	65	1	71
29	Republic Institute for Informatics and Internet	11	2	8	0	10
30	Mine Action Centre	9	2	6	0	8
31	Intellectual Property Office	101	6	87	7	100
32	Directorate for Waterways	101	2	43	56	101
33	Geomagnetic Institute	30	1	29	0	30
34	Public Procurement Directorate	20	1	17	0	18
35	Republic Seismological Institute	16	2	12	1	15
36	Refugees Commissariat	55	4	37	9	50

37	Republic Directorate for Peaceful Settlement of Labour Disputes	7	2	4	1	7
38	Railway Directorate	30	4	25	1	30
39	Restitution Directorate	18	1	12	3	16
40	Republic Development Bureau	29	4	25	0	29
41	Social Insurance Bureau	12	2	8	0	10
42	Energy Agency	9	1	7	0	8
GOVERNMENT SERVICES						
43	Secretariat-General of the Government**	80	4	59	9	72
44	Media Cooperation Bureau	25	1	15	7	23
45	European Integration Office	80	9	48	0	57
46	Permanent Office of the Government for Economic Development in Kragujevac	1	1	0	0	1
47	Permanent Office of the Government for Economic Development in Bor	1	1	0	0	1
48	Human Resource Management Service	34	4	22	2	28
49	Airplane Service of the Government	24	0	6	11	17
50	Sustainable Development for Underdeveloped Areas	5	4	3	1	8
51	Office of the National Council for Cooperation with the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law	10	2	3	0	5

	Committed in the Territory of the Former Yugoslavia since 1991.					
52	Service of Coordination Body of the Government of the Republic of Serbia for Municipalities of Presevo, Bujanovac and Medvedja	25	2	4	3	9
53	Office of the Council for National Security and the Protection of Classified Information	24	1	5	0	6
54	Office of the National Council for Decentralization of the Republic of Serbia	37	4	0	0	4
55	Administration for Joint Services of the Republic Bodies	916	9	171	650	830
PROFESSIONAL SERVICES ADMINISTRATIVE DISTRICTS						
56	Professional Service of North Backa Administrative District	8	1	4	3	8
57	Professional Service of Central Banat Administrative District	9	1	5	3	9
58	Professional Service of North Banat Administrative District	8	1	4	3	8
59	Professional Service of South Banat Administrative District	10	1	7	2	10
60	Professional Service of West Backa Administrative District	10	1	3	3	7
61	Professional Service of South Backa Administrative	18	1	10	4	15

	District					
62	Professional Service of Srem Administrative District	9	1	4	4	9
63	Professional Service of Macva Administrative District	9	1	4	3	8
64	Professional Service of Kolubara Administrative District	11	1	6	4	11
65	Professional Service of Podunavlje Administrative District	8	1	3	4	8
66	Professional Service of Branicevo Administrative District	10	1	5	4	10
67	Professional Service of Sumadija Administrative District	14	1	7	6	14
68	Professional Service of Pomoravlje Administrative District	9	1	5	3	9
69	Professional Service of Bor Administrative District	7	1	3	3	7
70	Professional Service of Zaječar Administrative District	10	1	5	4	10
71	Professional Service of Zlatibor Administrative District	18	1	7	10	18
72	Professional Service of Moravica Administrative District	9	1	4	4	9
73	Professional Service of Raska Administrative	17	1	6	9	16

	District					
74	Professional Service of Rasina Administrative District	10	1	5	4	10
75	Professional Service of Nisava Administrative District	18	1	7	10	18
76	Professional Service of Toplicea Administrative District	8	1	4	3	8
77	Professional Service of Pirot Administrative District	8	1	3	4	8
78	Professional Service of Jablanica Administrative District	8	1	4	3	8
79	Professional Service of Pcinj Administrative District	8	1	3	4	8
80	Professional Service of Kosovo Administrative District	9	1	4	3	8
81	Professional Service of Pec Administrative District	4	1	0	3	4
82	Professional Service of Prizren Administrative District	3	1	1	1	3
83	Professional Service of Kosovska Mitrovica Administrative District	8	1	2	4	7
84	Professional Service of Kosovsko Pomoravlje Mitrovica Administrative District	7	1	1	5	7
TOTAL		285	29	126	120	275

TOTAL	26650	340	22787	1568	24695
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* The Government gave a consent to the Rulebook on Internal Organization and Systematization of Jobs in the Ministry of Agriculture, Forestry and Water Management on the 11th November 2010. The Rulebook is harmonised with the Decision on Maximum Number of Employees in the Bodies of Public Administration, Public Agencies and Organizations for Mandatory Social Insurance. Deployment of the employees according to the new Rulebook is currently being performed, after which a certain number of employees will receive the status of unemployed.

**Decision amending the Decision on the Maximum Number of Employees in Public Administration, Public Agencies and Organizations for Mandatory Social Insurance determines the maximum number of employees for an indefinite time in the Tax Administration of 6387 employees, in the Treasury Administration of 1003 employees, at the Ministry of Infrastructure of 205 employees in the Republic Directorate for Property of the Republic of Serbia of 107 employees, at the General Secretariat of the Government of 100 employees. Rulebooks of the said bodies have yet to comply with the approved number.

NB: Data do not include employees in the jobs that are positions and full-time employees in the Ministry of Interior and Security Information Agency.

2. Holders of public power

Certain affairs of the public administration **may be delegated by the law** to autonomous provinces, municipalities, cities and the city of Belgrade, public enterprises, institutions, public agencies and other organizations (holders of public power).

According to The Public Agencies Act ("Official Gazette of RS" No. 18/05 and 81/05) organizations may be formed - public agency for development, professional or regulatory affairs of general interest, if developmental, professional and regulatory affairs do not require constant and immediate political control and, if public agencies can better and more efficiently perform them than the public administrations and especially if they can be wholly or mainly funded from the price paid by users of services. The founder of a public agency - the Government must be authorized by a special law to establish a public agency. By a special law, as a public authority, public agency can be entrusted with the following activities of public administration **issuance of regulations for implementation of laws and other general acts of the National Assembly and the Government; resolving in the first instance in administrative matters, issuing public documents and keeping records.**

Public agency has a status of a legal person obtained by registration in the judicial register, it is independent in its work, and is financed, as already stated, **from the price paid by the users of services of the agency; gifts (donations), sponsor contributions (sponsorships), the budget of the Republic of Serbia to finance entrusted activities of public administration and other contributions and income realised under the law.**

Rights of the founders of public agencies on behalf of the Government of the Republic of Serbia are performed by the Government, unless special laws provide otherwise. Decisions for forming public agency are proposed to the Government by ministries in whose purview are the affairs of public agencies. Bodies of public agencies are **the Managing Board and Director**.

Certain activities of public administration which are primarily related to the control of the lawfulness of public administration and holders of public powers and the protection of the rights of citizens, are performed by independent regulatory bodies and public authorities whose establishment, competence, financing and other issues related to their work is regulated by special laws.

2.1. Ombudsman

Ombudsman of the Republic of Serbia is an independent and autonomous state body introduced into the legal order of the Republic of Serbia in 2005 by the Law on Ombudsman and subsequently the Constitution of the Republic of Serbia.

The Ombudsman is a state body responsible for protection and promotion of human and minority freedoms and rights. He/she is elected by the National Assembly and is solely responsible to the National Assembly for his/her work. The basic function of the institution is to control of lawfulness and regularity of administrative authorities work in connection with the realisation of individual and collective rights of citizens.

The independence of the Ombudsman is one of the basic principles of the institution, which means that the Ombudsman is organizationally and functionally separated from the administration bodies, as he/she controls their work. The Ombudsman is independent in its work and no one may affect his work and actions.

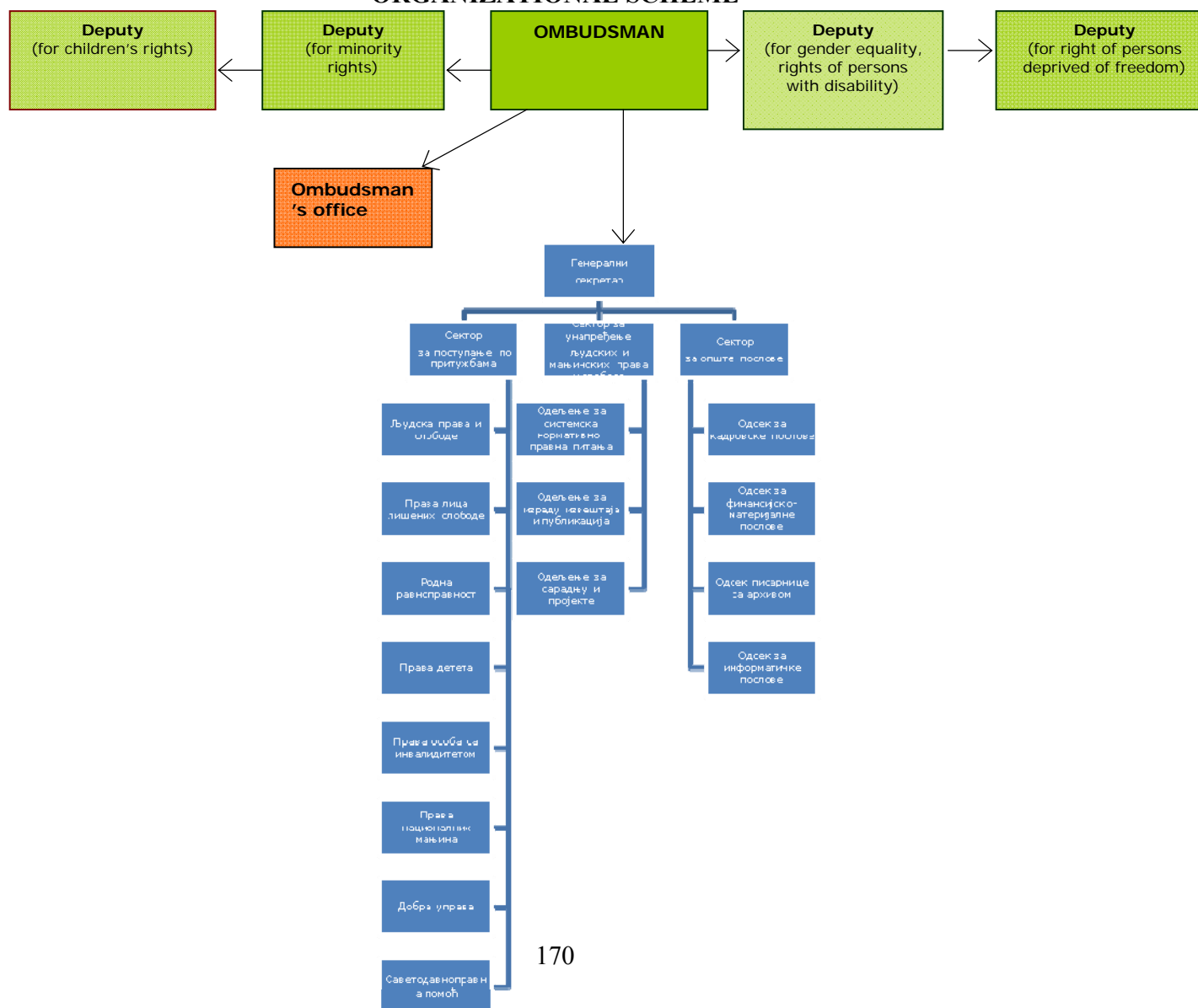
Ombudsman controls the work of public administration authorities, the authority responsible for the legal protection of property rights and interests of the Republic of Serbia, as well as other bodies and organizations, enterprises and institutions entrusted with public powers. He/she is not authorized to control the work of the National Assembly, President of the Republic, Government, Constitutional Court, courts and public prosecutions.

In a relatively quick procedure freed from excessive formality, the Ombudsman controls respect of the rights of citizens, establishes violation done by acts, actions or failures to act by government, if it is a violation of the Republic laws, other regulations and general acts.

The Ombudsman is financed from the budget of the Republic of Serbia. The budget for 2010 amounts 121,645,000.00 dinars.

The Law on the Ombudsman provides that the Ombudsman has four deputies. In addition, in the Professional Service of the Ombudsman 62 persons are employed, 49 women and 13 men.

PROFESSIONAL SERVICE ORGANIZATIONAL SCHEME



Deputy (for children's rights)

Deputy (for minority rights)

OMBUDSMAN

Deputy (for gender equality, rights of persons with disability)

Deputy (for rights of persons deprived of freedom)

Ombudsman's office

Secretary-General

Sector for Dealing with Complaints:

Human Rights and Freedoms

Rights of Persons Deprived of Freedom

Gender Equality

Children's Rights

Rights of Invalid Persons

Rights of National Minorities

Good Administration

Consultative Legal Assistance

Sector for Improving Human and Minority Rights and Freedoms:

Department for Systemic – Regulatory – Legal Issues

Department for Drafting Reports and Publications

Department for Cooperation and Projects

Sector for General Affairs:

Section for Staff Matters

Section for Financial – Material Affairs

Section of Writing Office with Archive

Section for Informational Matters

2.2. State Audit Institution

Institution – structure and bodies

By the Law on State Audit Institution from 2005. the National Audit Institution was founded, as the supreme state body for auditing public finances in the Republic of Serbia. The Constitution of the Republic of Serbia from 2006 confirms the autonomy and independence of this institution, which is subject to supervision by the National Assembly, to which it is responsible for its work. The adoption of this Constitution confirms the basic principles of the Lima Declaration, on functional and organizational independence of the Institution, necessary for the execution of its tasks.

The Institution has a president of the Institution, Vice President, the Council, audit services and related services.

The Council of the State Audit Institution is the highest body of the Institution, which is elected by National Assembly of Serbia for a period of five years. The Council has five members, a president, vice presidents and three members.

The Council of the State Audit Institution, as the highest body of the Institution, was elected on 24th September 2007. After the election, the President, Vice President and Council members swore an oath before the National Assembly of Serbia and on 27th September 2007 took over the duty. Conditions for election and dismissal of members of the Council are regulated by the Law on State Audit Institution.

Council president is simultaneously the president of the Institution, the General Auditor and the Head Manager of the Institution. The Vice President of the Institution performs activities of the general state auditor and performs other activities under the authority of the President of the Institution, replaces him in the case of temporary absence, in the case of early termination of function of the President of the Institution, he performs the function of the president until the election of the new president. Competence of the President and Vice President of the Institution is stipulated by the Law.

The scope and manner of performing activities of the Institution, internal organization and systematization of jobs are further regulated by the act of the Institution, drawn up by the Council at the proposal of the President of the Institution.

The Supreme state auditor manages the audit service and executes audit competence of the Institution, in accordance with the law and in accordance with authority granted by the President of the Institution.

Work related services are adjusted by the Secretary of the Institution. The Secretary manages the operation of the Institution and performs other activities under the provisions of the law and in accordance with the powers of the President of the Institution.

Conditions for appointment of the supreme state auditor and secretary of Institution are regulated by the Law on State Audit Institution.

The same law provides that members of the Council, the supreme state auditor and secretary of the Institution are officials of the Institution.

Financing of the Institution

Funds for the work of the Institution are provided in the budget of the Republic of Serbia in a frame of special budgetary allotment.

The Council determines the proposal of financial plan of the Institution and submits it to the competent working body of the Assembly for approval.

After the approval, the Institution submits the proposal of the financial plan to the ministry in charge for the budget. Office space, equipment and resources necessary for the work of the Institution is provided by the Government.

The State Audit Institution has provided funding in a frame of a separate budget allotments of the RS budget that allows the execution of tasks and uses the resources in a manner deemed appropriate and necessary.

Goal of the Institution

The main objective for which the Institution was founded is the audit of public finances in the Republic of Serbia (**audit of financial reports, audit of the regularity of operations and audit of the appropriateness of operating**).

The Institution performs the audit based on the annual audit program, which is obliged to adopt before the end of the year for the next calendar year.

Its auditory competence the Institution performs in accordance with generally accepted auditing principles and rules and in accordance with selected internationally accepted auditing standards. In the frame set by the laws, the Institution independently decides on the subjects of audit, object, volume and type of audit, the starting time and duration of the audit, unless otherwise provided by this law.

The Institution also performs other activities stipulated by the Law.

Organisational scheme, the number of jobs according to the Rulebook on Organisation and Systematization and the number of currently employed and their functions

Independent of any state body, the Institution regulates its own organizational structure and freely determines its jobs and the number of employees by title in the Institution.

By the Special Rulebook, the Institution regulated an internal organization and systematization of jobs required for performing activities of its competence.

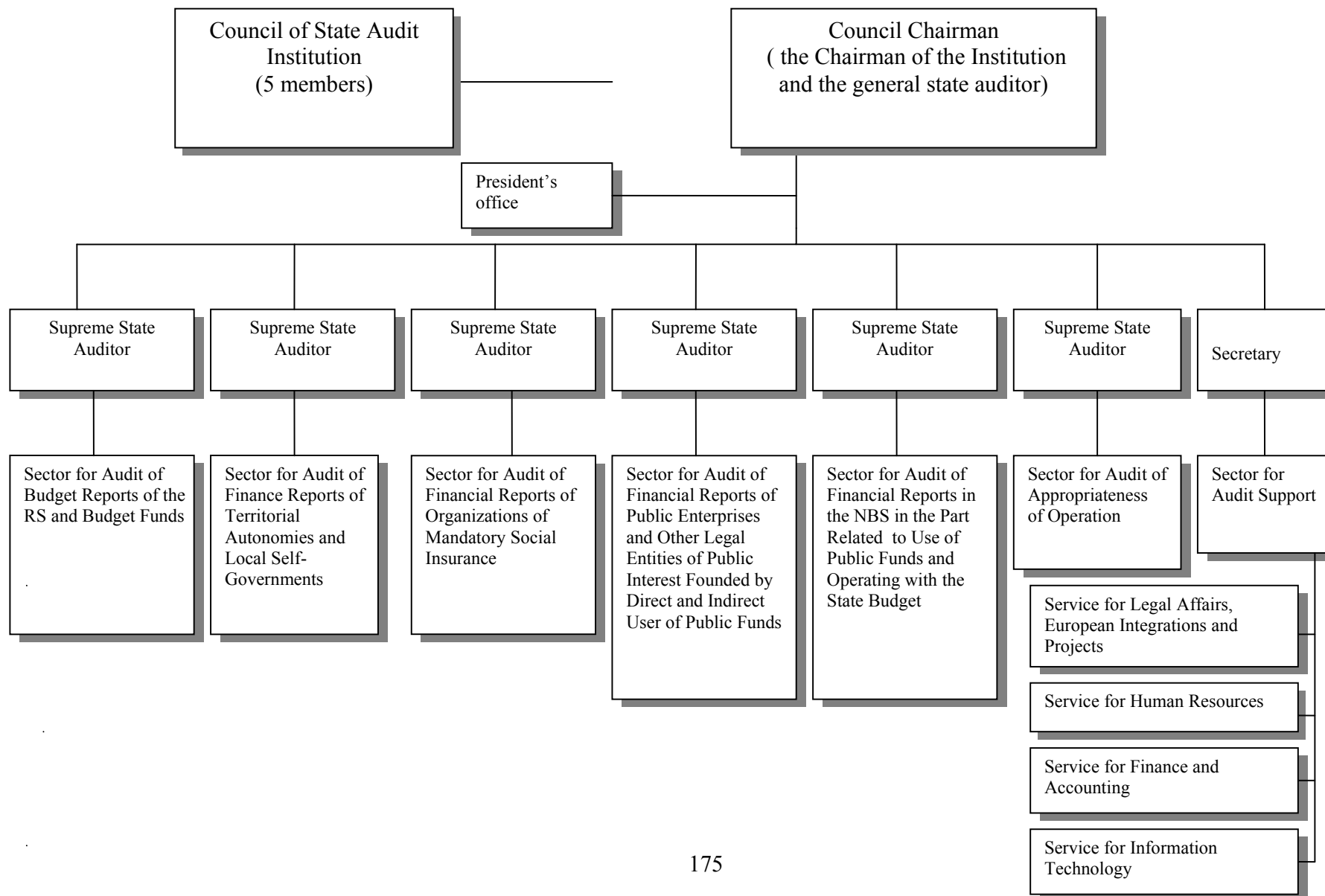
The Institution has six auditing sector and one support auditing sector, namely: The Department for Audit of the Budget and Budget Funds of the Republic of Serbia, the Department for Audit of Local Government Budgets, the Department for Audit of Organizations of Mandatory Social Insurance, Sector for Audit of Public Enterprises, Companies and Other Legal Entities founded or have part in the capital of management of the use of public funds, the Sector for Audit of the National Bank of Serbia in the Part Relating to Use of Public Funds and Operating with State Budget and other subjects of the audit, the Sector for Audit of the Appropriateness of Operation and Sector of Audit Support.

Sector of Audit Support has four services, namely: Service for Legal Affairs, European Integration and Projects, Service for Human Resources, Service for Finance and Accountancy and Service for Information Technology.

By the Rulebook on Internal Organisation and Systematization of in the National Audit Institution it is systematized the total number of 80 executive jobs , with 159 executors, of which 44 state auditors, 103 civil servants, 5 appointees, 1 secretary of the Institution and 6 of supreme state auditors.

State Audit Institution has a total of 35 employees, of which 5 are the members of the Council. In the auditing services there are total of 18 employees, of which 4 supreme state auditors (as service managers), 5 empowered and 2 state auditors, 1 senior advisor, 2 advisors, 3 junior advisors and 1 clerk. The audit support services there are total of 10 employees, of which 1 secretary of the Institution (as a service manager), 3 senior advisers, 2 independent advisors, 1 associate, 2 referents and 1 appointee. In the Office of the President of the Institution there is 1 senior advisor and 1 clerk employed.

The President, Vice President and Council members and the supreme state auditor and secretary of the Institution are officials. The employment status of all employees of the institution is provided for by the Law.



2.3. Commissioner for Information of public interest and protection of data about a person

The Commissioner is the supervisory authority in the field of data protection. Also, the Commissioner is secondary authority in the area of data protection, because he make decisions by appeals, whereat previously takes actions to determine the facts necessary for making decisions by appeals.

The Commissioner is an independent state body, independent in executing his competence, performing activities for protection of personal data. In executing his competence the Commissioner does not seek or receive orders and instructions from state bodies and other entities. Commissioner is financed from the budget of the Republic of Serbia.

The Commissioner is elected by the National Assembly for a period of 7 years with the possibility of re-election for another mandate. The Commissioner has two deputies - one for the field of free access to information of public relevance and another for the field of protection of personal data. Their mandate lasts 7 years with the possibility of re-election. For the terms for selection, duration, termination of the mandate of the deputy Commissioner, the same terms are applied as for the election of Commissioner, provided that the Deputy Commissioner is proposed by the Commissioner, and the procedure for dismissal of the deputy commissioner may be initiated by the Commissioner.

The function of the first Commissioner for Information in the Republic of Serbia performs Rodoljub Sabic, BSc. lawyer, elected by the Decision of the National Assembly of the Republic of Serbia, RS No. 91 from 22/12/2004, who was once again, before the termination of the mandate, after the adoption of the Constitution, re-elected by the Decision of the National Assembly of RS, number 19 from 29th June 2007, whereat his mandate runs from the first election.

Under the Decision of the National Assembly of the RS No. 9 from 3rd April 2006 deputy commissioner was elected for the domain of free access to information. Under the Decision of the National Assembly of the RS No. 1 from 23rd March 2010 the deputy commissioner was elected for the domain of protection of personal data.

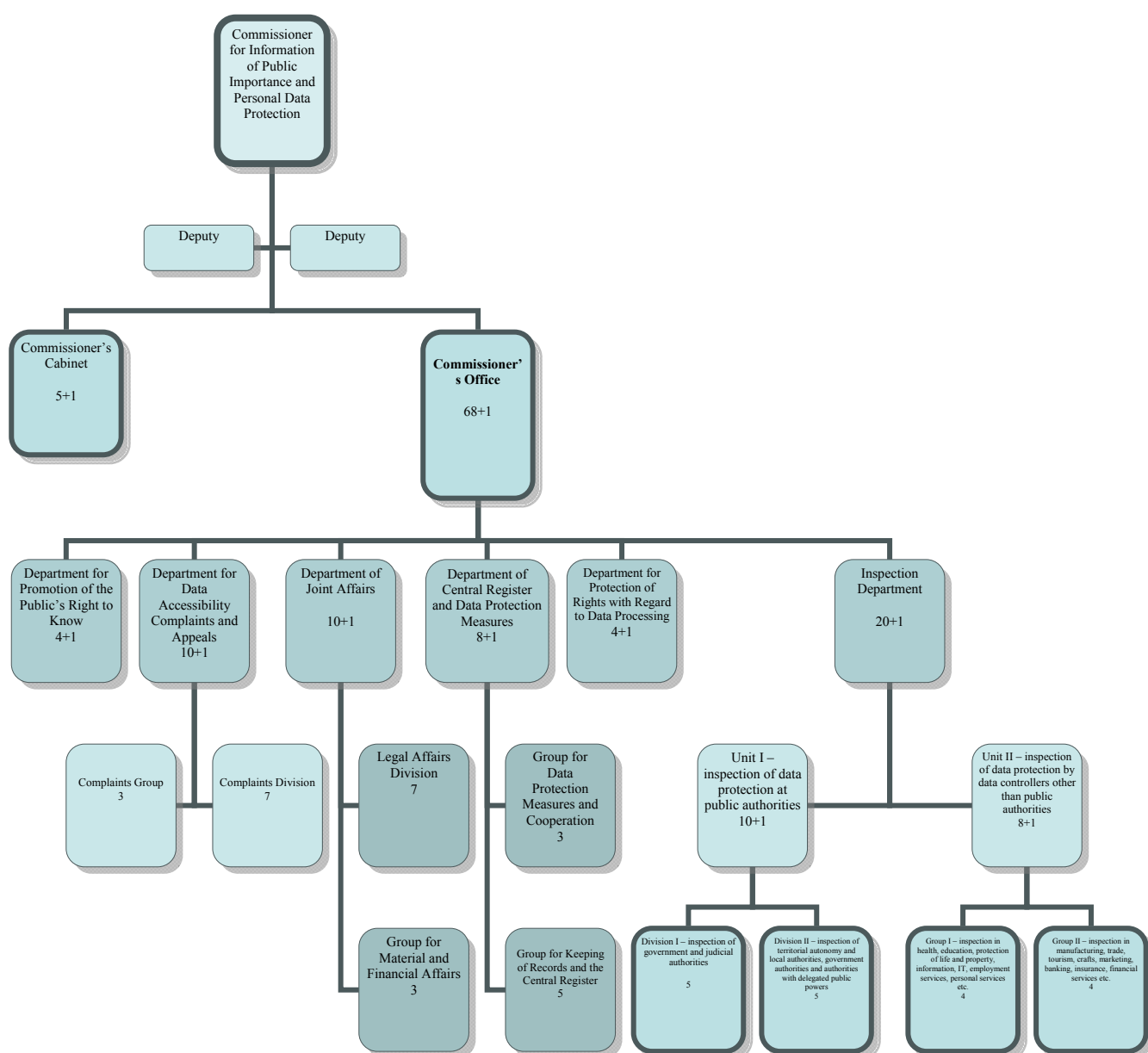
Organization and Human Resources of the Commissioner

The Commissioner has Service which helps him in carrying out his competence in accordance with the Article 34 of the Law on Free Access to Information of Public Importance and the Article 58 ZZPL (*The organizational scheme of the Service of the Commissioner is attached to the answer*).

According to the Rulebook on internal organization and systematization of jobs in the Service of the Commissioner for Information of Public Importance and Personal Data Protection submitted by the Commissioner on 05th June 2010 (number 110-00-3/2010-01), to which the Administrative Committee of the National Assembly gave its approval (Decision No. 28. 02-2532/10 from 10/12/2010), The Service of the Commissioner should have in total 69 employees.

The Commissioner even after six years of work is not provided with an adequate working space, so that although there is an obvious need to recruit new persons, of 69 jobs provided for by the Regulations on internal organization and systematization of jobs, currently only 28 are occupied, which is not enough for complete and timely performance of all activities within the scope of the Commissioner.

On 30th November 2010 year, from a total number of 28 employees in the Service of the Commissioner, 26 are civil servants and 2 are General Service Employee. Within the Sector for Supervision there are five people employed at the jobs of inspectors, which is not enough considering the real needs.



2.4. Anti-corruption Agency

Law on Anti-Corruption Agency ("Official Gazette of RS, no. 97/08 and 53/10) was adopted on 23st November 2008 and is applicable from the 1st January 2010. The Law on Anti-Corruption Agency is the main anti-corruption law by which the Anti-Corruption Agency was established as an independent regulatory body which within its competence:

- supervises the implementation of the National Anti-Corruption Strategy (hereinafter: Strategy), the Action Plan to apply the National Anti-Corruption Strategy (hereinafter referred to as the Action Plan) and sector action plans;
- initiates proceedings and impose measures for violation of this law;
- resolves conflicts of interest;
- performs activities in accordance with the law governing the funding of political parties;
- gives opinions and guidelines for implementation of this Law;
- gives initiatives for the change and adoption of regulations in the domain of fight against corruption;
- gives opinions regarding the application of the Strategy, Action Plan and sector action plans;
- monitors and performs activities related to the organization of coordinating of the work of state bodies in the fight against corruption;
- keeps a register of officials;;
- keeps a register of assets and revenue of officials (hereinafter: the Register of assets);
- provides professional assistance in the field of fight against corruption;
- cooperates with other state bodies in drafting the regulations in the field of fight against corruption;
- provides guidelines for drafting plans of integrity in public and private sector;
- introduces and implements training programs on corruption, in accordance with this Law;
- keeps special records in accordance with this Law;
- acts according to complaints of legal and natural persons;
- organises research, monitoring and analyzing of statistical and other data on the state of corruption;
- in cooperation with the competent state bodies monitors international cooperation in the field of combating corruption;
- Performs other activities stipulated by the law.

–
The Agency is an autonomous and independent state body. To perform activities within its competence the Agency is responsible to the National Assembly.

Funds for the work and operation of the Agency are provided in the budget of the Republic of Serbia, at the Agency's proposal, as well as from other sources, in accordance with the law. The Agency is independently in dispose of stated funds, in accordance with the law. The bodies of the Agency are the Board and Director. The director has a deputy. The Board has nine members.

To perform activities within the scope of the Anti-Corruption Agency professional services have been formed: Sector for Business Preventions and the Sector for Operative Activities. In the sectors internal units are formed: Departments and groups. Professional service is managed by the Director. Sector is managed by the Assistant Director.

The Sector Business Preventions internal units are:

- Department of Resolving Conflicts of Interest;
- Department of Integrity Plans;
- Department for the Implementation of the Strategy and Regulations
- Group for research, relations with media and civil society
- Department for Training Programmes

In the Department of Operative Activities internal units are::

1. Group for reports on the assets and verification of data;
2. Group to control the funding of political parties and election campaigns;
3. Group for keeping registers;
4. Group for complaints.

In order to perform certain activities outside the composition of the sector, formed are:

1. Office of the Committee
2. Office of the Director
3. Service for International Cooperation
4. Service for Public Relations
5. Service for General Affairs

The Office of the Committee is managed by the Secretary of the Committee. The Service is managed by the chief of the service.

In the Service for General Affairs, internal units are:

1. Group personnel activities;
2. Group for material – financial activities;
3. Group for information activities;
4. Writing Office.

Jobs in the Professional Service are divided into positions and executing jobs. The positions are jobs with the powers and responsibilities relating to coordinating the work of the Agency, while all other jobs are the executive.

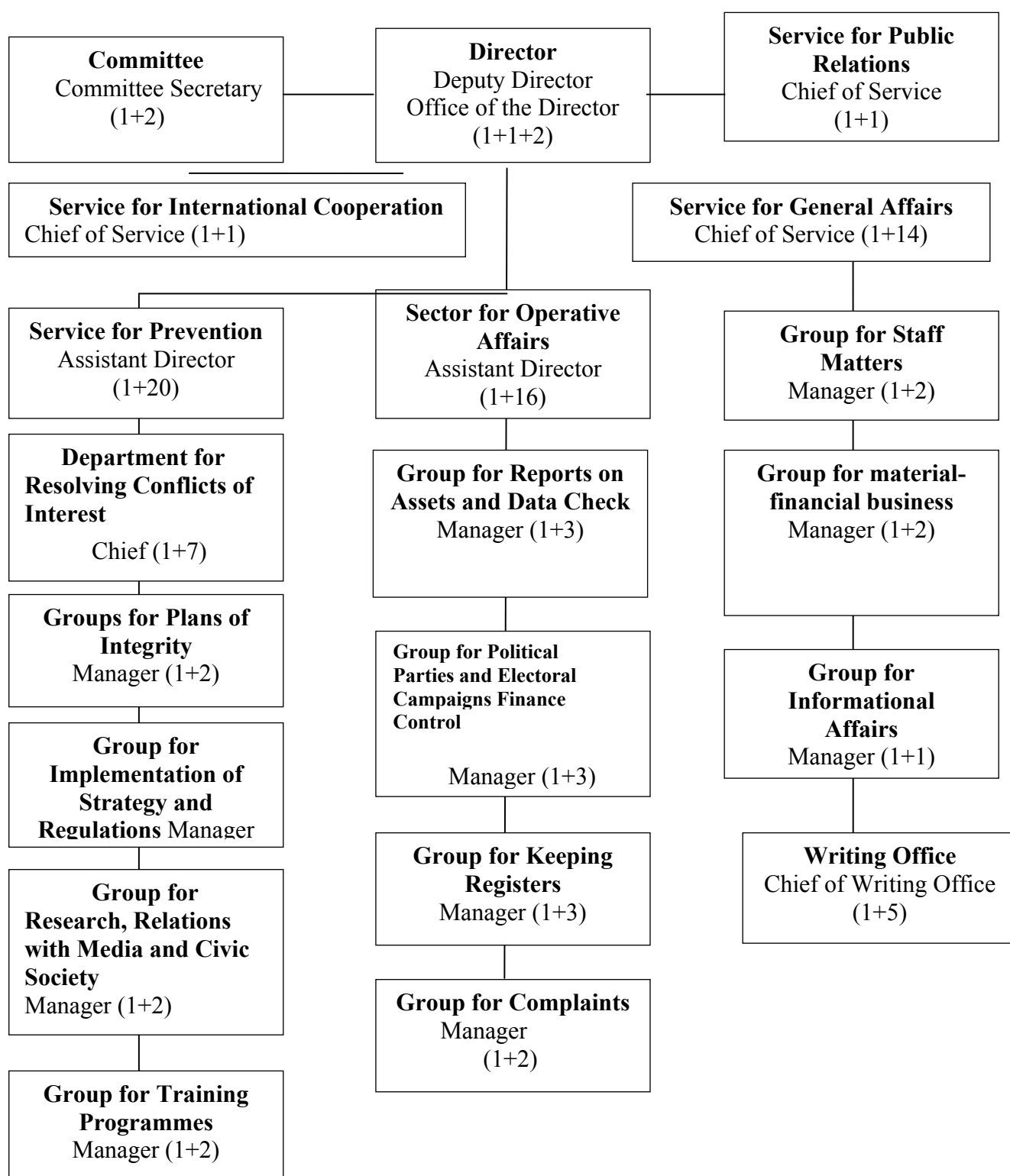
Positions are: Assistant Director, Secretary of the Board, the Chief of the Office and Chief of the Service outside the sector. Executive jobs are classified in titles: senior adviser, independent advisor, advisor, assistant and administrative officer.

The rulebook on systematization and organization of jobs, adopted in July 2010, provides the following systematization of jobs:

1. Positions: eight jobs
 2. Executive jobs, namely:
 - Seventeen jobs of a title senior adviser (twenty-one civil servant);
 - twelve jobs of a title independent advisor (twenty-four civil servants);
 - twelve jobs of a title advisor (twenty-four civil servants);
 - twelve jobs of a title collaborator (five civil servants);
 - five jobs of a title administrative officer (eleven civil servants);
 3. Two jobs for general service employees (three general service employees of the type IV).
- Currently at the Agency in addition to the director and deputy director, there are four appointed persons: Deputy Director in the Department of Prevention, Assistant

Director in the Sector of Operative Activities, Assistant Director in the Sector for Control and Assistant Director in the Service of General Affairs that are set for a period of five years, as well as one appointed person, head of the Service for International Cooperation.
In terms of employees, currently there are 45 for unlimited time and 4 for limited time.

ORGANIZATIONAL SCHEME



2.5. Republic Broadcasting Agency

The Republic Broadcasting Agency was established by the Law on Broadcasting, which entered into force on 27th July 2002, as an autonomous and independent organization performing public competence in accordance with this Law and regulations issued under this Law. The Agency is an independent legal person and functionally independent of any state body, as well as all organizations and persons engaged in activities of production and broadcast of radio and television programs and/or related activities. The competence of the Republic Broadcasting Agency (Article 8 of The Law on Broadcasting) is:

- 1) adoption of the Strategy of broadcasting development with the consent of the Government of the Republic of Serbia;
- 2) monitoring applications of the provisions of the Law on Broadcasting;
- 3) issuing licences for program broadcasting and prescribing forms for these permits;
- 4) prescribing technical, organizational and programme requirements for the production and broadcasting of the programme, in accordance with the provisions of the Law on Broadcasting;
- 5) prescribing rules that are binding on the broadcasters, and ensuring the implementation of broadcasting policy of the Republic of Serbia
- 6) supervise the work of broadcasters in the Republic of Serbia;
- 7) Deciding on complain by natural and legal persons and the complaints of broadcasters in relation to the work of other broadcasters;
- 8) international cooperation with relevant organizations of other countries and relevant international organizations;
- 9) providing opinions to the competent state authorities in connection with accession to international conventions relating to broadcasting;
- 10) providing opinions to the competent state authorities in applying the regulations in the field of broadcasting;
- 11) taking appropriate measures against broadcasters, in accordance with the Law on Broadcasting;
- 12) performing tasks related to taking activities in the field of broadcasting in order to protect minors, the application of the regulations on copyright and related rights and to prevent broadcasting of programs that contain information that incite discrimination, hatred or violence against persons or groups because of their belonging or not belonging to a certain race , religion, nation, ethnic group or gender;
- 13) perform other activities in accordance with the law on Broadcasting.

Income of the Agency are the funds generated from the fees that broadcasters, in accordance with the Law on Broadcasting, pay for the right of broadcasting programmes (broadcasting licenses). If the annual accounting of income and expenditure of the Agency determines that the total realised income of the Agency exceeds expenditures, the difference is paid to the account of the budget of the Republic of Serbia and distributed, in equal shares, for the promotion and development of culture, health, education and social protection.

Organization of the work of the Agency is based on the need for a functional and efficient fulfilment of tasks of the Council and the Agency (Article 45 of the Statute of the RBA).

The number of jobs is not determined by the Law, it was determined the Rulebook on internal organization and systematization of jobs in the Republic Broadcasting Agency.

Rulebook on internal organization and organization of jobs at the Republic Broadcasting Agency, in accordance with the provisions of the Labour Act, the Law on Broadcasting, the Statute of the Republic Broadcasting Agency, further determines the internal organization of the Republic Broadcasting Agency and systematization of activities and tasks of the Agency.

In accordance with the Rulebook on internal organization and systematization of jobs at the Republic Broadcasting Agency the following organizational units of the Agency have been formed:

1. Service of Common Affairs
2. Legal Service
3. Service for Public Relations
4. Service for Supervision and Analysis
5. Service for Control and Execution
6. Finance Service

Classification structure of the employees in organizational units of the Republic Broadcasting Agency

Structure of the employees according to professional qualifications							
Professional qualification	Number of employees						
	Service for Supervision and Analysis	Service of Common Affairs	Finance Service	Legal Service	Service for Control and Execution	Service for Public Relations	TOTAL
PhD							
PhD			1				1
HS	18	1	3	5	2	2	31
FEC	3	1			1		5
SS	11	16			3	2	32
Total	32	19	4	5	6	4	69

2.6. Agency for Energy

Financing of the Agency

The establishment and the first two years of work (2005 to 2007) of the Agency were financed by grants provided by the European Union (CARDS programme). Today the Agency is financed from funds that are provided from the revenue generated from license fees and of charges for the access to and use of the system.

Competence of the Agency

The Agency was established as a regulatory body to perform activities for promoting and directing the development of energy markets on the principles of non-discrimination and effective competition, monitoring the implementation of regulations and rules for the operation of the energy system, coordination of activities of energy subjects to ensure regular supply of the client with energy and services and their protection and equal position, as well as other activities defined by law.

The Agency has competence in the sectors of electric power, natural gas, and partly in the sectors of oil and oil products and heat.²

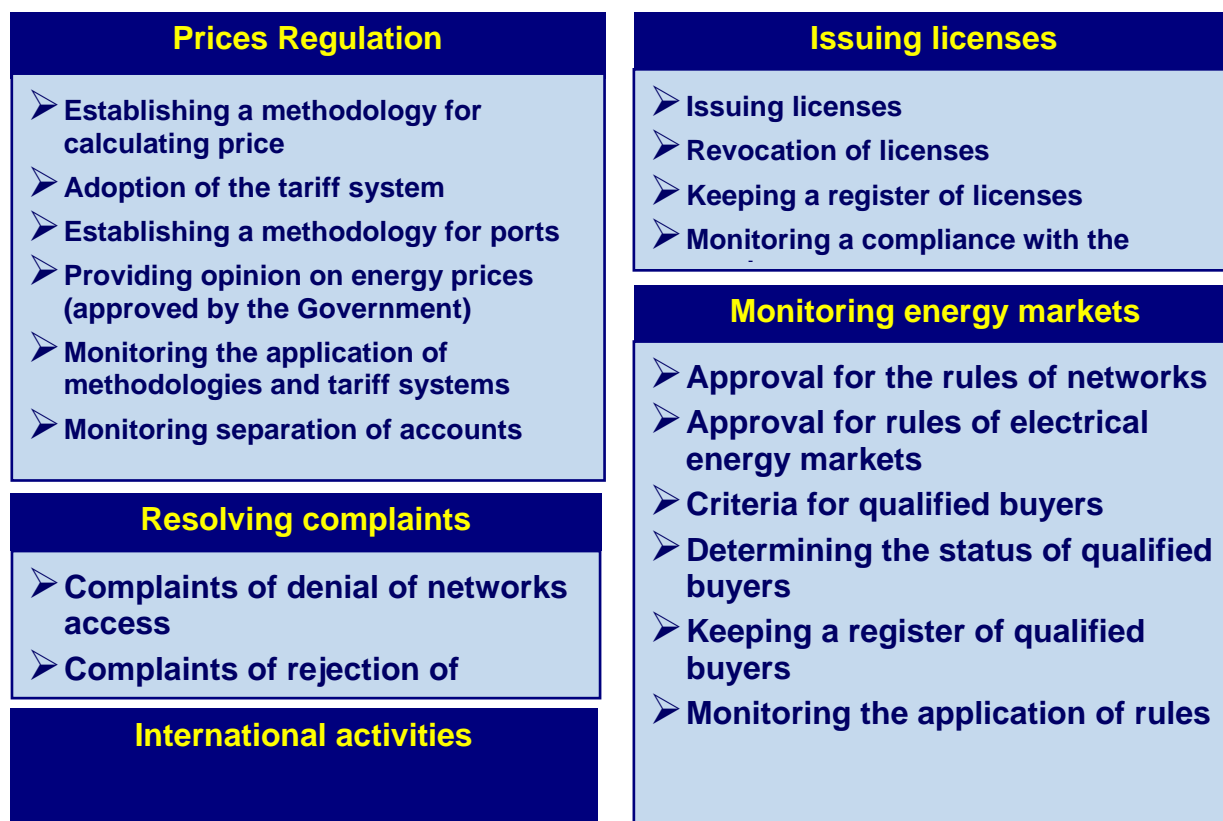
The Agency performs the following activities:.

- Adopts tariff system for calculation of electric energy and natural gas for tariff clients and tariff systems for access and use of the transmission system, transport, i.e. energy and object distribution and storage of natural gas and other services;
- specify the methodology for determination of tariff elements for calculating prices of electricity and natural gas for tariff customers, including prices of generated electricity , i.e. natural gas for tariff customers, as well as the methodology for determining the bill of heat energy produced in power plants – heating plants (combined process of production) and delivers it to energy subjects for the heat energy supply of tariff customers;
- determines criteria and methods for determining costs of connection to the system for transmission, transportation and distribution of energy
- issues licenses for performing energy activities and enacts an act on license revocation, under the conditions specified in this Law, except for activities of distribution and production of heat energy in heating plants and keeps records of issued and revoked licenses;
- approves the rules on the work of the system, the rules on the work of energy markets and the rules on work of the system for storage of natural gas;
- decides on appeals against the act of operator of transmission, transportation and distribution system, the refusal of access, as well as appeals against the act of the energy subject of refusal i.e. failure to make decision upon a request for connection to the system, as well as appeals against the act on refusal of access of the energy subject for natural gas storage;
- determines the minimum annual energy consumption that confers the status of eligible customer, determines the meeting of the terms for obtaining the status of an eligible customer and keeps the register of eligible customers.

In addition to these activities, the Agency monitors the implementation of the tariff systems, collects and processes data on energy subjects in connection with the performance of energy activities, monitors the conduction of energy subjects in the sense of separation of accounts and protection of customers and performs other activities in accordance with the law. The Agency is authorized to request from energy subjects the data and documentation necessary for implementation of the activities of the agency defined by the Law

² Combined production of heat and electric energy – CPHEE).

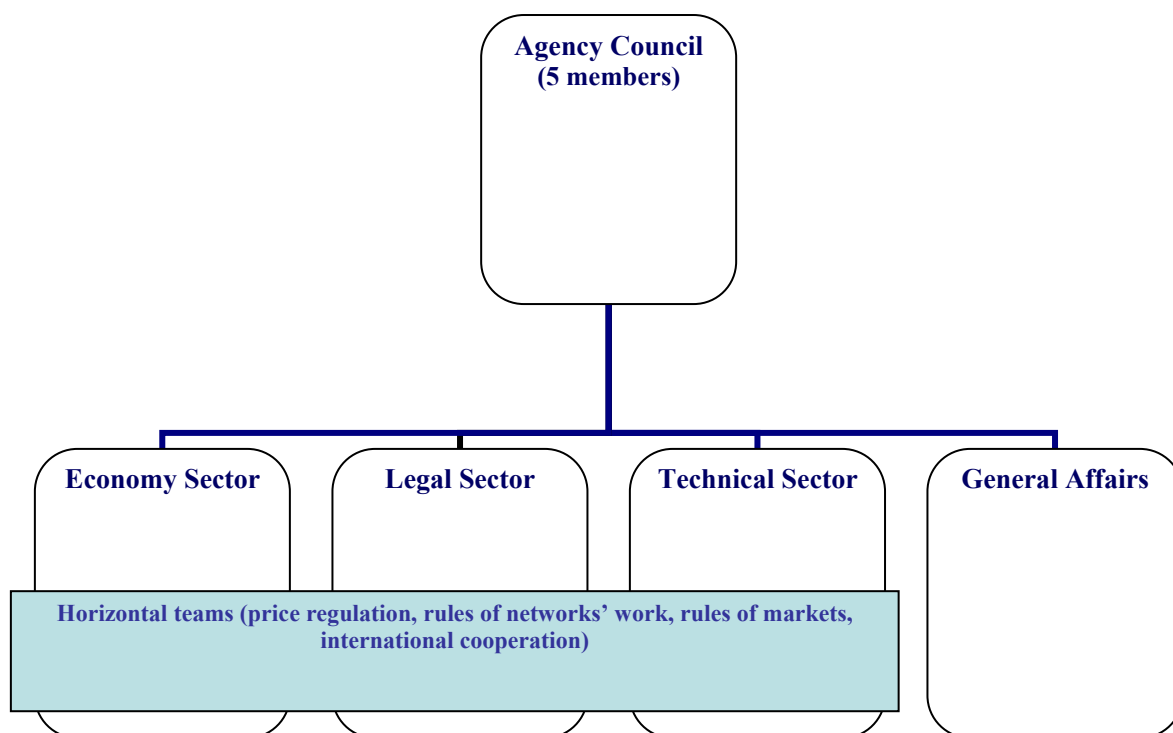
The main groups of activities performed by the AERS are:



Organization of the Agency

The Agency is managed by the Council of the Agency, which consists of the president and four members, elected by the National Assembly upon the proposal of the Government of the Republic of Serbia.

The work of the Agency is performed in the frame of four sectors – technical, economic, legal and general. In order to achieve the necessary degree of mutual coordination in the performance of complex multi-disciplinary activities, along with efficient use of available resources, horizontal teams which include experts from different sectors have been established, namely:



Number of jobs (upon systematization) amounts 57. In the Agency, on the day 15/12/2010 31 jobs have been occupied (including Agency Council Members). Number of systemized jobs, the number employed and their functions are indicated in the following table:

Function	Number of jobs (system)	Number of employees
The President of the Agency Council	1	1
Agency Council Members	4	2
Special Adviser of the Agency	2	0
Agency Secretary-General	1	1
Sector for Energy – Technical Affairs		
Manager of the Sector for Energy – Technical Affairs	1	1
Leading Engineer	1	0
Senior consultant for natural gas	2	2
Senior consultant for oil and natural gas	1	1
Senior consultant for electrical energy	3	3
Independent consultant for heat energy, renewable sources of energy and protection of the environment	1	0
Consultant for natural gas	1	1
Sector for Economic – Financial Affairs;		
Manager of the Sector for Economic – Financial Affairs;	1	1

Leading Economist	1	0
Senior consultant for economic- financial affairs	3	3
Senior consultant for economic- financial affairs	1	1
Consultant expert for economic- financial affairs	2	0
Sector for Legal Affairs		
Manager of the Sector for Legal Affairs	1	1
Leading Lawyer	1	1
Senior consultant for normative – legal affairs	2	2
Senior consultant for system – legal and analytical affairs	1	0
Senior consultant for managing – legal affairs	2	1
Independent senior consultant for managing – legal affairs	1	1
Consultant for managing – legal affairs	1	0
Sector for General and Organisational Affairs		
Manager of the Sector for General and Organisational Affairs;	1	0
Independent consultant for personnel management	1	0
Independent consultant for information technology	1	1
Independent senior consultant for public relations	1	1
Senior consultant for accounting and finance	1	1
Consultant for information technology	1	0
Consultant for accounting and finance	1	0
Consultant interpreter	1	1
Junior consultant for managing – legal affairs	1	1
Business secretary	1	1
Clerk of reception and archive	1	1
Driver-courier	1	1
TOTAL	57	31

2.7. Republic Agency for Electronic Communication

Pursuant to the Law on Electronic Communications (“Official Gazette of the RS” No. 44/10) (hereinafter referred as: The Law), Republic Agency for Electronic Communication (hereinafter referred as: the Agency) is an independent organization with the status of legal person executing public authority with the aim to effectively implementation defined policies in the field of electronic communications, encouraging competition of electronic communications networks and services, improve their capacity and quality, contribute to the development of electronic communications and protect the interests of users of electronic communications, in accordance with the provisions of this Law and regulations made based on this Law.

The Agency is functionally and financially independent from public authorities, as well as organizations and individuals that deal with electronic communications.

The Agency, in accordance with the Article 8 of the Law has the following competences:

- 1) enacts by-law acts;
- 2) decide on the rights and obligations of operators and users;
- 3) cooperates with authorities and organizations responsible for the broadcasting sector, protection of competition, consumer protection, protection of personal data and other bodies and organizations on issues of importance for the field of electronic communications;
- 4) cooperates with relevant regulatory and professional bodies of the Member States of the European Union and other countries in order to comply practice of application of regulations in the field of electronic communications and to encourage the development of cross-border electronic communications networks and services;
- 5) participates in the work of international organizations and institutions in the field of electronic communications with the status of the national regulatory body in the field of electronic communications;
- 6) performs other activities in accordance with this Law.

The agency performs specified activities as entrusted duties, impartially and publicly.

The Article 26 of the Law stipulates that the funds for the Agency are provided from the revenues derived from the Agency for the use of numeration, fees, charges for the use of radio-frequencies, fees for conducting electronic communications, and the income realized by the Agency by providing services within its jurisdiction, which are paid in accordance with the Law.

Based on the new Law on Electronic Communications, the Director issued a new organization that enters into force on 1st January 2011.

To perform activities within the scope of the Agency professional services have been formed:

1. Sector for Regulative
2. Sector for Economic Affairs and Market Analysis
3. Sector for Logistics

In the Agency, as a special organization unit, Cabinet is formed.

In the Sectors for Regulative, the following Services are formed:

1. Service for Drafting By-Law Acts
2. Service for Technical Regulations, and
3. Service for Radio - Communications

In the Sector for Economic Affairs and Market Analysis two Services and one Section are formed:

1. Service for Market Analysis and Accounting Expenditures,
2. Service for Accounting and Finance, and
3. Section for Procurements

In the Sectors for Logistics, the following Services are formed:

1. Service for general Affairs
2. Service for Eratel

3. Service for control.

Number of employees is 102.

2.8. Securities Commission

The Commission is an autonomous and independent organization of the Republic of Serbia, according to the Law on the Market of Securities and Other Financial Instruments (Official Gazette, No. 46/07 - hereinafter the Act) which is responsible for its work to the National Assembly. It has a status of a legal person with the seat in Belgrade.

In regard to the composition of the Commission, the Law provides that the Commission has five members including the chairman, who represents the Commission and manages it. The Chairman and members are elected and dismissed by the National Assembly upon the proposal of the competent working body of finance affairs.

The Commission is organisationally divided into sectors and departments (organizational chart is attached).

In addition to the Office of the Chairman, Members and Secretary of the Commission, professional services of the Commission are employed within the Sector for Supervision, Sector for Securities, Sector for Market Participants, Sector of Information, Department of Personnel and General Services and the Department of Material and Financial Affairs. There is no special legal service in the Commission, but there is a person with the status of the Main Lawyer.

There are 42 people employed in the Commission.

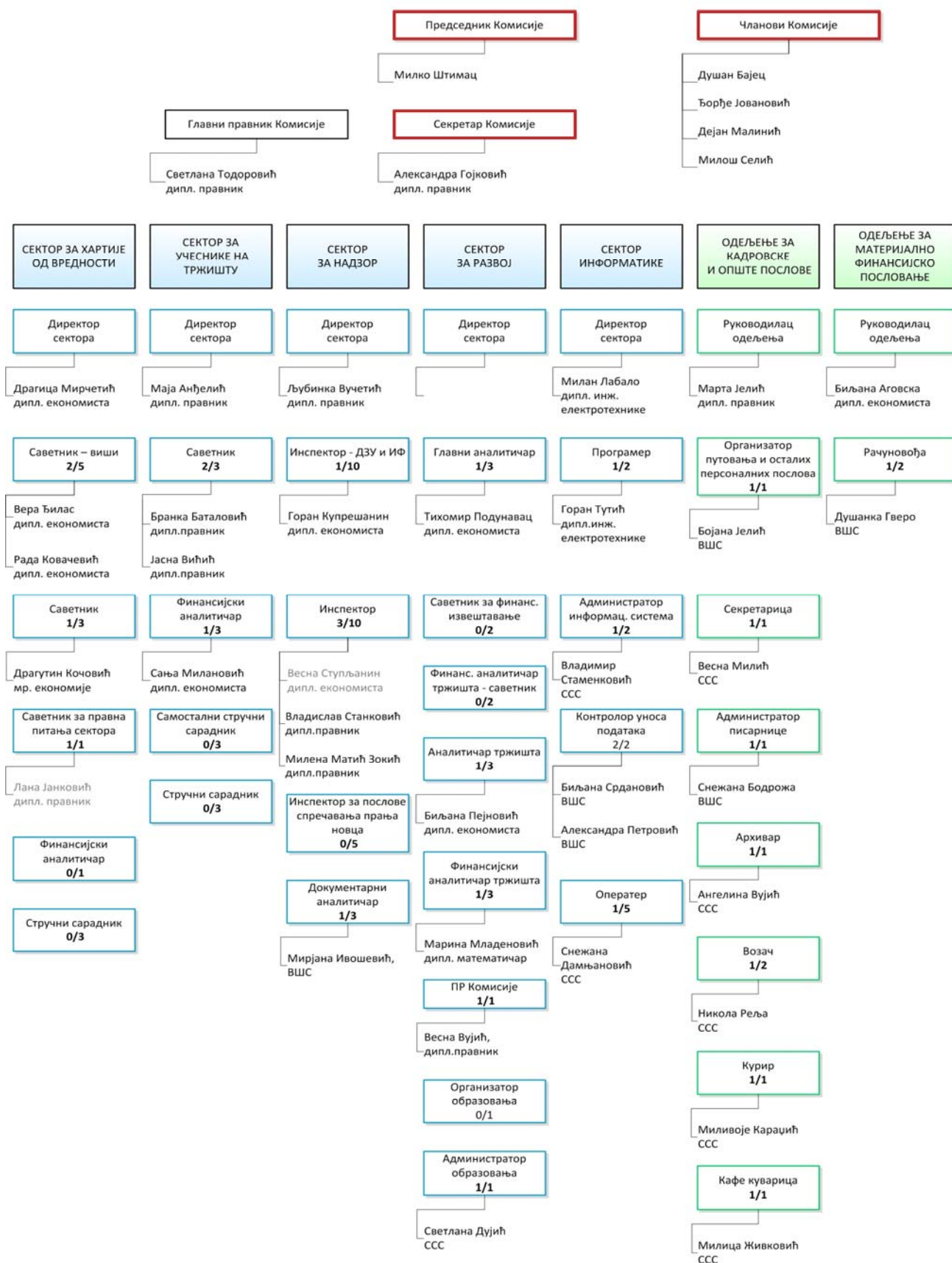
According to the Law, the Commission has competence to enact by-law acts due to implementation the Law, approve the issuance of securities with or without public bid, approve the status of professional investors, issue working licenses (as well as approval for the appointment of directors, board members, acquiring qualified participation, changes of general acts) to the market organizer, broker-dealer societies, authorized and custodian banks, societies for management and investment funds, and supervise the participants in the financial markets, keep different kinds of registers, submit reports to competent authorities, and perform other duties in accordance with the law.

The Commission performs these activities as entrusted, as stipulated by the Law.

Funds for the work of the Commission are provided from the fees which, in accordance with the Rulebook on the tariff, enacted by the Commission, are paid for perform in activities from its jurisdiction, as well as from other sources in accordance with the law. The excess of expenditures over revenues, the Commission covers from its reserves, and if the resources are insufficient, from the Budget of the Republic.

Excess of revenues over expenditures of the Commission are paid into the budget of the Republic .

Комисија за хартије од вредности организациона шема



Securities Commission Organizational scheme

President of the Commission
Milko Stimac

Members of Commission
Dusan Bajec, Djordje Jovanovic, Dejan Malinic, Milos Selic

Main Lawyer of the Commission
Svetlana Todorovic, LLB

Secretary of the Commission
Aleksandar Gojkovic, LLB

SECURITIES SECTOR
Sector Director
Dragica Mircetic, BEc.

Senior Advisor **2/5**
Vera Djilas, BEc.
Rada Kovacevic, BEc.

Adviser **1/3**
Dragutin Kocovic, M.Econ

Adviser for Sector Legal Issues **1/1**
Lana Jankovic, LLB

Finance Analyst **0/1**
Consultant **0/3**

SECTOR FOR MARKET PARTICIPANTS
Sector Director
Maja Andjelic, LLB

Adviser **2/3**
Branka Batalovic, LLB
Jasna Vicic, LLB

Finance Analyst **1/3**
Sanja Milanovic, BEc
Independent Consultant **0/3**
Consultant **0/3**

SECTOR FOR MONITORING
Sector Director
Ljubinka Vucetic, LLB

Inspector – Management Company and Finance Inspector **1/10**
Goran Kupresanin, BEc

Inspector **3/10**
Vesna Stupljanin, BEc
Vladislav Stankovic, LLB
Milena Matic Zokic, LLB

Inspector for Affairs of Money Laundering Preventing **0/5**
Document Analyst **1/3**
Mirjana Ivosevic, FEC

SECTOR FOR DEVELOPMENT

Sector Director

Head Analyst **1/3**
Tihomir Podunavac, BEc

Advisor for Financial Reporting **0/2**

Financial Market Analyst - Advisor **0/2**

Market Analyst **1/3**
Biljana Pejnovic, BEc

Financial Market Analyst **1/3**
Marina Mladenovic, BMath

Commission PR **1/1**
Vesna Vujic, LLB

Education Organiser **0/1**

Education Administrator **1/1**
Svetlana Dujic, SS

SECTOR OF INFORMATICS

Sector Director
Milan Labalo, EE
Programmer **1/2**
Goran Tutic, EE

Information System Administrator
Vladimir Stamenkovic, SS

Data Entry Controller **2/2**
Biljana Srdanovic, FEC

Aleksandra Petrovic, FEC

Operator **1/5**

Snezana Damnjanovic, SS

DEPARTMENT FOR STAFF AND GENERAL MATTERS

Department Manager

Marta Jelic, LLB

Travel and Personal Affairs Organiser **1/1**

Bojana Jelic, FEC

Secretary **1/1**

Vesna Milic, SS

Writing Office Administrator **1/1**

Snezana Bodroza, FEC

Registrar **1/1**

Angelina Vujic, SS

Driver **1/2**

Nikola Relja, SS

Courier **1/1**

Milivoje Karadzic, SS

Café Service Person **1/1**

Milica Zivkovic

DEPARTMENT FOR MATERIAL FINANCIAL BUSINESS

Department Manager

Biljana Agovska, BEc

Accountant **1/2**

Dusanka Gvero, FEC

2.9. Commission for Protection of Competition

Position of the Commission

By the Law on Protection of Competition ("Official Gazette" No. 51/09) the Commission is defined as an autonomous and independent organization with the status of legal person and performs public authority in accordance with the Law. The Commission is responsible to the National Assembly for its work, to which it submits an annual report on the work. The bodies

of the Commission are the Council of the Commission and the President of the Commission. The Council consists of the President of the commission and four members.

Independence of the Commission is provided by the way of the election of the President of the Commission and Council members, as well as the requirements to be fulfilled in order to run for these positions. The President of the Commission and Council members are elected from distinguished experts in the domain of law and economics with at least ten years of relevant working experience, who have made significant and recognized works or praxis in the relevant field, especially in the field of protection of competition and who enjoy the reputation of objective and impartial personality. The President of the Commission and Council members are elected and dismissed by the National Assembly upon the proposal of the Board for business trade.

The President of the Commission and Council members, during the mandate in the Commission, may not perform any other public function or occupational activity, i.e. may not deal with any public or private business for a fee. Also, they may not be members of bodies of political parties, nor can public competition promote the programme and attitudes of political parties

Financing of the Commission

The law provides for the financial independence of the Commission.. Funding for the work of the Commission is provided from the income that the Commission realises by performing activities within its competence. The Commission prepares an annual financial plan approved by the Government of the Republic of Serbia.

In the case that the Commission is not able to cover expenditures from their own funds, the Law provides that the Commission shall notify the Government and suggest measures within its competence required to balance income and expenses, including the possibility of allocating funds from the budget of the Republic of Serbia.

Competence of the Commission

The Commission is competent to deal with rights and obligations of the market participants in accordance with the Law; impose administrative measures; participate in drafting regulations to be adopted in the field of protection of competition; proposes to the Government adoption of regulations for implementation of the Law and provides instructions and guidelines for implementation of the Law. Also, the Commission monitors and analyzes the competitive conditions in individual markets and in individual sectors and gives opinion to the competent authorities on drafts regulations and the applicable regulations that affect competition in the market.

Organizational structure of the Commission

Organizational structure of the Commission	Number of employees	
Council		The President and four (4) Council members
Sector for determining violations of	7	Manager

competition		5 Senior advisers Independent consultant
Sector for Investigation of Concentrations	5	Manager 4 Senior advisers
Sector for Legal Affairs	3	Manager 2 Senior advisers
Sector for Economic Analyses	2	2 Senior advisers
Sector for International and Domestic Cooperation	2	Manager Independent consultant
Sector for Material– Financial Affairs	3	Manager clerk treasurer
Sector for Normative-Legal, Personnel and General Affairs	5	Manager Senior advisor consultant clerk Driver-courier
Total	27	

2.10. Commission for State Aid Control

Pursuant to Article 25 of the Law on State Aid Control , the Government has formed a Commission for the Control of State Aid that is operationally independent in its work. Operational independence is guaranteed by the Article 6 of the Law on State Aid Control. The Commission has five members appointed by the Government on the proposal of authorized nominators.

Additional guarantees of independence of the Commission are contained in the following facts: A requirement for a member of the Commission is to have at least a high degree of professional qualification and required professional knowledge in the field of state aid, competition and/or European Union Law; member of the Commission's mandate lasts five years with the possibility of reappointment upon the proposal of the same nominators and **may be terminated only for reasons enumerated by the law** (Article 8 of the Law on State Aid Control) funding for work of the Commission are provided in the budget of the Republic of Serbia. For the work of the Commission one receives a special fee.

Competent proponents of the member of the Commission is the Ministry in charge for financial affairs, the Ministry in charge for Economy and Regional Development Affairs, the Ministry in charge of infrastructure affairs, the Ministry in charge for Environmental Affairs and protection of the Competition. **If the member of the Commission is simultaneously a representative of the state aid grantor, he has no right to participate in decision-making process.**

Professional, administrative and technical assistance to the Commission, pursuant to the Article 10 of the Law on State Aid Control within the Sector for Economy and Public Enterprises of the Ministry of Finance.

The Commission for state aid submits to the Government an annual report on granted state aid.

All decisions of the Commission are published on the website of the Ministry of Finance and are available to all interested parties

2.11 The Republic Commission for the Protection of Rights in Public Procurement Procedures

The Republic Commission for the Protection of Rights in Public Procurement Procedures is formed as an independent and autonomous body of the Republic of Serbia.

Method of financing:

Funding for the work of the Republican Commission for the Protection of Rights in Public Procurement Procedures (hereinafter referred to as the Republic Commission) is provided in the budget of the Republic of Serbia.

Role (mission):

The Republican Commission provides protection of bidders' rights and public interest in public procurement procedures. Within its competence, the Republican Commission:

- 1) decides on requirements for the protection of rights of the bidders and the public interest;
- 2) decides on appeals against conclusions of the customer;
- 3) decides on proposals of the purchaser that the submitted request for protection of rights does not hinder activities in the public procurement procedure;
- 4) decides on costs of the procedure for the protection of rights;
- 5) monitors the implementation of the decisions taken;
- 6) cooperates with foreign institutions and experts in public procurement;
- 7) performs other activities in accordance with the law.

Organizational structure:

Republic Committee consists of the president and four members appointed and dismissed by the National Assembly at the proposal of the Government. The President and the members of Republic Commission are elected for a period of five years, and the same person cannot be elected more than twice.

The Republican Committee has a Service which performs professional, general-legal, financial-material, and administrative-technical activities necessary for the work of the Republic Committee. In the Service, internal units are formed: Sector for Professional Activities and the Sector for General Affairs.

In sectors, internal, more specified units are formed **-departments, sections and groups.**

Legal basis:

The **Law on Public Procurements** ("Official Gazette of the RS" No. 116/2008) regulates the issues concerning the education of the Republican Commission, competence, constitution

and election of the Republic Committee, dismissal of the President and members, service and operation of the Republican Commission.

Number of employees and their functions:

Republic Committee consists of the Chairperson and four members appointed and dismissed by the National Assembly at the proposal of the Government.

Service of the Republic Commission is regulated by the Rulebook on internal organization and systematization of jobs. The stated Rulebook provides for a total number of 70 employees, of which to 68 employed civil servants at the position and the executive jobs and the two appointees.

At this moment the Service has not yet been established, since the approval of the budget is being expected, as a necessary requirements for filling the predicted jobs, as well as provision of adequate office space to accommodate services. Space that is now available is not adequate even for the currently employed in the Republic Commission, who are taken from the Commission for the Protection of suppliers' right in public procurement procedures in the Public Procurement Directorate.

38. Is there a Strategy and an Action Plan for the reform of the Public Administration in place? If so, when was it adopted, what are the main objectives and what is the state of play of their implementation? How progress is measured (indicators)? What were the shortcomings noticed in the implementation process and how were they overcome?

The Strategy for the reform of the Public Administration was brought by the Government in October 2004, as well as an Action Plan for conducting the reform of the Public Administration for the period from 2004 to 2008. The Strategy for the reform of the Public Administration is based on the basic principles of the European administrative framework and so-competitioned "good governance", as well as the concept of so-competitioned "open administration". Considering aforementioned, the basic principles for conducting the reform were stipulated – the principles of decentralisation, depolitisation, professionalisation, rationalisation and modernisation. At the strategic level, the public administration reform management was entrusted to the Council for Public Administration Reform as a central strategic authority of the Government, whereas at the operational level, reform management was entrusted to the Ministry of Public Administration and Local Self-government with active participation and coordination of all state authorities. The main objectives set by this strategy are the reform of the legislative framework which was completely enforced (by enacting the law regulating the system and organisation of the public administration, status of civil servants, territorial organisation and organisation of the local self-government) and implementation of the principle of decentralisation, professionalisation and depolitisation of the public administration.

By the analysis of the Strategy and Action Plan for the period 2004-2008, it was observed that the system for coordination of reform conduct was not efficient enough, as well as that not all necessary activities for popularisation and promotion of the public administration reform were carried out. Considering the aforementioned, in the new Action Plan, it was necessary to enhance and develop the mechanisms for coordination of public administration reform

implementation as well as the mechanisms for monitoring and evaluation of the Action Plan realisation.

In July 2009, the Government adopted the new Action Plan for implementation of the public administration reform in the Republic of Serbia for the period from 2009 to 2012 which foresees the establishment of mechanisms for enhancing coordination and accelerated process of decentralisation, enhancement of protection of rights and interests of citizens, the level of service quality which the utility companies are providing to citizens, etc. as well as time framework for conducting the activities, sources of assets and activity holders.

In comparison to the initial condition and within the expected effects, the results within the time framework for which the Action Plan was prepared (2009-2012) are:

- 1) **enhanced mechanisms for coordination and accelerated decentralisation process** including establishing Platform for coordination of decentralisation and Strategy for decentralisation in the Republic of Serbia, establishment of legislative framework for the area of steady regional development;
- 2) **enhanced protection of rights and interests of citizens** by adopting the regulations for settling the method of activities of communal police and selection of the members of parliament;
- 3) **increased level of service quality which utility companies provide to citizens** by adopting the Strategy for restructure of public-utility companies;
- 4) **created conditions for sustainable development at the local level and more quality provision of services to the citizens through enhancement of unit capacity of the local self-government** by implementation of general standardised organisation models and more efficient and effective realisation of strategic planning process in the local self-government units;
- 5) **enhanced participation of citizens regarding business operation of local self-governments** by establishing the legislative framework for the new form of participation of citizens in government (referendum and civic initiative);
- 6) **enhancement of administrative capacities of public administration through continuous professional training of civil servants** including enforcement of the Strategy on training of civil servants with the Action Plan for its implementation.
- 7) **enhanced organisational structure and increased efficiency of business operations of the state authorities** by defining the new methodology for conducting the functional analyses and acting in compliance with the recommendations from the carried out functional analyses;
- 8) **enhanced quality level of the process of programming the requirements and distribution of assets from the first and second component of the Instruments Pre-Accession Assistance (IPA) of the EU and created preconditions for use and management of assets from the EU pre-accession funds** including accreditation of the system for decentralisation of management of the EU funds for the first and second component of IPA;
- 9) **enhanced process of creation and conduct of the public policies and realisations in compliance with the strategic priorities of the Government** including he enhanced quality of the proposal for public policies;
- 10) **created conditions for enhancement of the strategic planning process in public administration** including establishment of the efficient unique strategic planning system;
- 11) **creating conditions for increase in transparency and responsibility regarding business operations of the state authorities through proving support to the**

development of external control mechanisms of the public authorities including reinforcement of the capacity of the Office of the Ombudsman and Office of Commissioner for Information of Public Importance and Personal Data Protection;

12) establishing the legislative formwork for e-administration, electronic identity of the electronic services users and signatories of electronic documents, use of electronic documents, keeping official records, as electronic data bases in which the insight is done electronic competition, more efficient provision of services through various channels of procedure accesses based on electronic data exchange between the state authorities in compliance with the regulations and standards of the personal data protection;

13) developed transparent process of public procurements based on the standardised and automated procedures which leads towards more rational resource engagement of the client and supplier including establishment of the public procurement automation system;

14) creation of conditions for efficient and effective conducting of the public administration reform within the period from 2011 to 2014 by approving the reviewed Action Plan for conducting the reform of the Public Administration for the period from 2011 to 2014.

39. Which bodies/institutions are involved in the definition, coordination, implementation and monitoring of the Public Administration Reform Strategy? Is there a central body or ministry in charge of public administration reform?

One of the basic preconditions for efficient conduct of the Public Administration Reform Strategy, besides political will and general consensus to conduct reforms, selection of priorities and phase approach in conduct, reform popularisation, i.e. approximation of the reform objectives to citizens and employees in the public administration, is also establishment of the clear institutional framework for reform conduct.

Having approved the Public Administration Reform Strategy, the Government of Serbia showed its political will and resolution to start the serious and complex task such as public administration reform.

Simultaneously with the Strategy preparation, the Government established the institutional framework for reform conduct in order to ensure existence of a clearly defined mechanism for management of changes from the first day. Due to the aforementioned issue, the Government selected the concept for strategic reform management which shall be entrusted to the Council for the public administration reform, presided by the Prime Minister including also the first deputy Prime Minister and Minister of Interior, the deputy Prime Minister and Minister of Economy and Regional Development; the deputy Prime Minister and Minister of Science and Technological Development, Minister of Finance, Minister of Justice, Minister of Public Administration and Local Self-government, Minister of Education, Minister of Telecommunications and Information Society, director of the Republic Secretariat for Legislation, director of the Human Resource Management Service, director of the EU Integration Office. The Public Administration Reform Council was established by **the Decision on forming Public Administration Reform Council** ("Official Gazette of RS", nos. 29/09 and 45/09), as the Government central strategic authority for public administration

reform, with the task: to define the proposals of the strategic development of the public administration in the Republic of Serbia; to initiate and propose to the Government taking the measures and activities regarding the public administration reform; to consider and adopt the reports on reached goals regarding the public administration reform; to promote and follow the conducts of the Public Administration Reform Strategy, especially from the view of including principles and objectives of public administration reform into the sector development strategies and planning documents; to consider and grant the previous opinion to the Government on development strategies, drafts on laws and other documents regarding the organisation and operation of the Government, state authorities, organisations, services or the authorities of the Government.

In order to consider the issues within its jurisdiction, the Council may form the work groups. Furthermore, due to inquiry of certain especially complex issues regarding public administration reform, the Council may engage the professional and educational institutions and prominent professionals, as well as to use the professional assistance which is available in the form of international projects.

Regarding the importance and range of forthcoming activities, Serbia selected the concept including the separate ministry which shall specially engage with the issues of public administration and local self-government. However, as not even a separate ministry can provide implementation of the reforms without coordination and inclusion of all other state administration bodies, reform teams were formed in every state authority, i.e. the persons in charge of coordination of activities in the reform process were selected in order to ensure conduct of those activities within their bodies. These reform teams, i.e. reform coordinators are the link of every individual state body with the Ministry of Public Administration and Local Self-Government.

Special attention is paid to reinforcement of the reform teams and their coordination, primarily due to the need that the general programme of public administration reform shall be conducted appropriately in all ministries and other state bodies. The reform team as an body for coordination of the activities for implementation of measures and methods regarding administration authority reform has an objective to be a central point for promotion, monitoring and professional assistance by its concrete activities within this field.

40. What is the capacity of the administration to handle EU integration issues and to which extent have recent staff cuts had an impact on it?

Capacity of the administration in EU integration issues

State administration of the Republic of Serbia continues to establish and strengthen its administrative capacity to handle the EU integration issues. This continuing process has lasted since 2000, and the capacity strengthens according to the commitments and needs of the upcoming period in the process of European integration.

The central coordinating body of the state authority, which coordinates, guides and monitors the process of European integration is Serbian EU Integration Office of the Government of Serbia (SEIO). Its task is to coordinate, monitor and direct the work of state authority, propose general guidelines for the integration process, provide advice and support to other

state authorities in performing their commitments and prepare them, technically and professionally, for the upcoming steps in this process. SEIO adds to its capacities constantly, and adapts its inner structure to the present and upcoming commitments in the process of integration. There are currently 75 workplaces according to job classification in SEIO, with 80 employees. Out of that number 69 workplaces according to job classification are for the jobs relating to European integration, 56 whereof are filled.

Due to the increased amount of work in the process and the need for long-term planning, inter-sectoral bodies are established, which should provide better coordination, communication and better planning and monitoring of the entire process (about SEIO itself and the system of inter-sectoral coordination in the process of integration please see question 23)

The capacities of staff managing the EU funds are constantly strengthened (see Chapter 22, question 41- 47)

For maintaining contacts with EU officials and institutions and monitoring the EU politics, the Republic of Serbia established the Mission of the Republic of Serbia to the EU in Brussels. According to the Rulebook on internal organisation and job classification in the Ministry of Foreign Affairs from 30 December 2009, there are 12 working places for diplomatic positions and 4 for administrative and technical positions in the Mission.

In addition to the employees of the Ministry of Foreign Affairs, a number of representatives of the state authorities (three) have been delegated to the Mission of the Republic of Serbia to the EU in Brussels. They are working on special duties of monitoring and analysing the activities of specific sectoral policies of the EU significant for the process of accession of the Republic of Serbia to the EU (agriculture, trade, customs and taxes, regional development).

On 23 November 2010, the Government of the Republic of Serbia has adopted the Conclusion on delegation of experts from other state authorities to the Mission of the Republic of Serbia to the EU in Brussels, which envisages the delegation of another eight representatives from state authorities.

The continued strengthening of administrative capacities managing the EU integration issues has been recognised as one of the key duties in the field of continued training of state authorities. (see question 43)

In different state authority bodies, the units managing the EU integration have been developed according to the needs and the current stage of integration. Assessment of the need for establishing new units was based on the EU documents, the assessment of the institution itself on the need for such unit in the upcoming period and financial possibilities at the given moment. In addition, other agencies (for example SIGMA) provided certain assistance in the analysis of the present state and assessment of needs of administrative capacities.

In order to make the objective assessment of the necessary administrative capacities, in July 2006 the Action Plan for Strengthening Institutional Capacities for Assuming Responsibilities in the European Integration Process was adopted. It was based on the status of present capacities, the assessment of present capacities given in the Progress Reports of the EC, European Partnerships and other EU documents (Guide to the Main administrative structures

required for implementing the *acquis*), and the assessment of the institutions themselves on the need for such capacities in the next phases of integration. This plan was the foundation for establishing new units for European integration and their staffing.

The National Plan for Integration with the European Union (NPI) adopted in October 2008 represents a general document, which puts together all commitments which Serbia might have until the moment when it should be fully ready to become an EU member. A part of the NPI represents the administrative capacities as well. On the basis of prior Action plans, and based on the assessment of commitments coming from complete legal harmonization with EU law, each institution presented the plan for strengthening of administrative capacities for the next period i.e. until the deadline given in the NPI (31 December 2012). NPI encompasses all data on the present state of capacities for EU integration, with the adopted recommendations from the Progress Reports of EC and European Partnership, and gives the real estimate of strengthening of administration in the upcoming period. NPI also envisages the definition of recruitment plan and financial resources for each institution on the annual level.

On the basis of the previously mentioned criteria, at this moment all ministries whose scope and complexity of European integration issues thus require have either state secretaries or deputy ministers appointed for these tasks and special units for European integration representing contact points for communication with SEIO, EC and other international institutions on one side, and other departments in the ministry on the other.

For other state authorities, where European integration tasks are not within direct scope of work, the Government has established the obligation to designate a department for integration activities (Governments Regulation on the Principles for internal organisation and job classification in the ministries, special organizations and offices of the Government (*Official Gazette of RS*, No 81/2007, 69/2008), which establishes that "if European integration activities are not directly in the competence of the authority, it is its duty to designate a department in which it will be performed, and that is, by rule, the department whose jurisdiction is closest to European integration").

According to the register (see Table in Annex) of the European integration positions there are 2197 jobs classified at the moment. Criterion used for obtaining this figure is that the activity on European integration issues, though difficult to separate from other tasks of state authorities because they are intertwined, is defined as activities on coordination, managing EU funds, legal harmonization with EU laws and tasks of implementation of European regulations. This criterion, though it cannot be completely precise, since it is impossible to fully delimitate *European* from national regulations, serves as a criterion on the basis of which the filling of positions and functionality of civil servants on the positions for administering European integration issues is monitored and planned.

Administration cuts and maintaining administrative capacities administering the European integration issues

Public administration cuts in Serbia in the past period did not influence the decreasing or weakening of administrative capacities dealing with European integration activities.

In order to provide the macroeconomic stability in the time of economic crisis, Serbia started negotiations with the IMF and signed the stand-by arrangement in the first quarter of 2009.

One of the pre-requisites of the IMF arrangement were cuts in public spending, because of which the Government of Serbia decided to cut the number of employees in the state administration. This was the reason for adoption of the Law on the Maximum Number of Employees in the Republic Administration (*Official Gazette of RS*, No 104/09) and the Decision on the maximum number of employees in state authority, public agencies and organisations for mandatory social insurance (*Official Gazette of RS*, No. 109/09, 5/10 and 89/10), which determines the maximum number of employees in the public administration (28 400), and for which reason the number of employees in Republic administration had to be cut. In addition to this request, Serbia made arrangement with the EU on direct budget support of the EU (*Financial Agreement between the Republic of Serbia and the Commission of European Communities regarding the Programme of Budget Support to the Republic of Serbia within IPA Component - transition assistance to establishing of institutions for 2009*), with the condition that in the announced cuts of administration, the capacities for European integration issues are not weaken. **Because of this, Serbia made the system of cuts in administration, which ensured no weakening of capacities for EU tasks.** The required cuts in administration regarding the employees had to be adopted through the new job classification, where the number of employees should be reduced. However, in order for the Government to adopt the job classification, it had to obtain positive opinion of the Human Resources Management Service (HRMS) (Government Conclusion 05 No: 48-6356/2009 from 5 October 2009 and 05 No 112-7812/2009 from 30 November).

HRMS gave its opinion as to whether there had been weakening of institutional capacity or of the number of administration staff for EU activities.

So the system in which there was no weakening of capacity on EU activities was established. During 2010, the Government adopted these new job classifications, which fulfilled the obligations according to the IMF arrangement on one hand, and managed to keep the capacities for EU activities on the other. Until 30 November 2010, the Government adopted 77 job classifications of state authorities (21 ministry, 17 special organisations, 10 Government services, 29 competent services of regional administrations), and did not adopt 3 job classifications for 3 authorities (1 ministry, 1 special organisation and 1 administration).

In order to verify the conditions set in the mentioned Financial Agreement between RS and EU, in March 2010 the competent visit of the Mission of SIGMA programme took place. This Mission had the aim to estimate the measures adopted by the Government in order to sustain European integration capacities and to draft a report, which should serve the EC when estimating this process. The report was publicised in May 2010 (see Annex).

- Annex to the answer:

1. Table of Capacity of Serbian State Authority on European Integration Activities
2. SIGMA Report from May 2010: *Review of expenditure cuts in Serbia - May 2010*

41. What is the legal basis for the status of civil servants and other public employees? Is there a public administration law or regulation defining the status of civil servants, including independence, recruitment, promotion and career structures and remuneration? Are the principles of a European Public administration as identified by

SIGMA³ embedded within the legal framework? What are the different categories of state employees (i.e. civil servants versus other public employees)? What are the distinctions between these different categories (in terms of legal regime, rights and obligation)? Please indicate the number of employees in each category.

Adopting the Law on Civil Servants in 2005 and afterwards beginning of its implementation, the labour relation position of employees in the public authorities was regulated. The Law on Civil Servants establishes the complete civil servant system based on the standards approved in the contemporary resembling legal systems. The Law stipulates that there are civil servants and 0. These two categories are divided in relation to the type of job they perform. Civil servants conduct the jobs which are appropriate and appointed by law exclusively to state authorities, i.e. jobs within their scope of activities, whereas general service employees conduct jobs which may, otherwise, be carried out also in private sector (accompanying and auxiliary technical jobs). According to aforementioned, the term of civil servant refers to the public legal component, unlike general service employees. It is also planned that the Law shall regulate the rights and obligations of civil servants and only certain rights and obligations of general service employees (drivers, maids, employees in printing house, etc.). Simultaneously, the provisions of the Law shall be applicable to the rights and obligations of civil servants and general regulations on labour regarding issues which are not regulated by it, whereas general regulations on labour shall be primarily applicable to the rights and obligations of general service employees, and the Law subsidiary.

The public sector is not a legal category and it represents a significantly wide term which differs from one country to the other one. Actually, the term “public sector” represents what is referred to public administration in its broadest meaning in the science of administration law. To be more precise, public administration is a term adopted in the event of defining the theoretical term of administration in organisational meaning. Public administration primarily refers to professional part of the state administrative organisation, but also non-state government conductors including public institutions, public services and public companies, and very often that term implies local self-government including municipalities and other territorial communities of public character. Employees in public sector in the Republic of Serbia refers to all employees in state authorities (for example, employees in the National Assembly, state authorities, courts, public prosecutor’s offices, etc.), then employees in the autonomous province authorities, employees in the local self-government authorities, employees in public services (schools, hospitals, museums, social protection institutions, etc.), employees in public companies and employees in independent regulatory authorities (for example, employees in Republic Agency for Telecommunications, Republic Broadcasting Agency, etc.).

The Law does not refer to and it shall not be applicable to all persons employed in the public sector of the Republic of Serbia. The Law shall be applicable only to persons employed in state authorities, courts, public prosecutor’s offices, Republic public solicitor’s office, National Assembly services, and services of the President of the Republic, Government services, the Constitutional Court services and the services of authorities whose members shall be elected by the National Assembly. State authorities shall include also ministries,

³ According to the SIGMA paper no. 27 "European Principles for Public Administration (1999)", these principles refer to: the separation of public administration of politics, the legal certainty and the proportionality of administrative decisions, the openness and transparency of administrative acts, the accountability of administrative bodies, the efficiency and effectiveness of public administration in achieving its goals.

special organisations, and administration authorities belonging to ministries as well as the professional services of the administrative provinces. The Article 41(4) of the Law on Public Administration (“Official Gazette of RS” nos. 79/05, 101/07 and 95/10) stipulates that: “the regulations on public administration shall be applicable to professional service of the administrative province”. Considering the fact that the Law is applied as *lex specialis*, its provisions shall be primarily applicable to the rights and obligations in relation to employment of civil servants. In case that certain rights and obligations regarding employment of civil servants are not regulated by the Law as a special law, or some other law or a special delegated legislation, general regulations on labour as *lex generalis* shall be applicable. Furthermore, the Individual Collective Agreement for State Authorities (“Official Gazette of RS”, numbers 23/98 and 11/09) shall be applicable to rights and obligations in relation to employment of civil servants. The implementation of provisions of the Law to general service employees is significantly reduced that in case of civil servants. General regulations on labour and an individual collective agreement shall be applicable to the rights and obligations of general service employees unless stipulated otherwise in the Law or some other law. Besides the aforementioned, the Law regulates also the range of persons who are not civil servants but officials, therefore the rules of the Law are not applicable to those persons. Pursuant to the norms of the Law, the following persons shall not be considered civil servants: Members of Parliament, the President of the Republic, the arbiters of the Constitutional Court, members of the Government, arbiters, public prosecutors, deputy public prosecutors and other persons appointed by the National Assembly, the persons appointed by the Government, as well as persons who have a status of an official according to the special regulations.

Regarding employees in autonomous province authorities and local self-government authorities, the Article 189 of the Law regulates that also in future, the provisions of the Law on labour relations in State bodies (“Official Gazette of RS”, nos. 48/91, 66/91, 44/98-other law*, 49/99-other law**, 34/01-other law***, 39/02, 49/05-decision of Constitutional Court of the Republic of Serbia, 79/05-other law, 81/05-corrigendum of other law and 83/05 - corrigendum of other law) shall be applicable to labour relations in the autonomous province authorities and local self-government authorities, until enforcement of the special law. The special law has not been enforced until this moment.

To the rights and obligations resulting from the labour relations of persons employed in public services (for example employees in schools, hospitals, museums, social protection institutions, Employees Pension and Disability Insurance Fund, National Employment Agency, etc.), the general regulations on labour shall be applicable which primarily implies the provisions of the Law on Employment (“Official Gazette of RS”, nos. 24/05, 61/05 and 54/09). The same legal framework, i.e. provisions of the Law on Employment and provisions of the corresponding collective agreement shall be applicable also to the rights and obligations from the labour relation of the employees in public companies (for example to employees in the companies Telekom Srbija, EPS, NIS, etc.). Furthermore, provisions of the Law on Labour shall be applicable to rights and obligations from the labour relation of the employees in the independent regulatory authorities in the Republic of Serbia.

The Law on Civil Servants stipulates the basic principles such as: impartiality and political neutrality. A civil servant is obliged to act in compliance with the Constitution, law and other regulations, pursuant to the rules of profession, on impartial and political neutral basis. A civil servant shall not express and represent one's own political beliefs. A civil servant is

responsible for legitimacy, competence and efficiency of one's own work. Nobody shall influence a civil servant to do or not to do something contrary to the regulations.

According to the Law on Civil Servants, the High Civil Service Council shall be entitled to specify the Code of conduct for civil servants for employees in the state authorities and services of the Government. Pursuant to that authorisation, the High Civil Service Council in February 2008 prepared the Code of conduct for civil servants ("Official Gazette of RS", number 29/08) with the objective to specify more closely the standards of integrity and rules on behaviour of civil servants regarding state authorities, Government services and professional services of administrative provinces and inform public on behaviour which could be expected from civil servants. Among other things, the Code implementation shall be monitored also through implementation of provisions of the Law on Civil Servants referring to the responsibility of civil servants. The violation of the Code of conduct for civil servants which is not included in any of duty violations in reference to labour relation stipulated in the Law on Civil Servants or a special law, shall be regarded as a slight duty violation of labour relation.

Filling the vacancy in state authorities is regulated by the Law on Civil Servants, Regulation on conduct of internal and public competition for filling vacancies in state authorities, Rulebook on professional qualifications, knowledge and skills tested in the selection procedure, method of their testing and standards for selection regarding vacancies.

Employment in state administration is based on two basic principles: the principle of equal opportunities for everybody and the merit principle (selection based on qualifications, knowledge and skills of the candidate, i.e. candidate competencies). An adult citizen of the Republic of Serbia may be employed as a civil servant who has a stipulated education and meets also other conditions specified in the Law and other regulations, as well as the Rulebook on the Internal Systematization and Job Description within the state authority.

In defining the European standards in relation to the civil servant law, especially character and values of state service, in accordance with the recommendations from SIGMA which starts from the obligation of the state that in the course of public interest and obligation of provision of public services, ensures efficient, professional and unbiased operation of the public administration, the civil servant law in the Republic of Serbia is based on the Law on Civil Servants which regulates the position of civil servants and in sub-legislative documents which guarantee obedience of the legitimacy principle of public administration regulation; depolitisation of the public administration – a precise distinction between political and top civil servants position; employment and promotion in state service based on abilities, knowledge and competencies of the candidates – merit system; the complete system of professional training of civil servants; regulation of all cases in which civil servants may be found in the conflict of interests; the dual level system in solving civil servants relations, i.e. system of judicial control of administrative documents; strengthening all mechanisms of human resource management, especially by establishment of the Human Resource Management Service as the central service with such authorization; righteous regulation of the assessment on business activities of civil servants with sufficient guarantees that civil servants may be protected against unjust assessments; the payment system in state service is established by the law; classified system of professions in public administration is the precondition of the quality system of promotion, assessment and defining the salaries of civil servants; categories and hierarchy position of civil servants are conditioned by the work they

conduct, and the responsibility level is in relation to it; conditions and requests for employment in state authorities were conceptualized in order to provide everybody with an equal opportunity for vacancy application, and the selection of candidates is based on the merit system; employment procedure is open and transparent in order to provide selection of the best candidate; unsatisfied candidates have the right for objection regarding the decision on candidate selection; mobility of civil servants is greatly in relation to their acceptance, unless it is a public interest or service interest; promotion to higher work place or position is based exclusively to merit system; the law excludes discrimination regarding age, skin colour, sex, sexual orientation, race, ethnical and racial belonging, social origin and political beliefs; civil servants are disciplinary responsible for disobedience civil duty; a civil servant in procedures of disciplinary penalties has a right to objection against such decisions; employment of civil servant may be terminated only in the cases stipulated by the law; a civil servant has a provided judicial protection against all decisions regulating the obligations and rights from the labour relation.

All civil servant positions are divided into appointed civil servants and civil service staff. The division is based on the principle of job complexity, accountability for business operations of the state authority and conduct of work as well as range of authorisations. The appointed civil servants is a job position in which a civil servant has authorisations and obligations in relation to management, adjustment and organisation of work in the state authority. The remaining job positions are civil service staff, including also the Head positions of the small organisational units in state authorities such as Head of division, Chief of section and Head of Group.

The appointed civil servants are occupied by persons appointed by the Government and who occupy management job positions in ministries, special organisations and Government services, as follows: assistant ministers, secretaries in ministries or Head of administrative authorities within ministries. Their job positions, at higher levels, now obtain the character of professional and competent work and their positions shall not further on depend on change in power.

Although the status of appointed civil servants and civil service staff does not differ basic competition, there are certain differences between the two. One of the basic differences is the method of being appointed in the job position. Work in the position of appointed civil servant is always based on the appointment document. The employment of the civil service staff is based on internal documents of the managers of the state authorities and Government services or manager of National Assembly services, the President of the Republic or the Constitutional Court – decision on transfer or decision on employment.

The appointed civil servants are the top level job positions in which persons may work as civil servants and to which they may be promoted. In the state authorities, the positions shall become the job positions of: assistant minister, secretary of ministry, manager of administration authority within ministry, assistant manager of administration authority within ministry, manager of a special organisation, deputy and assistant manager of a special organisation and manager of administrative district. The Law also regulates the job positions of the manager of Government service, deputy and assistant manager of the Government service, deputy and assistant of the General Secretary of the Government, Republic Public Solicitor and his deputies.

Executive job positions shall be classified regarding the titles. Classification is based on the job position complexity, responsibility, required knowledge, abilities and conditions for conduct of business activities of the job position.

The classification system in relation to job positions is established by the Law on Civil Servants and directed exactly to creating the preconditions for rewards and promotion primarily considering the job positions in which the civil servant is working and only secondarily his work experience. The titles are not obtained by civil servants, but they are in relation to business activities in relation to the job position. The titles are senior counsellor, independent counsellor, counsellor, junior counsellor, associate, junior associate, assistant and junior assistant.

The precise data on the number of employed civil servants and general service employees shall be viewed in the answer to the question number 37.

42. How are civil servants and public employees recruited (on national, regional and local level)? Are recruitment and promotion based on merit and competence? What is the status of public employees? Is there legal framework regulating their status, job classification system, career promotion system, accountability and salaries of civil servants and public employees?

Filling in the job vacancy in the public administration authorities is regulated in the Law on Civil Servants, in the Articles 45-75 ("Official Gazette of RS", nos. 79/2005, 81/2005, 83/2005, 64/2007, 67/2007, 116/2008 and 104/2009), by the Regulation on conduct of internal and public competition for filing in the job vacancies in the state authorities ("Official Gazette of RS", no. 41/2007- cleaned text and 109/2009) and the Regulation on professional qualifications, knowledge and skills tested in the selection procedure, the method of their testing and criteria for selection to job positions ("Official Gazette of RS", nos. 64/06, 81/06, 43/09 and 35/10).

The Law on Civil Servants includes the principle of equal availability of job vacancies; in the event of employment in the state authority, all job vacancies are available to the candidates under equal conditions, and the candidate selection is based on the professional qualifications, knowledge and skills. An adult citizen of the Republic of Serbia may be employed as a civil servant who has a stipulated education and meets also other conditions specified in the Law and other regulations, as well as the Rulebook on the Internal Systematization and Job Description within the state authority.

In the event of employment to state authorities, the attention is paid to the fact that representation of nationalities, gender and the number of persons with disabilities represent as much as possible the population structure.

In order to start filling in the job vacancy, it is required that the job position is specified in the Rulebook on the Internal Systematization and Job Description and that it matches the adopted human resources plan. The human resources plan is specified for every state authority and the number of job positions for every budget year which may be filled in according to the assets provided for that purpose in the budget of the Republic of Serbia.

Civil servant positions are divided into civil service staff and appointed civil servants. The appointed civil servants in public administration authorities, Government services and professional services of the administrative districts are: assistant minister, secretary of ministry, manager of administration authority within ministry, assistant managers of administration authority within ministry, manager of a special organisation, deputy and assistant manager of a special organisation, manager of Government service, deputy and assistant manager of Government service, deputy and assistant manager of the General Secretary of the Government and manager of administrative district.

The method of occupying the job vacancy depends on the fact whether civil service staff vacancy or appointed civil servants are filled in. Pursuant to the Law on Civil Servants, the civil service staff position is always filled in by relocation of the civil servant within the same state authority or from other one or employing the person who previously did not have a status of civil servant. The appointed civil servant position in the state authorities, Government services and administrative districts is always filled in by appointment in the act of the Government.

The general service employee shall be employed in relation to the employment contract. When all legal requirements are met for filling in the executive job vacancy, the manager of the state authority shall decide whether the job vacancy shall be occupied by transfer of civil servant from the state authority he manages or through transfer of civil servant based on the agreement on transfer from some other authority, organising internal or a public competition for employment. The public administration authority of the Government service which require to fill in the job vacancy are obliged to submit the decision on occupancy and submit it accompanying the proofs of meeting the requirements for filling in the job vacancy and statement of the manager on the method of filling in the job vacancy to the Human Resources Management Service which is competent to determine whether all requirements for filling in the job vacancy are met.

If internal competition for employment is carried out, it shall be prepared by the Human Resources Management Service which shall announce it on its Web page, notice board and on the premises of the state authority in which the job vacancy shall be filled in. The public competition for employment shall be announced by the authority filling in the job vacancy in the daily newspaper or Official Gazette of the Republic of Serbia, and the Human Resources Management Service shall publish it on its Web page.

The job ad on internal/public competition for employment shall include data on state authority, job position, requirements for employment in the job position, location, professional qualifications, knowledge and skills tested in the selection procedure and the method of their testing, deadline for application submission, the date of the beginning of selection procedure, proofs submitted with the application, person in charge of providing information, etc. The deadline for application submission for the internal/public competition for employment shall not be less than eight days from the advertisement date. Advertisement on internal competition shall include also data on which civil servants are entitled to participate in the competition, and the advertisement on public competition data in relation to probation.

The rules on conducting the public competition shall apply to conducting the internal competition. It implies that the rules on selection procedure conducted by the Selection panel and obligation of the manager of the state administration authority to select one candidate from the selection list, which are regulated within the public competition institute, are applicable also within the internal competition institute.

The internal and public competition for filling in the executive job vacancy in the state administration authorities shall be carried out by the Selection panel appointed by the authority management where one member shall be a civil servant employed in the Human Resources Management Service. The task of Selection panel is to carry out the selection procedure whose objective is to conduct the candidate selection through various eliminatory phases and to select and employ the best candidates.

The criteria for candidate selection in the procedure for filling in the civil service staff vacancies and appointed civil servants positions in the state authorities and Government services are regulated in the Rulebook on professional qualifications, knowledge and skills tested in the selection procedure, the method of their testing and criteria for selection to job positions, stipulated by the High Civil Service Council.

In the event of selection procedure, commission for employment selects the candidate by testing professional qualifications, knowledge and skills of candidates participating in the selection procedure. Professional qualifications, knowledge and skills may be tested in writing or verbally by use of various methods. The method for testing professional qualifications, knowledge and skills depend on stipulated conditions for work in the job position and other requirements resulting from the description of tasks in relation to the job position. The members of Selection panel for filling in the executive job vacancy independently (in cooperation with the employees in human resource authority unit) shall decide in advance how, i.e. using which method, they shall test in the selection procedure, define the criteria for assessment and prepare tasks/questions for knowledge test. In the event of selection procedure, when the skills of logical and analytical reasoning, organisational abilities and management skills of the candidates are tested, the test shall be carried out by the psychologists employed in the Human Resources Management Service indirectly, through standardised tests of the competent vocational organisations.

The candidates, who met the criteria required by the selection with the best result, shall be short-listed by Selection panel. The short-list with maximum three candidates shall be submitted to the authority manager who shall be obliged to select one short-listed candidate. Before the decision on selection, the authority manager may carry out an interview with the short-listed candidates. If the selected candidate is not a civil servant, the authority manager shall prepare a decision on his employment, whereas if the selected candidate is already a civil servant, the authority manager shall prepare the decision on his transfer. Internal/public competition for employment shall be considered invalid if the Selection panel determines that none candidate met the criteria stipulated for selection.

The decision on employment, i.e. decision on transfer shall be submitted to all candidates having participated in the selection procedure. The candidate participating in the selection procedure is entitled within eight days from the date of submission of decision to lay the appeal to the Government Appeals Board if one considers that the selected candidate does not meet requirements for employment at the job position or that such irregularities occurred

during the selection procedure which could affect the objectivity of its result. Under monitoring of the official person of the state authority, the candidate who was participating in the selection procedure is entitled to view the complete documentation of the public competition.

Everybody who is being employed in the state authority for the first time, apart from probationers, civil servants who work in the cabinet and appointed civil servants shall be under the probation. The probation for employment for an unspecified time period shall last six months. The probation of the civil servant is monitored by one's supervisor who after the probation period, grants the written opinion on the fact whether the civil servant satisfied during probation period to the manager of the state authority. If the civil servant proves to be unsatisfactory at the probation period, one's employment shall be cancelled and one shall not be entitled to compensation.

Internal or public competition for employment shall also be carried out in order to fill in the appointed civil servants position. Internal competition for employment is obligatory if the position is filled in by the Government. After the expiration of time for which one was appointed, the civil servant may be re-appointed in the same position without conducting internal or public competition for employment at the proposal of the one responsible for one's appointment.

The first competition for appointment in all positions after enforcement of the Law on Civil Servants shall be carried out as a public competition. For the positions filled in by the Government in the state authorities, Government services and administrative districts, internal, i.e. public competition shall be advertised by the Human Resources Management Service, and conducted by Selection panel.

Appointing of the Selection panel is under jurisdiction of the High Civil Service Council, an authority whose members are appointed by the Government for the period of six years, including appointed civil servants and professionals in the fields significant for functioning of state administration. Selection panel for every individual position being filled in shall be appointed by the High Civil Service Council among their members and professionals for a certain field, of whom one may be a civil servant from the authority in which the position is being filled in. When internal competition is conducted for filling in the position, the right to participate shall have civil servants from the state authorities and Government services who were in the previous two years assessed with the mark "especially excels", who have already been working in the position or whose work at the position ended due to resignation, the time for which they were appointed expired or the position was cancelled. The selection procedure shall be conducted by Selection panel, to whose activities the provisions of the Rulebook on professional qualifications, knowledge and skills tested in the selection procedure, the method of their testing and criteria for selection to job positions shall be applicable. For all positions, the test of logical and analytical reasoning, organisational abilities and management skills is obligatory, as well as an interview with the candidates participating in the selection procedure. After the end of selection procedure, the commission prepares the list with maximum three candidates who met criteria specified for the selection to the position with the best results and submits it to the authority manager, i.e. person in charge of proposing the candidate for the position to the Government.

Internal and public competition for employment shall be considered invalid if one candidate is not suggested for the position to the Government or if the Government does not appoint the proposed candidate.

As aforementioned, the job vacancy may be filled in by transfer of civil servant within the same authority or transfer based on the agreement on taking civil servants from the other state authority. This possibility refers only to the civil service staff positions. In order to be transferred from lower to immediate higher civil service staff position, the civil servant is required to meet the conditions for promotion regarding one's assessment of work. The civil servant may be transferred to immediate higher job position if one has been twice consecutively granted the assessment "especially excels" or four times consecutively the assessment "excels".

Promotion of the civil servant depends on competence, work results and requirements of the state authority. The civil servant has the right and duty to professionally improve according to the requirements of the state authority. All civil servants are equal when promotion is decided upon.

The assessment system of civil servants in the Republic of Serbia is carried out once annually and in the event of decision on the assessment, two criteria groups shall be considered: the first group includes the accomplished work results in relation to the established work goals, whereas the other group includes criteria for work behaviour such as independence, creative ability, initiative, precision and conscientiousness, quality of cooperation with others and possible additional criteria, of which every criteria group participates with 50% in the final assessment. An evaluator is always an immediate manager of the related civil servant, and possible assessment marks are those included in the five level scale: unsatisfactory, satisfactory, good, excels and especially excels. The assessment mark shall be explained, a decision shall be made on it and it shall be entered into the file of an employee.

Primarily, the general regulations on labour shall be applicable to the rights and obligations of general service employees and the Law on Civil Servants on subsidiary basis. The general service employee shall be employed by Agreement on Labour, which shall on mandatory basis include the provision by which the employer may change those parts of the agreement in the decision whose unilateral application is allowed by the law. The Government shall classify the job positions of the general service employees in the regulation. The job positions of general service employees, conditions for employment in them and the number of general service employees shall be regulated by the Rulebook.

The rights and obligations of general service employees shall be decided by the manager or a civil servant authorised by the manager in a written document. A general service employee is entitled to a salary, compensations and other payments in compliance with the law regulating the salaries in state authorities. The provisions of the Law on Civil Servants regarding the transfer and allocation of civil servants shall be applicable accordingly to general service employees. The decision on transfer i.e. allocation of general service employees shall replace the corresponding provisions of the Labour Agreement by statutory power. If a general service employee refuses transfer, i.e. allocation, one's Labour Agreement shall be cancelled. Labour Agreement shall be cancelled to a general service employee always when there is none job position to which one can be transferred, i.e. allocated due to change of internal organisation of state authority or organisation of state authorities system.

The Provincial Assembly Decision on Provincial Civil Servants (*Official Journal of APV*, 9/09-consolidated version, 18/09-change in the name of the act) defines rights and duties of provincial civil servants, recruitment procedure, classification of jobs of provincial civil servants, professional development and training, promotion, disciplinary and material responsibility and other matters of importance for the realisation of rights and duties of provincial civil servants, as well as certain matters relevant for regulating the realisation of rights, duties and responsibilities of general service employees. Provisions of this Decision are in accordance with the provisions of the Law on Civil Servants, however, some of the arrangements have been simplified with regard to the type and complexity of work performed by provincial civil servants and general service employees.

The mentioned Decision entails legal framework for the adoption of the following provincial regulations regulating legal and work status of provincial civil servants and general service employees:

- Provincial Regulations on the Evaluation of Provincial Civil Servants (*Official Journal of APV*, No. 17/07, 18/09- change in the name of the act).
- Provincial Regulations on the Procedure and Manner of Launching and Implementing Internal Advertisement and Competition to Fill in Vacancies (*Official Journal of APV*, No. 17/07, 18/09- change in the name of the act).
- Provincial Regulations on the Distribution of Jobs in Provincial Authorities (*Official Journal of APV*, No. 17/07, 21/07, 07/09 and 18/09- change in the name of the act),
- Provincial Regulations on the Salaries of Provincial Civil Servants at Executorial Job Positions and General Service Employees (*Official Journal of APV*, No. 07/10, 09/10, 12/10 and 19/10),
- Provincial Regulations on the Salaries of Appointed Persons and Provincial Civil Servants at Managerial Job Positions and General Service Employees (*Official Journal of APV*, No. 07/10, 09/10, 12/10 and 19/10).

43. Are there training institutions for civil servants? Please provide statistics on training provided in the last three years. What percentage of civil servants are (a) women and (b) from ethnic and national minorities (please provide details of grade and seniority if available).

The Law on Civil Servants (which is applied only to state bodies) lays down, within its provisions on working principles of civil servants, that a civil servant shall have the right and obligation to improve professionally in accordance with the needs of the relevant state authority.

Professional training is based on programmes which define a form and contents of training, as well as the amount of the funds allocated to the training. Pursuant to the Law on Civil Servants, the Government shall pass the general programme of professional training for civil servants in state authorities and Government services for every year separately, on proposal from the Human Resource Management Service. The Human Resource Management Service is a Government service, established by the Regulation establishing the Human Resource Management Service (*Official Gazette of the RS* No. 106/05, 109/09), in line with the Law on

Civil Servants. The Service performs expert tasks related to the management of human resources in ministries, special organisations, Government services, and expert services of administrative districts, as well as to the preparation for the Government of the proposal of the professional training programme for civil servants and organisation of the professional training in compliance with the programme.

The general professional training programme is based on horizontal, common needs of state authorities in compliance with common, horizontal tasks or those tasks performed in all or majority of state authorities.

Professional training of civil servants in state authorities is also carried out as an additional training conducted by state authorities based on a special professional training programme. The special professional training programme is adopted by the Manager of the authority concerned, for every year separately, in accordance with specific needs of the state authority. Hitherto, the Government has adopted four general professional training programmes for civil servants at the proposal of the Human Resource Management Service, namely for the years of 2007, 2008, 2009 and 2010. The programmes aim at meeting the needs for professional improvement of different categories of civil servants, depending on the hierarchy of their positions (civil servants in appointed positions, managers of smaller internal units in state authorities, newly employed civil servants, as well as other civil servants). The programmes are also designed with an aim to meet the needs of civil servants depending on the type of tasks they perform.

In 2008, 201 training events in total were carried out with 3,327 participants, in 2009, 159 training events in total were carried out with 2,641 participants. In 2010, 173 training events were carried out, with 3,118 participants.

For the purpose of more complete realization of training programmes of higher quality, cooperation with donors has been established, and the support of projects has been provided. Special attention has been devoted to the creation of a pool of trainers, civil servants who, after having undergone systematic training, have been engaged to carry out training in the area of medium-term planning, in the area of preparation, management, implementation, monitoring and evaluation of projects within IPA Component I. In 2010, a group of trainers were also trained to carry out a training programme regarding the IPA Components III and IV.

A specialised training on EU, encompassing training on EU and special issues within the competence of certain ministries, is carried out by the Serbian European Integration Office. The Serbian European Integration Office (hereinafter: SEIO) is a Government service, established by the Regulation Establishing the European Integration Office (*Official Gazette of the RS* No. 126/07, 117/08, 42/10, 48/10). The Government Regulation prescribes the organisation and scope of work of SEIO which includes, *inter alia*, expert, administrative and operative tasks related to the organization of training on EU, in cooperation with other state authorities and Government services.

Training topics regarding European integration issues are selected on the basis of training needs assessments (carried out on an annual level through a questionnaire which is answered by working groups/expert subgroups of the Coordination Body for the EU Accession Process), NPI and Annual Progress Reports of the European Commission.

In the period 2008-2009, following the conclusion of SAA and its implementation, within the training events that were carried out, the number of sectoral topics was increased and the priority was given to the topics regarding harmonisation of national legislation with certain areas of the EU *acquis*, experiences of the countries in the region that were already EU Member States, foreign and domestic coordination of European affairs. Techniques of negotiation and lobbying were specially considered, and target groups also included, besides the EU Departments of Ministries, the members of expert Subgroups of the Coordination Body for the EU Accession Process and legislative institutions, the working bodies in charge of the development of certain laws (including representatives of civil society), agricultural inspectors, judges, prosecutors, employees in the sector of culture, the media and other relevant actors on whom the implementation of SAA and realisation of European goals of Serbia depends. Special support within the capacity building was provided for the Translation Coordination Department in the Serbian European Integration Office.

In the most recent period, the focus of training has been on special aspects in the implementation of the harmonised legislation and institutional strengthening, on specific and almost individual professional training, acquisition of specific, vocational knowledge regarding certain areas of the EU *acquis*. The target group has been expanded to include the employees in local self-government bodies.

In 2010, the EU accession process was supported by the project whose official title is "European Integration – Scholarship Programme" financed from IPA 2008 funds (Project Reference: Europe Aid/128558/C/SER/RS), which will enable practical training programmes for 180 civil and public servants, 30 internships in EU institutions and institutions of EU Member States, as well as the training of 40 Community multipliers.

In the organisation of the training, SEIO has cooperated with different domestic and foreign partners using different sources of financial assistance for the needs of training, owing to the fact that it does not have its own resources allocated to this purpose.

In the period 2008-2010, the European Integration Office, independently or in cooperation with domestic and foreign institutions, organised 143 training events in total (seminars, workshops, round tables, conferences, study visits, etc.), covering nearly 70 different topics regarding European integration. In the period 2008-2010, 448 days of training were realised with 3,464 participants (2,446 civil servants, 424 participants from the local level of authority, and employees of the National Bank of Serbia and the Serbian Chamber of Commerce; certain seminars were attended by representatives of NGOs and the media, representatives of trade unions and the Serbian Association of Employers, whereas the translators engaged in the translation of the EU *acquis* had specialised training).

The Serbian European Integration Office is a national coordinator for TAIEX. According to official TAIEX data, from 2008 to 2010, TAIEX, in cooperation with Serbian institutions, organised a large number of events, i.e. 181 in Serbia and 505 events attended by 8,657 participants from Serbia, out of which 95% are civil servants. In the same period, 385 applications were submitted for TAIEX.

At the level of the Autonomous Province of Vojvodina, Article 22 of the Provincial Assembly Decision on Provincial Civil Servants lays down that a provincial civil servant shall improve

his/her professional abilities and improve professionally for the purpose of personal advancement and increase of the efficiency of the provincial body concerned. It also lays down that provincial authorities and the Human Resource Management Service, as an expert service established to this purpose, shall ensure professional training of provincial civil servants by organising workshops, practice, seminars, and courses.

The Executive Council of the Autonomous Province of Vojvodina has passed the Decision establishing the Human Resource Management Service (*Official Journal of the APV* No. 18/2006) as an independent provincial authority that is financed from the budget of the Autonomous Province of Vojvodina. The Human Resource Management Service organises and coordinates professional development, training and additional education of employees in provincial authorities, carries out detailed analyses of training needs of employees and monitors and analyses the employees' professional training and education effects.

Professional training of provincial civil servants is carried out in accordance with a general professional training programme for provincial civil servants adopted by the Government of the Autonomous Province of Vojvodina at the proposal from the Human Resource Management Service. General professional training programmes for provincial civil servants and the dynamics of their realisation have been based on demonstrated needs of provincial administration bodies, which were defined by analysing the Questionnaire on the professional training needs answered by provincial civil servants.

Hitherto, the Government of the Autonomous Province of Vojvodina has passed four general professional training programmes, namely for 2007, 2008, 2009 and 2010. Types of training courses that the general professional training programmes included were selected in line with the professional training needs of various categories of provincial civil servants, depending on the type of tasks they perform and on the hierarchy of the position they have. The training courses also included provincial civil servants from the Assembly of the Autonomous Province of Vojvodina.

Special emphasis was put on the establishment of a group of provincial civil servants who would be trainers/lecturers and who were selected on the basis of their work experience and expertise in certain areas. After the training was completed, a series of seminars was held where the previously trained civil servants had the role of lecturers and earned high marks from the seminar participants who filled in anonymous evaluation forms.

A significant number of training events in the period 2008-2010 was directed towards the education of provincial civil servants in the area of preparation, management, implementation, monitoring and evaluation of projects within IPA programmes. For the purpose of more complete and higher-quality training, cooperation with lecturers and donors from Hungary was established. Having in mind the special nature of thematic areas, target group for these seminars was also expanded to include the employees of local self-governments from the territory of the Autonomous Province of Vojvodina.

In 2008, 11 training events in total were carried out with 550 participants, in 2009, 8 training events in total were carried out with 604 participants, whereas in 2010, 6 training events were carried out with 402 participants.

The number of training events carried out in the period 2008-2010 was much lower as compared to the number of training events that were envisaged by the general professional training programmes for provincial civil servants. The reason for the small number of training events that were carried out was a significant reduction of budget resources available to the Human Resource Management Service for professional development and training of provincial civil servants.

Professional development and training of provincial civil servants is carried out based not only on general professional development and training programmes for provincial civil servants, but also through realisation of special professional development and training programmes developed and independently adopted by each provincial authority with the approval of the Government of the Autonomous Province of Vojvodina for every year and in line with specific needs of the provincial authority concerned.

At the level of local self-government, the Training Centre of the Standing Conference of Towns and Municipalities (hereinafter: SCTM) (as a part of the Department for Services to Members of the Standing Conference of Towns and Municipalities) carries out activities that contribute to the establishment of a sustainable professional development and training system at local level as one of key mechanisms for the establishment of highly professional, accountable and efficient local self-government.

The Standing Conference of Towns and Municipalities – the Association of Towns and Municipalities of Serbia is an independent, non-partisan, non-governmental and non-profit association within which towns and municipalities of the Republic of Serbia may associate on voluntary basis for an indefinite time period and for the purpose of development and improvement of local self-government, its protection and realisation of common interests. All towns and municipalities in Serbia are members of SCTM.

Basic activities of the Training Centre of the Standing Conference of Towns and Municipalities are the following: regular monitoring and analysis of the capacity building/training needs of SCTM members (through annual questionnaires on the needs of members, work of SCTM committees, direct contacts with members, etc); establishment of partnership relations and improvement of cooperation of key actors in the process of planning and realisation of training events intended for local self-governments; continuous collection and dissemination of relevant information, training material and examples of good practice to members and all key partners at local, national and international level; improvement of standards in the area of preparation, realisation, monitoring and evaluation of training events intended for local self-governments; development of thematic training programmes, and organisation and implementation of training events intended for local self-governments in line with identified needs; development and implementation of other forms of professional and expert support to local self-governments in capacity building (through the so-called municipality service packages).

In the period 2008-2010, SCTM, in cooperation with many partner institutions and donor-supported programmes/projects directly realised or was a partner in the realisation of 211 training events attended by over 4,900 representatives of local self-governments in Serbia.

In the Annex you can find tables – statistics on training events realised by the Human Resource Management Service, the Serbian European Integration Office, the Human

Resource Management Service of the Autonomous Province of Vojvodina, and the Standing Conference of Towns and Municipalities in the last three years (2008-2010).

A small number of civil servants of the Republic of Serbia participated in training events organised by the Regional School of Public Administration.

Percentage of civil servants who are (a) women and (b) from ethnic and national minorities

(a) According to the data collected by the Human Resource Management Service, the share of women in state authorities (excluding the Ministry of Internal Affairs and the Security-Information Agency) is the following:

in ministers' cabinets – 70%; in appointed positions – 40%; among employees with permanent employment contracts – 55%.

Among the employees with permanent employment contracts, the share of women in grades into which executorial positions are classified in accordance with the Law on Civil Servants is the following:

- 1) Grades which require higher education in second-degree academic studies, i.e. undergraduate studies lasting for at least four years
in Senior Adviser positions – 52%,
in Mid-level Adviser positions – 64%
in Adviser positions – 58%
in Junior Adviser positions – 76%
- 2) Grades which require higher education in first-degree academic studies, i.e. undergraduate studies lasting for up to three years
in Associate positions – 54%
in Junior Associate positions – 74%
- 3) Grades which require secondary education
in Clerk positions – 64%
in Junior Clerk positions – 99%
- 4) Employees
in employee positions – 47%.

The data regarding the share of women according to the grades into which executorial positions are classified do not include the employees of state authorities which have different grades pursuant to special regulations.

According to the data of the Ministry of the Interior, the percentage of women as compared to the total number of employees in this Ministry is 21.14%.

According to the data of the Human Resource Management Service of the Autonomous Province of Vojvodina, the share of women in provincial authorities is 69.3% of the total number of provincial civil servants. 71.3% executorial positions are filled by women, while 44.3% managerial positions are filled by women.

Among the staff the share of women in grades into which executorial positions are classified in accordance with the Decision of the Provincial Assembly on Provincial Civil Servants is the following:

- 1) Grades which require higher education in second-degree academic studies, i.e. undergraduate studies lasting for at least four years
 - in Senior Adviser positions – 67 %
 - in Adviser positions – 69 %
 - in Mid-level Expert Associate positions – 70 %
 - in Senior Expert Associate positions – 73 %
 - in Expert Associate positions – 62 %
- 2) Grades which require higher education in first-degree academic studies, i.e. undergraduate studies lasting for up to three years
 - in Senior Associate positions – 68 %
 - in Associate positions – 71 %
- 3) Grades which require secondary education
 - in Senior Clerk positions – 86%
 - in Clerk positions – 75 %.

(b) Article 160 of the Law on Civil Servants (which is applicable to state bodies) lays down what data on civil servants are recorded and these data do not include the information on ethnicity. The Law on Personal Data Protection stipulates conditions for personal data collection and processing. Pursuant to Article 16 of this Law, the data on national affiliation fall into the category of particularly sensitive data, and pursuant to Article 8 of the same Law, gathering and processing of data is not allowed if performed without legal authorisation. Pursuant to the above-mentioned, the data on ethnicity of civil servants in state authorities shall not be recorded and processed.

Pursuant to Article 110 of the Law on Police, provisions of Article 160 of the Law on Civil Servants shall not apply to the employees of the Ministry of the Interior. Although the Ministry of the Interior does not have concrete data on the number of employees who belong to national minorities, since there is no obligation to declare ethnicity, it has been established that 19 national/ethnic minorities compose 9.22% of the total number of employees in the Ministry on the basis of voluntarily given statements on the occasion of concluding their employment contracts.

According to the data of the Human Resource Management Service of the Autonomous Province of Vojvodina, the majority of provincial civil servants in provincial authorities are of Serbian ethnicity – 65% out of the total number of civil servants; Hungarian ethnicity – 6.4 %; Croatian ethnicity – 2.1 %; Montenegrin ethnicity – 2 %; Slovak ethnicity – 1.9 %; Romanian ethnicity – 1.4 %; Rusyn ethnicity – 1.1 %; Roma ethnicity – 0.4 %. Other ethnic communities comprise about 1.2% and they are composed of provincial civil servants of “Bunjevac”, Muslim, Macedonian, Bosniac, Herzegovinian, Ukrainian, and Jewish ethnicity. According to the data of the Human Resource Management Service, 17.2% of the total number of provincial civil servants have not declared their ethnicity.

Annex: statistics on training events realised by the Human Resource Management Service, the Serbian European Integration Office, the Human Resource Management Service of the Autonomous Province of Vojvodina, and the Standing Conference of Towns and Municipalities in the last three years (2008-2010).

44. What are their conditions of service? Is there a Code of Ethics applicable to Civil Servants? If so, how is its application monitored? Are there specific rules applicable to specific categories of civil servants? How is the career development (promotion, transfers, etc.) organised for the civil servants? How is the legal framework regulating these aspects implemented (e.g. indications about the number of people being promoted each year)?

According to the Law on Civil Servants, the High Civil Service Council shall be entitled to specify the Code of conduct for civil servants of civil servants for employees in the state authorities and the Government services. Pursuant to that authorisation, the High Civil Service Council in February 2008 prepared the Civil Service Code of the Standards and Behaviour ("Official Gazette of RS", no. 29/08) with the objective to specify more closely the standards of integrity and rules on behaviour of civil servants regarding state authorities, Government services and competent services of administrative provinces and inform public on behaviour which could be expected from civil servants. Among other things, Code implementation shall be monitored also through implementation of provisions of the Law on Civil Servants referring to the accountability of civil servants. The violation of the Civil Service Code of the Standards and Behaviour which is not included in any of duty violations stipulated in the Law on Civil Servants or a special law is a slight duty violation of labour relation.

Promotion of the civil servant depends on competence, work results and requirements of the state authority. The civil servant shall be promoted by transfer to immediate higher civil service staff position or appointment in the position or higher position, within the same or other state authority. Immediate higher civil service staff position is the one whose activities are carried out with immediate higher title or with the same title but in the job position of the manager of the internal unit within the state authority. A general service employee may be promoted also by transfer to higher payment level, without change of job position, in compliance with the law regulating the salaries within state authorities. All civil servants are equal when promotion is decided upon.

The manager may transfer the civil servant to immediate higher job position if one has been twice consecutively granted the assessment "especially excels" or four times consecutively the assessment "excels" in case there is a job vacancy and the civil servant meets its requirements. Exceptionally, the civil servant transferred to immediate higher job position if one has been twice consecutively granted the assessment "especially excels" may, in spite of not meeting requirements in relation to work experience, be transferred to immediate higher job position if he is once again assessed "especially excels". Assessments which were used as basis for promotion shall not be considered in the following promotion.

The civil servant may be promoted to every position, not only an immediate higher job position, if one has been twice consecutively granted the assessment "especially excels" or if the requirements regarding a job vacancy and work experience required for higher civil service staff position have been met.

The civil servant has the right and duty to professionally improve according to the requirements of the state authority. Professional training of civil servants in state authorities is also carried out as general (horizontal) training planned and conducted by Human Resources Management Service and as a special training conducted by the state authorities in

compliance with their specific requirements. Specific training for EU shall be conducted by the Serbian European Integration Office. The Government shall pass the programme of general professional training for civil servants in state authorities and Government services for every year, at the proposal of the Human Resource Management Service. The Human Resource Management Service shall be also competent for organisation of professional training in compliance with the implemented programme. The general professional training programme shall be based on horizontal, common needs of state authorities in compliance with common, horizontal tasks or those tasks performed in all or majority of state authorities. The special professional training programme for civil servants shall be adopted by the Manager for every year separately, in accordance with specific needs of the state authority. The civil servant may be enabled for additional training significant for the state authority. The civil servant who shall have an additional training is selected in internal competition within the state authority and the preference shall be granted to the civil servant with higher average assessment mark in the last three years.

45. Please indicate if there are temporary staff employments in the public administration? What is the procedure for recruitment of these categories? What is the legal status of these categories – are they considered civil servants and if not, what procedure applies for them becoming civil servants? Please provide data on annual employments of such categories (indicate also the percentage of these recruitments against the recruitments based on open competitions).

According to Law on Civil Servants, the civil servant, by rule, is employed for a non- fixed term. Temporary staff employment may be established in the following cases:

- 1) in order to replace a temporarily absent civil servant, until his or her return;
- 2) due to temporarily increased amount of work, which is not possible to perform with the existing number of civil servants, for a maximum of six months;
- 3) for job positions in the cabinet, until the expiry of term of office of the official;
- 4) in order to train trainees until the expiry of the traineeship period

Temporary employment is established without the internal or public competition, except for employment of trainee. Trainee establishes temporary employment, after the conducted competition.

Temporary staff employment may not develop into non- fixed employment, except for employment of trainee, who, after the end of training, has to pass state or special professional exam and continue the non- fixed employment if there is suitable work place for him/ her and if this is in line with the adopted Human Resource plan. Temporary staff employment terminates when the fixed term according to which it was established ends.

The staff with temporary employment have the status of civil servants, with the emphasis that pursuant to the Law on Civil Servants, civil servants with temporary employment are not graded for their work.

In relation to employment of these categories on annual basis, in 2009 the Law on the Maximum Number of Employees in the Republic Administration (*Official Gazette*, no 104/2009), which establishes that the total number of temporary employees due to increased amount of work, persons employed under the contract for work, contract for temporary and

occasional jobs, through the Youth and Student Union and persons employed on other basis, cannot be higher than 10% of the number of fixed term employees in the republic administration.

According to the Human Resources Management Service of the Government, on 30th November 2010, in the state authority bodies and Government services there was 1169 fixed-term employees due to increased amount of work, 6 trainees and 80 persons employed in the minister's cabinets (without the cabinet of the Vice- President of Government). The stated data do not account for Ministry of Interior, Ministry of Defense, BIA, Administration for Execution of Criminal Sanctions as the administration body within the Ministry of Justice, Ministry of Finance- Treasury Administration, Republic Hydrometeorological Service of Serbia, Republic Statistical Office and Republic Geodetic Authority, since the Law on Setting the Maximum Number of Employees in the Republic Administration does not apply to these authorities.

46. How are the management and middle management recruited and for how long? Who would be politically appointed? Do you have a delimitation between political and expert/management appointments in the public administration? Are there safeguards against the politicisation of the civil service?

Filling the vacancy in state authorities is regulated by the Law on Civil Servants, Regulation on conduct of internal and public competition for filling vacancies in state authorities, Rulebook on professional qualifications, knowledge and skills tested in the selection procedure, method of their testing and standards for selection regarding vacancies.

Pursuant to Law on Civil Servants, the civil servant positions are divided into civil service staff and appointed civil servants positions. The division is based on the principle of job complexity, accountability for business operations of the state authority and conduct of work as well as range of authorisations. The appointed civil servant is a job position in which a civil servant has authorisations and obligations in relation to management, adjustment and organisation of work in the state authority. The remaining job positions are civil service staff positions, including also the manager positions of the small organisational units in state authorities such as Head of division, Chief of section and Head of Group. These job positions (managers of small organisational units in state authorities) shall be filled in by implementation of provisions of the Law on Civil Servants for filling in civil service staff positions within the public administration system and Government services.

The appointed civil servants positions are the top level job positions in which persons may work as civil servants and to which they may be promoted. The appointed civil servants positions are occupied by persons appointed by the Government and who occupy top level job positions in ministries, special organisations and Government services. The appointed civil servants positions in the state authorities and Government services shall be: assistant minister, secretary of ministry, head of administrative authority within ministry, assistant managers of administrative authority within ministry, manager of a special organisation, deputy and assistant manager of a special organisation, manager of Government service, deputy and assistant manager of Government service, deputy and assistant manager of the General Secretary of the Government and manager of administrative district. All those persons shall be appointed by the Government, for the five year period in compliance with the carried out competition. The specified job positions, appointments, now obtain the character of professional and expert work and their positions shall not depend on change in power. The

appointed civil servants position in the state authorities, Government services and administrative districts is always filled in by appointment in the position by the act of the Government.

In order to start filling in the job positions, it is required that the job position (appointment) is specified in the Rulebook on the Internal Systematization and Job Description and that it matches the adopted human resources plan. The human resources plan is specified for every state authority and the number of job positions for every budget year which may be filled in according to the assets provided for that purpose in the budget of the Republic of Serbia.

Internal or public competition for employment shall also be carried out in order to fill in the appointed civil servants position. Internal competition for employment is obligatory if the appointed civil servants position is filled in by the Government.

The first competition for appointment in all positions after enforcement of the Law on Civil Servants shall be carried out as a public competition. For the appointed civil servants positions filled in by the Government in the state authorities, Government services and administrative districts, internal, i.e. public competition shall be advertised by the Human Resources Management Service, and conducted by Selection panel.

Appointing of the Selection panel is under jurisdiction of the High Civil Service Council, an authority whose members are appointed by the Government for the period of six years, including appointed civil servants (6 members) and experts in the fields significant for functioning of state administration (5 members). Selection panel for every individual appointed civil servants position being filled in shall be appointed by the High Civil Service Council among their members and professionals for a certain field, of whom one may be a civil servant from the authority in which the appointed civil servants position is being filled in. When internal competition is conducted for filling in the appointed civil servants position, the right to participate shall have civil servants from the state authorities and Government services who were in the previous two years assessed with the mark “especially excels”, who have already been working in the appointed civil servants position or whose work at the appointed civil servants position ended due to resignation, the time for which they were appointed expired or the appointed civil servants position was cancelled. The selection procedure shall be conducted by Selection panel, to whose activities the provisions of the Rulebook on professional qualifications, knowledge and skills tested in the selection procedure, the method of their testing and criteria for selection to job positions shall be applicable. For all appointed civil servants positions, the test of logical and analytical reasoning, organisational abilities and management skills is obligatory, as well as an interview with the candidates participating in the selection procedure. After the end of selection procedure, the commission prepares the list with maximum three candidates who met criteria specified for the selection to the appointed civil servants position with the best results and submits it to the authority manager, i.e. person in charge of proposing the candidate for the appointed civil servants position to the Government.

The civil servant shall be appointed in position and start exercising rights and obligations in position when the decision on appointment becomes final. Work in all appointed civil servants positions shall last five years and it is always based on the Act on appointment.

After the expiration of time for which one was appointed, the civil servant may be re-appointed in the same position without conducting internal or public competition for employment at the proposal of the one responsible for one's appointment.

Internal and public competition for employment shall be considered invalid if one candidate is not suggested for the appointed civil servants position to the Government or if the Government does not appoint the proposed candidate.

The new public competition for employment shall be conducted if one candidate shall not be proposed for appointment into the appointed civil servants position to the Government or if the Government does not appoint the proposed candidate after the public competition.

The managers of smaller internal organisational units are department managers, sector managers and group managers. Those are executive job positions to which the civil servants are appointed without a time limit in relation to the period of their appointment. Recruitment for those job positions shall be carried out in compliance with the rules valid for filling in the civil service staff positions, specified in the answer to the question number 42.

The status of officials in the state authorities and Government services remained only for state secretaries and General Secretary of the Government. All others in public administration and Government services shall become civil servants appointed in position. The Ministry may have one or several state secretaries who conform to their work to the Minister and the Government. The state secretary assists ministry within the specified authorisations. The Ministry shall not authorise a state secretary for enforcement of regulations nor for voting at the Government assemblies. The State Secretary is an official appointed and terminated by the Government at the proposal of the Ministry and his duty is terminated with the end of duty of Minister and thus the political and expert/management appointment in the public administration were delimited.

The Law on Civil Servants stipulates the basic principles such as: impartiality and political neutrality. A civil servant is obliged to act in compliance with the Constitution, law and other regulations, pursuant to the rules of profession, on impartial and political neutral basis. A civil servant shall not express and represent one's own political beliefs. A civil servant is responsible for legitimacy, competence and efficiency of one's own work. Nobody shall influence a civil servant to do or not to do something contrary to the regulations.

Establishment of the civil servant system based on professional, impartial and efficient functioning of the state authorities are prerogatives in exercising the prevention of public administration politisation.

In defining the European standards in relation to the civil servant law, especially character and values of state service, in accordance with the recommendations from SIGMA which starts from the obligation of the state that in the course of public interest and obligation of provision of public services, ensures efficient, professional and unbiased operation of the public administration, the civil servant law in the Republic of Serbia is based on the Law on Civil Servants which regulates the position of civil servants and in sub-legislative documents which guarantee obedience of the legitimacy principle of public administration regulation; depolitisation of the public administration – a precise distinction between political and top civil servants position; employment and promotion in state service based on abilities, knowledge and competencies of the candidates – merit system; the complete system of professional training of civil servants; regulation of all cases in which civil servants may be found in the conflict of interests; the dual level system in solving civil servants relations, i.e. system of judicial control of administrative documents; strengthening all mechanisms of human resource management, especially by establishment of the Human Resource Management Service as the central service with such authorization; righteous regulation of the assessment on business activities of civil servants with sufficient guarantees that civil servants may be protected against unjust assessments; the payment system in state service is established by the law; classified system of professions in public administration is the precondition of the quality system of promotion, assessment and defining the salaries of civil servants; categories and hierarchy position of civil servants are conditioned by the work they conduct, and the responsibility level is in relation to it; conditions and requests for employment in state authorities were conceptualized in order to provide everybody with an

equal opportunity for vacancy application, and the selection of candidates is based on the merit system; employment procedure is open and transparent in order to provide selection of the best candidate; unsatisfied candidates have the right for objection regarding the decision on candidate selection; mobility of civil servants is greatly in relation to their acceptance, unless it is a public interest or service interest; promotion to higher work place or position is based exclusively to merit system; the law excludes discrimination regarding age, skin colour, sex, sexual orientation, race, ethnical and racial belonging, social origin and political beliefs.

47. Is there a transparent and regulated system of defining the functions and the authority of middle management staff within the administration? Please describe.

In our public administration system, there is a transparent regulated system of defining the competences and accountabilities of the middle management staff within the state administration which may be observed as follows.

The public administration is the part of executive government of the Republic of Serbia conducting administrative jobs within the rights and obligations of the Republic of Serbia. The public administration includes ministries, authorities within ministries and special organisations, and the business activities within these authorities are performed by the civil servants and general service employees.

Pursuant to the Law on Civil Servants ("Official Gazette of RS" nos. 79/05, 81/05 – corrigendum, 83/05 – corrigendum, 64/07, 67/07 – corrigendum, 116/08 and 104/09) regulating the rights and liabilities of the civil servants, the job positions of the civil servants shall be divided in appointed civil servants and civil service staff positions in relation to job complexity, competencies and accountabilities. The appointed civil servants position is a job position in which a civil servant is authorised and accountable in relation to management, adjustment and organisation of work in the state authority. The remaining job positions are civil service staff positions, including also the manager positions of the small organisational units in state authorities such as department managers, sector managers and team managers. Although the status of appointed civil servants and civil service staff positions does not differ basically, there are certain differences between the two. One of the basic differences is the method of being appointed in the job position. Work in the appointed civil servants position is always based on the appointment document. The employment in the civil service staff positions is based on internal documents of the managers of the state authorities and Government services or manager of National Assembly services, the President of the Republic or the Constitutional Court – decision on transfer or decision on employment.

"The middle management structure" is represented by the civil servants appointed in the positions of assistant ministers, assistant manager of the special organisation and assistant manager of the administration authority within ministries and who manage the sector as an internal unit representing the complete area of activities. Pursuant to the specified law, every civil servant is obliged to act in compliance with the Constitution, law and other regulations, according to the rules of profession, on impartial and politically neutral basis. Besides these general principles of activities of civil servants, the job description of every civil servant appointed in the position is specified in the Rulebook on the Internal Systematization and Job Description brought by the authority manager to which the Government gives its approval. The content of the Rulebook is stipulated in the Regulation on principles for Internal

Systematization and Job Description of the job positions in ministries, special organisations and Government services ("Official Gazette of RS", nos. 81/07-cleared text and 69/08). Pursuant to this regulation, the Rulebook of every authority, among other things, shall include internal authority units, their competences and mutual relation, management of internal units, competences and accountabilities of the managers of internal units and the description of their jobs. In practice, it means that every job position representing "middle management structure", i.e. job position of the civil servant appointed to position, is defined in the Rulebook, that the Rulebook establishes the sector managed by him with his competences defined, that the business activities the employee performs are precisely defined in this job position, his competences and whom he is liable as well as job positions of the employees supervised by him.

48. Is there a transparent legal or regulatory basis for actions taken by civil servants? In particular, how is impartiality and non-discrimination of actions by civil servants ensured?

Impartiality and non-discrimination within the actions of civil servants are stipulated in the Law on Civil Servants. One of the principles of actions of civil servants is also a principle of legitimacy, impartiality and political neutrality of the civil servants. A civil servant is obliged to act in compliance with the Constitution, law and other regulations, pursuant to the rules of profession, on impartial and politicompetitiony neutral basis. Besides aforementioned, a civil servant is responsible for legitimacy, professionalism and efficiency of one's own work. Information on actions of civil servants is available to public, pursuant to the law regulating the free access to the information of public importance. The Law on Civil Servants stipulates also the violations of principle of impartiality or political neutrality or expressing and exercising political beliefs at work as a severe violation of duty from employment. the Code of conduct for civil servant ("Official Gazette of RS", number 29/08) closely stipulates the integrity standards and rules of behaviour of civil servants. The civil servant is obliged to conduct professionally and follow the principle of quality and not to give privileges regardless any characteristics or individual characteristics of the person.

49. How is accountability of administrative bodies ensured (e.g. are administrative bodies accountable or answerable for their actions to other administrative, legislative or judicial authorities, and subject to scrutiny by others)? Name structures involved. Does the legal framework comprise regulations concerning disciplinary measures against civil servants? Explain.

The Constitution of the Republic of Serbia ("Official Gazette of RS", number 98/06) stipulates that the Government, besides other competences specified in the Constitution and law, monitors activities of the state authorities (Article 123, point 5). The specified constitutional provision is explained in the Article 3(1) of the State Administration Act ("Official Gazette of RS" nos. 79/05, 101/07 and 95/10) by which the activities of the state authorities are subject to monitoring by the Government. Besides aforementioned, exercising its competence to monitor the Government activities specified in the Constitution (Article 99, paragraph 2, point 1), the National Assembly indirectly monitors also functioning of the state authorities, specified in the Article 3, paragraph 2 of the State Administration Act by which

the National Assembly monitors functioning of state authorities via monitoring the Government and Members of Parliament.

Functioning of the public administration **shall be subject to supervision by the Government.** The Government supervises the work of state authorities, directs state authorities in implementation of policy and execution of laws and other general acts and harmonise their work. The Government through its conclusions shall direct state authorities in implementation of policy and execution of laws and other general acts, shall harmonise their work and shall, for ministries and special organizations, determine time limits for passing legislation if the time limits are not prescribed by law or by the general act of the Government.

Pursuant to Article 7 of the Law on Public Administration, the administrative authorities are independent regarding conduct of their activities and they conduct within and based on Constitution, laws, other regulations and general acts. Pursuant to Article 8 of the same Law, it was stipulated that the state authorities act in compliance with the rules of profession, on impartial and political neutral basis.

The Law on Public Administration stipulates the term and form of internal supervision as the type of monitoring performed by the state authorities, besides others, over other state authorities. The internal supervision includes over the work, inspection, supervision, administrative inspection and other forms of monitoring specified in the special law (Article 45).

Monitoring the activities, as an element of internal monitoring, shall include monitoring the legal and purposeful activities of state authorities and other subjects specified in the Law (Article 46(1)).

Monitoring the legal activities shall exercise the legalisation and other general acts and monitoring the purposeful activities shall exercise the efficiency and economical functioning and purposeful activities of job organisation (Article 46(2)).

Ministry shall not perform monitoring of activities of other ministry (Article 46(3)).

Monitoring the activities of administrative authority within ministry shall be performed by the ministry including that authority (Article 49(1)), and the law may stipulate the ministry for monitoring of activities of the special organisation (Article 50(1)).

If the state authority does not enforce legislation for whose enforcement it is competent, the Government shall enforce it in case its non-enforcement could cause damaging effects to life or health of people, environment, economy or property of the higher value. If the state authority enforced legislation for whose enforcement it is competent, and according to the Government, it is contrary to the law or regulation of the Government, **the Government shall cancel or revoke the regulation and define the deadline for submitting the new regulation.**

The Ministries and special organisations shall submit to the Government at least once a year **a report on their work** which contains the description of the situation in the areas from their

scope of work, information on execution of laws, other general acts and conclusions of the Government and on the undertaken measures and their effects.

Ministries and special organisations are obliged to forward various information, explanations and data related to activities within their competence to National Assembly and the President of the Republic through the Government.

The National Assembly monitors the activities of the state authorities by monitoring the activities of Government and its members.

The courts monitor the legality of individual acts of the state authorities enforced in the administrative issues through administrative dispute. **The Law on administrative disputes** ("Official Gazette of RS", number 111/09) provides, pursuant to Article 198(2) of the Constitution of the Republic of Serbia, the judicial protection of all individual acts not including the right to appeal does not provide any other judicial protection.

Supervision the activities of public agency shall be done as follows:

- the founder appoints and cancels the members of board of directors and manager of public agency, grants the approvals to the annual programme of work, financial plan of public agency and other acts specified in the law;
- the ministry whose competence includes the activities of public agency exercises monitoring of the public agency in the entitled activities of the state administration;
- the ministry competent for finance activities monitors the legal and purposeful use of assets of the public agency and implementation of regulations in relation to finance and financial and accounting business activities;
- the ministry competent for administration activities monitors the implementation of the regulations of official use of language and letters, office activities, business activities with clients and users, as well as efficiency and prompt decisions in administrative dispute, education level of employees making decisions in the administrative dispute and authorisations for making decisions in the administrative dispute.

Ministries observe **constitutionality and legality of the decision being made by the autonomous provinces** within their competence, thus the competent authority of the autonomous province is accountable that, within the deadlines stipulated in the law, proposes to the Government to initiate the procedure for assessment of **constitutionality or legality** of the decision if it considers that it is not in compliance with the Constitution or legalisation, and if the Government initiates the procedure before the Constitutional Court for **assessment** of constitutionality or legality of the **decision**, the Constitutional Court may delay the enforcement of the disputed decision until the decision making (decision of the Constitutional Court). Furthermore, if the competent authority of the autonomous province does not carry out the general act which it enforced within its competence, the competent ministry prescribes it that within the deadline stipulated by the law, takes the measures required for exercising the general act, and if the competent authority of the autonomous province does not takes measures which were prescribed, the competent ministry may determine that the other authority of the autonomous province exercises the general act or the competent ministry shall take the enforcement of the general act for maximum 120 days. In these cases, the competent ministry is obliged to **ask the question regarding accountability of autonomous province authority Principal**.

Pursuant to the Law on Public Administration, in the event of monitoring the activities of the autonomous province authorities in performing the specified activities, the state authorities have all competences regarding monitoring of activities of other public authorisation holders. The autonomous province may, through the authority specified by the autonomous province statute, submit **appeal to the Constitutional court for protection of autonomous province rights** within 30 days from the date of act submission, i.e. performed activity of the state authority, if it considers that the individual act or activity of the state authority or municipal authority, of the city or the city of Belgrade, some right of the autonomous province is violated which is guaranteed by the Constitution or the law.

The Law on Civil Servants ("Official Gazette of RS" nos. 79/05, 81/05 – corrigendum, 83/05 – corrigendum, 64/07, 67/07 – corrigendum, 116/08 and 104/09) regulates the accountability of the civil servants – **disciplinary accountability** for violations of the duties from employment, which may be coarse and light. The accountability for crime or criminal offence does not exempt from disciplinary accountability.

In the last changes of the Law on Civil Servants from 2009, two new severe duty violations are included – **1. duty misconduct regarding informing the supervisor on the doubt of corruption occurrence and 2. coming to work in alcoholic intoxicated condition or under influence of other intoxicating substances, i.e. having alcohol or other intoxicating substances during working hours**. In compliance with the European standards, these changes implemented strengthening the disciplinary penalties for more severe duty violations as follows: in case of these violations, the promotion in service is banned for the duration of four years and defining immediate lower payment level is possible, as well as allocation of the civil servant to the job position with immediate lower title. It is also prescribed that the civil servant against whom the criminal dispute has been raised for the crime performed at work or in relation to work or disciplinary procedure due to severe duty violation, may be allocated from work until the end of criminal, i.e. disciplinary procedure if his attendance at work would endanger the interest of state authority or violate the disciplinary procedure.

In Serbia, enumeration system is traditionally applicable to disciplinary violations, which implies that all violations are stipulated in the Law on Civil Servants, in Article 108 less severe violations and in Article 109, the more severe ones.

The types of disciplinary penalties are defined in Article 109 of the specified Law which stipulates that less severe violations of duty from employment may cause the fine specified in paragraph 1 and for more severe duty violations from employment, the fine amounting 20-30% of full-time salary may be exercised, paid for the month in which the fine was prescribed, in the period of 6 months; defining immediate lower payment level; 4 year ban on promotion; allocation to job position with immediate lower title with the remain of the payment level whose number is the same as number of the payment level of the job position one was allocated from; termination of employment (paragraph 2).

Disciplinary procedure is initiated by the state authority manager, at his own initiative or proposal of supervising person in relation to the civil servant. Disciplinary procedure is initiated by the written conclusion submitted to the civil servant without the right for appeal. The disciplinary procedure shall be conducted and the disciplinary accountability shall be decided upon by the state authority manager. He can establish the disciplinary commission of three members, which shall on his behalf, initiate and conduct the disciplinary procedure and

decide on disciplinary accountability and define the disciplinary penalties. Verbal dispute shall be carried out in disciplinary procedure; the civil servant has the right to present his defence at the verbal dispute. The civil servant may defend himself on his own or through representatives or submit also a written defence for the dispute. The dispute may be held also without attendance of the civil servant due to significant reasons for that and in case the civil servant was regularly competitioned for dispute, i.e. if one was granted an opportunity to defend oneself.

For defining the disciplinary penalty, the accountability level of the civil servant shall be considered, the consequences occurred due to violation of duty from employment as well as subjective and objective circumstances under which the violation occurred; previously defined disciplinary penalty may affect the new one only if it has not been deleted from human resource records yet.

The civil servant who was prescribed the disciplinary penalty of employment termination, the employment shall terminate on the validity date of decision by which the disciplinary penalty is prescribed. The civil servant who was prescribed the disciplinary penalty has the right for appeal to the Government Appeal Board.

The competence for initiating and conducting the disciplinary procedure against civil servants appointed in the position is specially regulated. The procedure against the civil servants appointed in the position by the Government shall be conducted by the High Civil Service Council and against the civil servants appointed in the position by the other state authority, the procedure shall be defined by the acts of that state authority. The procedure against the civil servants appointed in the position by the Government shall be initiated at the proposal of the state authority manager, and in case the civil servant manages the state authority, at the proposal of the Government. The appeal shall not be allowed against the decision prescribing the disciplinary penalty to the civil servant appointed in the position, but the administrative dispute may be initiated.

50. Please describe the role of the Ombudsman in the oversight of administrative bodies. Please indicate if judicial proceedings could be initiated in case the Ombudsman's recommendations are not followed by the administration.

The Constitution of the Republic of Serbia and the Law on Ombudsman authorize the Ombudsman to control the observance of all rights and freedoms of citizens guaranteed in the legal order of the Republic of Serbia by public authorities. However, the Ombudsman has no jurisdiction over the activities of the National Assembly, President of the Republic, Government of Serbia, Constitutional Court, courts and Public Prosecutor's Office.

The Ombudsman controls both the lawfulness and regularity in the work of public administration, primarily taking into account the fairness and expediency of their activities and the respect for the dignity of citizens.

The Ombudsman holds legal powers to examine the irregularities in the activities of public administration, whereas they are legally obliged to cooperate with the Ombudsman during his controlling activities, as well as during the performance of his/her preventive functions –

preventing the violation of freedoms and rights. Refusing to cooperate may result in disciplinary proceedings against an employee of the public administration or in the recommendation for the dismissal of an official held responsible for the abuse of citizens' rights.

Following the conducting of the proceedings, the Ombudsman takes a decision on the shortcoming in the activities of a public administration body, and, if needed, gives a recommendation aimed at its resolving. The Ombudsman has a controlling, preventive and educational role aimed at the improvement in the functioning of public administration.

In accordance with the legal provisions in force, the Ombudsman cannot initiate the court proceedings if a state administration body does not follow his/her recommendation. The possession of such powers would not necessarily correspond to the nature of the Ombudsman as an extrajudicial body, as well as to his/her recommendations, as legally non-binding acts.

However, the Ombudsman currently lacks the authority to impose punishments, or initiate judicial proceedings against the representative of public administration body who refuses to cooperate with the Ombudsman, or obstructs his/her investigation. Granting such authorization would undoubtedly be beneficial and the best international practice in the area would thus be observed.

51. What guarantees exist for the independence of the Ombudsman? Please specify in particular the procedures for its appointment, end of mandate and the allocated financial and human resources.

The Ombudsman is introduced as an independent and autonomous body into the legal system of the Republic of Serbia in the year 2005 by the Law on Ombudsman (*Official Gazette of the RS* No. 79/2005 and 54/2007) of 24 September 2005. It was also provided for in the Constitution of the Republic of Serbia of 2006. According to the Law, the Ombudsman is independent and autonomous in performing his/her duties. Nobody has the right to influence his/her work and actions. He/she cannot be a member of a political party and cannot make any political statements.

The Ombudsman is appointed and relieved of duty by the National Assembly, by a majority vote of all the deputies following the proposal of the Committee on Constitutional Issues. Each parliamentary group in the National Assembly has the right to propose candidates. A candidate has to be a law graduate, having at least ten years of experience, high moral standards and qualifications and significant experience in the protection of civil rights. Several parliamentary groups may propose a joint candidate. The Ombudsman is appointed for a period of five years and the same person may be elected at most twice in succession. According to the Constitution, the National Assembly monitors the Ombudsman's activities. He/she is accountable to the National Assembly for his work. The Ombudsman and his/her deputies enjoy the same immunity as Members of Parliament.

According to the Law on Ombudsman, the term of Office of Ombudsman ceases due to the loss of citizenship, meeting requirements for retirement, becoming permanently physically or mentally unable to carry out his/her duties, in case of death; expiration of mandate, dismissal or resignation.

The Ombudsman is relieved of duty by the National Assembly following the proposal of the Committee on Constitutional Issues or at least one third of the total number of deputies. The Ombudsman may be relieved in the following cases: due to incompetence or negligence in performing his/her duties; if he/she holds other public function or engages in professional activity; if he/she performs the duty or task that might influence his/her autonomy and independence, if he/she performs other duties or acts contrary to the law regulating the prevention of the conflict of interests in performing public functions; if convicted for a criminal offence which makes him/her unsuitable for this function. The Ombudsman may be suspended at the session with the majority of deputies present by a majority of votes of the deputies present if he/she has been remanded in custody; if he/she has been convicted of a criminal offence which makes him/her unsuitable for this function but his/her sentence is still not enforceable.

In accordance with the Rulebook on Internal Organisation and Job Classification relating to Ombudsman's staff (adopted by the Ombudsman having the consent of the National Assembly) 63 employed officials and appointees were defined. On 30 November 2010 there were altogether 62 employees in the Ombudsman's Office. There is need for more employees in the activities related to the controlling of the activities of administration than it is currently defined by the Job Classification Act. The regulations defining the employment in state administration bodies apply to the employees in the Ombudsman's Office.

As of 2010 the Ombudsman has been placed in temporary facilities meeting the basic requirements needed for work for the first time since the establishment of the institution (prior to this he changed five temporary, inadequate facilities). The Government has provided permanent facilities the Ombudsman cannot move in as a complete reconstruction of the building is necessary and it is necessary to provide significant financial funds to this end.

Both spacial and technical conditions needed for the work of the Ombudsman are improved thus enabling him to increase the number of employees and enhance the efficacy of work. The number of his associates is insufficient owing to a large number of complaints and a detailed manner of their processing, establishment of reception offices in Southern Serbia, as well as the scope of authorization of the Ombudsman. On the other hand, it is limited by the Job Classification Act adopted by the National Assembly. For the time being the Ombudsman is trying to resolve the problem through additional project activities.

The basic technical equipment of the institution has been provided. A specially tailored software programme (CUSTOM) for the processing of complaints is going to be provided out of the EU funds until the end of the first quarter of 2011. The mobility, presence all over the country, timely processing of complaints and efficiency of the institution have been attained thanks to the procurement of five automobiles (from the Ombudsman's budget and donations) used for field work and performing investigations.

However, further capacity building of the institution of Ombudsman is necessary in order to respond adequately to the needs and justified expectations of citizens. It is necessary to provide adequate working space, increase the number of employees, purchase new automobiles for investigation teams and trips of the Ombudsman and his associates around the country and provide up-to-date information technology resources for the establishment of "Virtual Ombudsman's Offices" across the country.

Low salaries of the employed in the Ombudsman's Office compared to the complexity and responsibility of their job stand as a great challenge for attaining and maintaining high quality of work and work efficiency. Owing to the above-stated and difficult working conditions, a significant number of employees (18%) resigned in the first three years, switching to either better-paid or less responsible jobs in the administration or in the private sector.

The Ombudsman's Office is not entirely financially independent since the Treasury Administration does not make a difference between the independent state bodies and executive authorities which have to abide by the budget policy of the Government of the Republic of Serbia. Financial resources for the work of the Ombudsman are provided in the budget of the Republic of Serbia. They are defined by the Law on Budget of the Republic of Serbia which is adopted every year by the National Assembly. In accordance with Article 37 of the Law on Ombudsman, the Ombudsman drafts a budget proposal for the following year submitting it to the Government to be included as an integral part of the proposed state budget and sent to the National Assembly for adoption. This mechanism has so far protected the financial independence of the Ombudsman concerning the budget proposal. However, legislation is needed to emphasize and provide in practice the independence of the Ombudsman from the executive power concerning the realization of the budget adopted by the National Assembly.

52. Is access to all official documents granted to the Ombudsman? Is he entitled to suspend the execution of an administrative act if he determines that the act may result in irreparable prejudice to the rights of a person? If so, how is this implemented in practice? Does the Ombudsman have the right to contest the conformity of laws with the Constitution and, if so, how is this implemented in practice?

In accordance with the Law, access to all official documents is granted to the Ombudsman, inclusive of the documents having the highest level of confidentiality. There are no impediments in practice related to the realization of this right. The access of the Ombudsman to the most delicate confidential data is restricted by the safety verification. However, the verification has not been performed since the necessary by-laws have not been adopted.

The Ombudsman is not entitled to suspend the execution of an administrative act. However, he/she may recommend the postponement of execution. Based on the so far experience, the Ombudsman is of the view that it would be beneficial if he had powers to suspend the execution of administrative acts that might inflict an irreparable harm or injustice on a citizen and intends to initiate the amending of regulations in order to get such powers. The said powers would significantly strengthen the formal institutional authority of the Ombudsman.

Under the Law, the Ombudsman has the power to initiate proceedings before the Constitutional Court for the assessment of constitutionality and legality of laws, other regulations and general acts. The Ombudsman received 28 requests in 2010 from citizens and non-governmental organizations related to the initiating of the proceedings for the assessment of constitutionality and legality before the Constitutional Court. The Ombudsman initiated two proceedings for the assessment of constitutionality before the Constitutional Court in 2010. As for the first, the Constitutional Court declared several provisions of the Law on the Amendments to the Law on Public Information unconstitutional, since the Ombudsman was

of the view that they violated constitutional guarantees of the freedom of the media. The second proceedings, relating to which the Ombudsman contested the provisions of the Law on Electronic Communications and the Law on Military Security Agency and Military Intelligence Agency owing to the violations of constitutional guarantees of the right to privacy, was not ended at the time when this report was written.

53. Are there decentralised offices of the Ombudsman?

According to the Law, the Ombudsman is entitled to establish decentralised, local offices. The Ombudsman established the first offices of this kind in the municipalities of Presevo, Bujanovac and Medvedja (all situated in Southern Serbia) in November 2009, in order to increase availability of the institution of the Ombudsman and to ensure more efficient protection and the improvement of human and minority freedoms and rights of the citizens in the area. The Ombudsman employed two local clerks to work in the offices.

The complaints from these three municipalities present 3% of the total number of complaints the Ombudsman has received.

Autonomous Province of Vojvodina

The Provincial Ombudsman presents the independent and autonomous authority of the Autonomous province of Vojvodina ensuring the protection and improvement of human rights and freedoms of individuals guaranteed by the Constitution, ratified and published international treaties on human rights, as well as generally accepted rules of international law, laws and provincial regulations.

The Decision relating to the appointment of the Provincial Ombudsman was adopted on 31 December 2002. He/she was the first Ombudsman to start working in the Republic of Serbia.

54. Please provide concrete data regarding complaints to the Ombudsman and how they were followed up for the last few years. Please provide data regarding how the government takes on board recommendations of bodies in charge of administrative control. Please provide a detailed table indicating the activity of the Ombudsman per year since 2008 (number of received complains, number of cases solved, number of recommendations, number of followed recommendations).

Ord. numb.	Contacts with citizens and actions of the Protector of Citizens	2007	2008	2009	2010	Total
1.	Complaints received	406	1.030	1.766	2.650	5.852
2.	Other contacts with citizens (phone, e-meil, in person)	2.555	3.787	7.428	8.643	22.413
3.	Commenced proceedings	16	240	500	925	1.681
4.	Recommendations issued		37	126	140	303

5.	Recommendations acted upon		32	100	69	201
6.	Recommendations not acted upon		5	26	35	66
7.	Formal opinions and views		2	12	4	18
8.	Completed cases	393	951	1.485	1.424	4.253
9.	Not completed cases	13	79	281	1.227	1.600

From 140 issued recommendations in 2010, 36 are still within the prescribed deadline for the authority action.

55. Please specify the number of actions undertaken by the Ombudsman *ex officio*.

The Ombudsman takes into consideration cases of violation of rights submitted by the citizens in their complaints, but also those based on his own findings and on other sources, and exceptionally based on anonymous complaints, having estimated that a public administration has violated the human rights and freedoms by its action or failure to act. In the year 2010, the Ombudsman initiated 73 *ex-officio* proceedings – on his own initiative.

56. What systems are in place to monitor implementation of policies and laws and to receive feedback? Is there an inspection of the public administration and how does it function?

Monitoring the implementation of policies is carried out through implementation of strategic documents and action plans for their carrying out, as well as implementation of laws and other regulations.

The Government supervises the work of state authorities, directs state authorities in implementation of policy and execution of laws and other general acts and harmonise their work. For the purpose of improving the supervision performed by the Government, state authorities should submit their plans drafted on the basis of the medium-term planning, being obliged to clearly indicate the purpose, goals that they wish to achieve, references to strategic or other documents, indicators and sources of the control. Owing to the system set for monitoring the work of state authorities, the quality of the Annual Report on the Work of the Government has been improved since it encompasses criteria for measuring the results achieved in line with strategic plans and sources of financial resources. Monitoring the work performance of state authorities is based on indicators that state authorities have defined in their plans. Thus a clear procedure of the reporting on the work of state authorities has been established through monitoring the realisation of their planned activities and the results achieved.

The State Administration Act (“Official Gazette of RS” nos. 79/05, 101/07 and 95/10) stipulates the state authority activities: participating in forming the Government policy, observing the condition in the area; implementation of laws, other regulations and general acts, inspection monitoring; observing the public services; development activities and other expert activities.

Furthermore, the term and forms of **internal supervision** were stipulated as the type of monitoring performed by the state authorities in relation to other state authorities and public authorisation holders, in the event of carrying out the activities of public administration. The internal supervision includes **supervision over the work, inspection supervision**, administrative inspection and other forms of monitoring specified in the special law (Article 45). Monitoring the activities, as an element of internal supervision, shall include monitoring the legal and purposeful activities of state authorities and public authorisation holders in the event of exercising the specified activities of the state administration (Article 46(1)). Monitoring the legal activities shall exercise the legalisation and other general acts and monitoring the purposeful activities shall exercise the efficiency and economical functioning and purposeful activities of job organisation (Article 46(2)).

Ministry shall not perform monitoring of activities of other ministry. Ministry shall carry out monitoring over the authority within its system and in that case it has all rights in relation to monitoring the authority within its system stipulated in this law. Ministry may by the law be prescribed to monitor the activities of special organisation, and in that case it shall be the only one authorised to request the reports and data on work from the special organisation, as well as define the condition of performing the activities and warn the special organisation of the observed irregularities, issue instructions and suggest taking measures to which it is authorised to the Government.

The Administrative inspection shall supervise the implementation of the law and other regulations on public administration and office activities, as well as regulations on administrative procedure referring to efficiency and prompt solving of administrative issues, educational level of employees performing the activities in administrative dispute, to announcing the names of employees authorised for decision making in administrative dispute and taking measures in the procedure before the decision making. Besides the competence of administrative inspection is defined in the system law on state administration, the competence of administration inspection was defined also in other – special laws, such as: The Law on Civil Servants (“Official Gazette of RS” nos. 79/05, 81/05 – corrigendum, 83/05 – corrigendum, 64/07, 67/07 – corrigendum, 116/08 and 104/09), (Art. 173-174); Law on Registers (“Official Gazette of RS”, number 20/09), (Article 85); Law on Free Access to Information of Public Importance, (“Official Gazette of RS”, number 120/04, 54/07, 104/09 and 36/10), (Article 45); Law on Political Parties (“Official Gazette of RS”, number 36/09), (Article 40); Law on Associations (“Official Gazette of RS”, number 51/09), (Article 71); Law on Unique Electoral List (“Official Gazette of RS”, number 104/09), (Article 22); Law on Official use of Language and Alphabet (“Official Gazette of RS”, nos. 45/91, 53/93, 67/93, 48/94, 101/05-other law and 30/10), (Article 22) and Law on Seal of state and other authorities (“Official Gazette of RS”, number 101/07), (Article 20).

Administrative inspection shall perform monitoring in: state authorities, authorities entitled with the activities of public administration and other public authorisation holders, services of the President of the Republic, National Assembly, Government and Administration for Common Affairs of Republic Authorities, expert service of the Constitutional Court, courts, public prosecutor offices, public solicitor offices and penalty authorities. These activities shall be performed by the ministry competent for activities of state administration through administrative inspection and the activities of administrative inspection for the city of Belgrade shall be performed by the municipal administrative authority, as entrusted. The Administrative Inspector is a person performing activities within the competence of

administrative inspection, has completed the Faculty of Law, passed a bar exam and at least five years of work experience at this education level. The Administrative Inspector shall make decision by which he prescribes solving irregularities defined in the event of monitoring and defines the deadline within which it shall be done, i.e. acts in the way stipulated in the special law if that law prescribes to act otherwise in relation to the defined irregularity. An appeal may be announced against the decision of the administrative inspector which shall not delay the execution of decision.

The State Administration Act (Article 18) regulates the basic principles of **inspection supervision** performed by ministries, inspectors and other authorised persons who shall immediately carry out the inspection activities. The rights, liabilities, authorisations and responsibilities of inspectors are specified in the law. When carrying out certain inspection jobs entrusted with the authorities of the municipality, town, city of Belgrade and autonomous provinces, the inspector shall have in relation to those authorities, the right and obligation to issue mandatory instructions for implementation of laws and other regulations, exercise immediate monitoring over their functioning as well as in all activities and with all authorisations if the authorities do not perform them, take the authorisation from an inspector, etc.

Besides that, within the control of the public administration and method of its functioning, pursuant to the Law on state audit institution ("Official Gazette of RS", nos. 101/05 and 54/07), the State Audit Institution is the top level state institution for audit of public assets in the Republic of Serbia. The subject of audit are: Income and expenses in compliance with the regulations of budget system and regulations on public income and expenses; financial statements, financial transactions, calculations, analyses and other registries and information of the audit subjects; regulation of activities of audit subjects in compliance with the law, other regulations and given authorisations; reasonability of disposal of public assets completely or partially; the system of financial management and control of budget system and the system of other authorities and organisations which are subject to audit of an Institution; internal control system, internal audit, accounting and financial activities with the audit subjects; acts and subjects of audit which result or may result in financial effects on income and expenses of the public assets users, state property, debts and guarantee granting, as well as purposeful use of assets at the disposal of audit subjects; regularity of activities of management authorities, conduct and other responsible persons competent for planning, contracting and monitoring of business activities of public assets users and other field planned by the special laws. The state audit institution is an independent state authority, has the character of a legal entity and a seal, pursuant to the law. It may form organisational units outside the headquarters (the headquarters of the State Audit Institution is in Belgrade), but the organisational units outside the Institution headquarters do not have the character of a legal entity. The Institution is responsible to the National Assembly for carrying out activities within its competences. The acts for performing Institution audit competences shall not be subject to denial before the courts and other state authorities.

The area of access to the information of public importance is regulated in the **Law on free access to the information of public importance** ("Official Gazette of RS", nos. 120/04, 54/07 and 104/09). The information of public importance implies **information which the public authority has which emerged during work or in relation to work of the public authority, contained in the certain document, referring to all things that public has a justified interest to know**. Everybody has the right to know whether the authority has certain

information of public importance and whether it is available; to make the information of public importance available in order to provide an insight into document containing information of public importance and the right for document copy, as well as the right that at one's request, the documents copy is sent by mail, fax, e-mail or other convenient way. The right for access to the information of public importance may be limited only when it is regulated in the law, due to protection.

Commissioner shall be elected by the National Assembly for the period of seven years and the same person may be selected for Commissioner maximum two times. Commissioner has a deputy elected by the National Assembly at the request of the Commissioner. Commissioner observes obeying the liabilities of the state authorities regulated in the Law and informs public and National Assembly on the defined condition; makes decisions at the appeal of the state authority which specifies the rights stipulated in the law; informs public on content of Law on free access to the information of public importance as well as the rights regulated in the specified law and performs other jobs stipulated in the law. Commissioner may initiate the procedure for assessment of constitutionality and legitimacy of laws and other general acts. The state authorities are obliged to issue prospectus on work including information, besides others, on organisation of the authority, budget, competences, as well as information in relation to exercising rights to information access. The state authorities are obliged to update the prospectus on activities.

Monitoring the state authorities is provided also in the **Law on Ombudsman** ("Official Gazette of RS" nos. 79/05 and 54/07) described within the question number 58.

57. What is done to ensure that the public service is open and transparent? Can any citizen affected by an administrative action find out the basis for the action?

The right for being informed is guaranteed to the citizens of the Republic of Serbia, primarily, in the Constitution regulating that everybody has the right for truthfully, completely and timely being informed on issues of public importance and the means of public information are obliged to obey that right, and furthermore, everybody has the right to the access to information with the state authorities and organisations with the public competences, pursuant to the law.

The State Administration Act ("Official Gazette of RS" nos. 79/05, 101/07 and 95/10) regulates the principles of actions of the state authorities, including publicity of work, respecting the clients, i.e. amicable relation of state authorities towards the parties and citizens represent important principles that the Administration is based upon. State authorities are obliged to provide public with an insight into their activities, pursuant to the law regulating the free access to the information of public importance. Moreover, they are obliged to inform public on their activities through the means of public information and in other convenient way, and the employees authorised for preparation of information and data in relation to public informing shall be accountable for their correctness and update.

Ministries and special organisations are obliged to organise a public debate on law significantly changing the legal regime in the certain area or regulating the issues for which the public was especially interested. In this way, publicity in law preparation is provided as well as the fact that all interested subjects may affect the law content.

The state authorities may carry out certain tasks at the location outside their headquarters and location of a subsidiary, in the administrative days. The activities carried out in the

administrative days and the time and location of carrying out administrative days shall be defined by the manager of the state authority, and the administrative days shall be announced at the locations being held.

The state authorities are obliged that in appropriate way inform the parties on their competence, on rights and obligations of the parties in the procedure for exercising the rights and obligations, on monitoring state authority and method by which the parties may make contact with him and on all other issues important for the publicity of activities and relations with parties.

At the request of natural or legal entities, the state authorities are obliged to give their opinion on applicability of provisions of laws and other general acts, within 30 days.

The state authorities are obliged to enable the convenient method to which the citizens may submit their appeals to functioning or incorrect relation of employees and that within 15 days reply to the counter-claim if the applicant of appeal requests that, and at least once in 30 days the state authority is obliged to consider the issues included in the appeals.

The name of the administrative authority, emblem and flag of the Republic of Serbia shall be prominent at the facilities where the state authorities are located. At the appropriate position within the facility, the organisation of the rooms of the state authority shall be shown, and at the entrance into the official room, the personal names, title or job position of the persons who work there.

When acting in the administrative issues, the state authorities, organisations and other legal entities carrying out the public authorisation work and make decisions based on the law and other regulations prepared based on the legal authorisations, which shall be published in the official gazette which represents one of the basic principles of the Law on General Administrative Procedure (“Official Journal of SRY”, nos. 33/97 and 31/01 and “Official Gazette of RS” no. 30/10) – principle of legality.

Act (decision) made in the administrative matter which is the subject of procedure, shall contain introduction, dispositive (statement) based on the law and other regulation, explanation and instruction on legal means, name of the authority with number and date, signature of the official person and a stamp. Against the individual act brought at the first phase, the party has the right for appeal, and only the law may regulate that in certain administrative matters, the appeal shall not be allowed, if the protection of the rights and legal interests of the party, i.e. legality protection is provided in other way. Furthermore, if the authority within the prescribed deadline at the request of the party did not make a decision, the party may send the appeal to the competent authority as if one’s request was denied, i.e. administration silence. In case the appeal is not allowed, the judicial protection may be requested, i.e. initiate the administrative dispute by the legal action.

Administrative dispute may be initiated against the administrative act which was brought at the second phase (the final administrative act), against the administrative act brought at the first phase when the appeal shall not be allowed in the administrative procedure and when the competent authority did not prepare administrative act on request, i.e. appeal of a party.

At the event of procedures, as well as making decisions, the authorities and organisations are obliged to provide the citizens and other parties with easier protection and exercise of their rights, considering the fact that exercising their rights is not contrary to public interest and at the disadvantage of other persons (principle of protection of the rights of citizens and public interest), as well as to provide opportunity to the party to give an opinion on facts and circumstances of importance for making the decision (the principle of party hearing). Furthermore, the official person conducting the procedure is obliged to provide during the procedure that ignorance of a party and other persons participating in the procedure shall not

be at the disadvantage of their rights stipulated by the law (the principle of providing assistance to the ignorant party).

At the local self-government level, this right is regulated primarily in **the Law on Local Self-government** ("Official Gazette of RS", number 129/07) which stipulates that the authorities and services of the local self-government are obliged to inform the public on their activities through media and in other convenient way as well as to provide the citizens with required data, explanations and information in exercise of their rights and obligations. Furthermore, the authorities and services of local self-government units are obliged to provide everybody with submission of counter-appeals to their activities and incorrect relation of employees and provide the replies to them within 30 days, if the applicant of the appeal requests the reply.

Besides that, the right for being informed and information, was especially defined in **the Law on Local Elections** ("Official Gazette of RS" no. 129/07 and 34/10-decision of CC), primarily for importance of election as the means for exercising democracy. This law stipulates that citizens have the right to be equally, timely, truly, impartially and completely informed on electoral campaign of applicants of electoral lists and their candidates, as well as on other events important for elections, through means of public information. The means of public information are obliged that during the electoral campaign provide the equality, update, truthfulness, impartiality and completeness in informing on all applicants of the electoral lists and their candidates, as well as on other events important for elections. Electoral campaign, regarding this law, represents all public, political, promotional and other activities of the applicants of electoral lists and their candidates.

The protection of the citizens' rights is especially provided in the **Law on Ombudsman** ("Official Gazette of RS" No. 79/05 and 54/07) establishing this important institution which is described within the question number 58.

The Law on Free Access to the Information of Public Importance ("Official Gazette of RS" nos. 120/04, 54/07, 104/09 and 36/10) regulates also the rights for access to the information of public importance available to the state authorities in order to exercise and protect the public interest to know and exercise the free democratic order and open society.

The state authority in the meaning of this law is a state authority, territorial autonomy authority, local self-government authority, as well as organisation provided with exercising the public authorisations, as well as legal entity established or financed completely, i.e. major part, the state authority.

Administrative inspection (Article 45(2)) shall perform inspection monitoring over implementation of this law.

At the local self-government level, this right is regulated primarily in the Law on Local Self-government which stipulates that the authorities and services of the local self-government are obliged to inform the public on their activities through public information system and in other convenient way as well as to provide the citizens with required data, explanations and information in exercise of their rights and obligations. Furthermore, the authorities and services of local self-government units are obliged to provide everybody with submission of counter-appeals to their activities and incorrect relation of employees and provide the replies to them within 30 days, if the applicant of the appeal requests the reply.

Besides that, the right for being informed and informing, was especially defined in the Law on Local Elections, primarily for the importance of election as a means of exercising democracy. This law stipulates that citizens have the right to be equally, timely, truly, impartially and completely informed on electoral campaign of applicants of electoral lists and their candidates, as well as other events important for elections. The means of public information are obliged in electoral campaign to provide equality, update, truthfulness, impartiality and

completeness in informing on all applicants of electoral lists and their candidates, as well as on other events important for elections. Electoral campaign, regarding this law, represents all public, political, promotional and other activities of the applicants of electoral lists and their candidates.

The protection of the citizens' rights and control of state authority activities is especially provided in the **Law on Ombudsman** ("Official Gazette of RS" No. 79/05 and 54/07) establishing this important institution. The Ombudsman ensures the protection and enhancement of human and minority freedoms and rights. It is important to specify that the term citizen, in the meaning of this law, represents not only natural person who is a domestic citizen, but every natural person who is foreign citizen, as well as every domestic or foreign legal entity on whose rights and obligations decide state authorities, the authority competent for legal protection of the property rights and interests of the Republic of Serbia, as well as other authorities and organisations, companies and institutions entrusted with the public authorisations.

Every natural or legal, domestic or foreign person who regards that one's rights were violated by the act, action or non-performance of the administration authority, may submit the appeal to the Ombudsman.

After specifying all relevant facts and circumstances, the Ombudsman may inform the applicant of appeal that the appeal is unjustified or that there were failures in activities of the administration authorities.

If one finds that there were failures in activities of the administration authorities, the Ombudsman shall submit the recommendation to the authority in order that the observed misconduct is solved.

The administration authority is obliged to, not later than 60 days from obtaining the recommendation, inform the Ombudsman on the fact whether they acted according to the recommendation and solved the fault, i.e. inform him on the reasons due to which they did not act according to the recommendation.

Exceptionally, if there is a danger that due to non-solving the misconducts, the rights of applicant of appeal shall be permanently and significantly impaired, the Ombudsman in one's recommendation to the administration authority may specify also shorter period for solving misconduct, mentioning that the period shall not be shorter than 15 days.

Unless administrative authority acts in accordance with recommendation, the Ombudsman may inform public, Assembly and the Government on that, and he may also recommend specifying the responsibility of officials managing the administrative authority.

Furthermore, pursuant to the Law on Local Self-government, the Ombudsman may be established also in the local self-government unit authorised for control of obeying the citizen's rights, specification of violations by acts, actions or non-performance of the administrative authorities and public services, in case of violation of regulations and general acts of local self-government unit. Two or more local self-government units may make decision on establishment of the mutual Ombudsman.

58. What are the procedures to guarantee citizens' rights of recourse against public service actions? Describe these (e.g. parliamentary committees, ombudsman's office, internal and external audit, inspectorates, standard-setting authorities). To what extent are the recommendations formulated by these bodies (particularly the ombudsman's office) taken into account by the Government? Please provide concrete data. Do special administrative courts exist?

The Constitution of the Republic of Serbia (*"Official Gazette of the RS"*, No. 98/06), guarantees equal protection of rights before courts and other state bodies, entities exercising public powers and bodies of the autonomous province and local self-government units, and provides everyone shall have the right to appeal or use other legal remedy to contest any decision on his rights, obligations or lawful interest (Article 36). Moreover, everyone shall have the right to put forward petitions and other proposals alone or together with others, to state bodies, entities exercising public powers and to receive reply from them if they so request (Article 56, paragraph 1); no person may suffer detrimental consequences for opinions stated in the petition or proposal unless they constitute a criminal offence (Article 56, paragraph 3).

The Constitution of the Republic of Serbia provides that **the Government**, in addition to other constitutionally and legally defined responsibilities, directs and adjusts the work of public administration bodies and performs supervision of their work (Article 123 paragraph 5). This constitutional provision is elaborated in Article 3 paragraph 1 of the Law on Public Administration (*"Official Gazette of the RS"*, No. 79/05, 101/07 and 95/10) according to which, the work of public administration bodies is subject to the Government supervision. In addition to this, accomplishing its constitutional responsibility to supervise the work of the Government (Article 99 paragraph 2 item 1).

The National Assembly indirectly supervises the work of the public administration bodies, which is established by paragraph 2 of Article 3 of the Law on Public Administration, according to which the National Assembly supervises the work of the public administration bodies through the supervision of the work of the Government and the Members of the Government. Parliamentary control of the administration is achieved through **parliamentary questions** and **motion regarding the work of the Government** (Article 204-216. and Article 220-227. of the Rules of Procedure of the National Assembly), **and by informing the relevant committee on the work of the Ministry** every three months (Article 229 of the Rules of Procedure of the National Assembly).

The Rules of Procedure of the National Assembly from 2010 (*"Official Gazette of the RS"*, No. 52/10) in Article 295 establish that the existing committees continue their work in accordance with the current scope until the constitution of the National Assembly in new convocation, which means that in this part Article 67 of the Rules of Procedure of the National Assembly from 2005 is applied (*"Official Gazette of the RS"*, No. 14/09 - cleaned text). The above mentioned provision establishes **the Committee for Complaints and Proposals**, and whose competence includes consideration of complaints and proposals which are addressed to the National Assembly and which proposes to the National Assembly and the competent authorities the measures to address the issues contained in them and inform the applicants if they request so.

According to the constitutional system of the Republic of Serbia, everyone has the right to access the data possessed by the state bodies and organisations exercising public powers. Everyone shall have the right to put forward petitions and other proposals alone or together with others, to state bodies, entities exercising public powers and to receive reply from them if they so request. Everyone who achieves the above-mentioned rights may suffer detrimental consequences unless they constitute a criminal offence. (The Constitution of the RS – Articles 51 and 56).

In relation to this issue, we note that the Rules of Procedure of the National Assembly from 2010 (*"Official Gazette of the RS"*, No. 52/10) in Article 295 establish that the existing committees continue their work in accordance with the current scope until the constitution of the National Assembly in new convocation, which means that in this part Article 67 of the Rules of Procedure of the National Assembly from 2005 is applied (*"Official Gazette of the RS"*, No. 56/05, 81/06, 13/09). The above mentioned provision establishes the Committee for Complaints and Proposals, as a permanent working body of the National Assembly, considers the complaints and proposals which are addressed to the National Assembly and which proposes to the National Assembly and the competent authorities the measures to address the issues contained in them and inform the applicants if they request so. On their observations regarding the complaints and proposals, the Committee submits the report to the National Assembly at least once during every ordinary session.

During this convocation, after the constitution of the Committee in its full capacity, the Committee has considered more than 700 complaints and proposals of citizens: 70 % refers to the work of judicial authorities, the public administration bodies, primarily on the local level (the work of the inspecting authorities, granting of construction permits etc.), to the practice of the public administration bodies related to the achievement of rights from the social and pension insurance, as well as the rights from the employment relationship. Furthermore, the committee service conducts interviews with citizens on the premises of the National Assembly. Moreover, the service has given information by phone on a daily basis to all interested citizens who have addressed the committee in this manner. The committee acted according to the complaints which were addressed to the President of National Assembly, as well as individual Members of the Parliament, or the working bodies. In order to assess the situation related to the submitted complaints, the Committee has achieved cooperation with the Office of the Ombudsman, Anti-Corruption Agency, as well as the non-governmental sector.

The Law on National Assembly (*"Official Gazette of the RS"*, No. 9/10) provides that the National Assembly as the holder of constitutional and legislative authority, and/or the Members of Parliament, in achieving their representative function:

- a) Consider the complaints and proposals of citizens; b) hold meetings with citizens at the National Assembly and offices of the National Assembly outside the head office of the National Assembly (Article 15).

The Law on National Assembly from 2010 (*"Official Gazette of the RS"*, No. 52/10) the Committee for Complaints and Proposals is abolished, and its scope shall be accomplished by the committees of the National Assembly according to their scope, in the following manner: In order to consistently accomplish the above-mentioned functions of the National Assembly, the Rules of Procedure provide that the competent committees, starting with their scope, consider the initiatives, petitions, complaints and proposals from their scope and propose to the National Assembly and competent authorities the measures to address the issues contained in them and inform the applicants of individual complaints and initiatives. Performing these activities from their scope, the committee may ask opinion from the state bodies and organisations, as well as the non-governmental sector, in order to be able to be completely informed about of the occurrence or state related to a specific issue. At the same time, the competent committees, considering their position in the system of the National Assembly, report to the National Assembly on their observations, and/or their positions and the measures

for overcoming problems and/or resolving issues regarding a specific initiative, petitions, complaint or a proposal. When the committee considers the reports and initiatives and issues from the competence of the state bodies, organisations and authorities, their representatives are invited to the committee meeting. Regarding the above-mentioned, the committee chairman, performing his function, in preparation of the meeting and its realisation, proposes to the committee the procedure regarding the initiatives, petitions, complaints and proposals related to the issues from the scope of the committee. Anent the submitted initiatives, petitions, complaints and proposals from its scope, the competent committee in accordance with the constitutional position of the National Assembly in the system of separation of powers, forwards for further processing the above-mentioned letters to the competent authorities and institutions according to their competence established by law and other acts. At the same time the Committee informs in writing the applicant who has submitted the complaint, proposal, initiative and petition, on its actions in that specific case.

Moreover, the committee requests the feedback from the body or institution to which it has forwarded the above-mentioned case, on the actions taken related to it. (Articles 44, 70 and 74). (these provisions come into effect after the constitution of the National Assembly in new convocation).

In order to assess the situation in a specific field and determine the facts on individual occurrences and events, the National Assembly may form, as temporary working bodies, the Board of Inquiry which consists of the Members of Parliament, representatives of bodies and organisations, as well as scientists and experts from a specific field. Regarding the subject on the agenda, which may relate to the work of state bodies, Board of Inquiry may ask from the state bodies and organisations data, documents and information, as well as take statements from individuals, which they consider to be necessary.

The representatives of the state bodies and organisations are obliged to answer the invitation of the Board on Inquiry and/or the committee and to provide true statements, data, documentation and information.

Upon the completion of the task, the Board of Inquiry, and/or the committee submit the report with proposed measures to the National Assembly. (Article 68 of the Rules of Procedure of the NA).

The Rules of Procedure of the National Assembly provide the possibility that the committees may organise public hearings in order to obtain information, and/or expert opinion, *inter alia*, to accomplish the control function of the National Assembly, which are related to the issues from the scope of the committee. The proposal for the public hearing may be submitted by any member of the committee, which is decided on by the committee. The chairman of the committee may invite other persons, whose presence is significant for the subject of the public hearing, to the meeting at which the public hearing shall be held. (Article 83 of the Rules of Procedure of the NA).

The Law on National Assembly (*“Official Gazette of the RS”*, No. 9/10) provides that the National Assembly as the holder of constitutional and legislative authority, and/or the Members of Parliament, in achieving their representative function: a) Consider the complaints and proposals of citizens; b) hold meetings with citizens at the National Assembly and offices of the National Assembly outside the head office of the National Assembly (Article 15).

Pursuant to **The Rules of Procedure of the National Assembly** from 2010 (*“Official Gazette of the RS”*, No. 52/10) the Committee for complaints and proposals is abolished, and its scope shall be accomplished by the committees of the National Assembly according to their scope, in the following manner: In order to consistently accomplish the above-mentioned functions of the National Assembly, the Rules of Procedure provides that the competent committees, starting with their scope, consider the initiatives, petitions, complaints and proposals from their scope and propose to the National Assembly and competent authorities the measures to address the issues contained in them and inform the applicants of individual complaints and initiatives. Performing these activities from their scope, the committee may ask opinion from the state bodies and organisations, as well as the non-governmental sector, in order to be able to be completely informed about of the occurrence or state related to a specific issue. At the same time, the competent committees, considering their position in the system of the National Assembly, report to the National Assembly on their observations, and/or their positions and the measures for overcoming problems and/or resolving issues regarding a specific initiative, petitions, complaint or a proposal. When the committee considers the reports and initiatives and issues from the competence of the state bodies, organisations and authorities, their representatives are invited to the committee meeting. Regarding the above-mentioned, the committee chairman, performing his function, in preparation of the meeting and its realisation, proposes to the committee the procedure regarding the initiatives, petitions, complaints and proposals related to the issues from the scope of the committee. Anent the submitted initiatives, petitions, complaints and proposals from its scope, the competent committee in accordance with the constitutional position of the National Assembly in the system of division of powers, forwards for further processing the above-mentioned letters to the competent authorities and institutions according to their competence established by law and other acts. At the same time the Committee informs in writing the applicant who has submitted the complaint, proposal, initiative and petition, on its actions in that specific case. Moreover, the committee requests the feedback from the body or institution to which it has forwarded the above-mentioned case, on the actions taken related to it. (Articles 44, 70 and 74). (these provisions come into effect after the constitution of the National Assembly in new convocation).

In order to assess the situation in a specific field and determine the facts on individual occurrences and events, the National Assembly may form, as temporary working bodies, the Board of Inquiry which consists of the Members of Parliament, representatives of bodies and organisations, as well as scientists and experts from a specific field. Regarding the subject on the agenda, which may relate to the work of state bodies, Board of Inquiry may ask from the state bodies and organisations data, documents and information, as well as take statements from individuals, which they consider to be necessary. The representatives of the state bodies and organisations are obliged to answer the invitation of the Board on Inquiry and/or the committee and to provide true statements, data, documentation and information. Upon the completion of the task, the Board of Inquiry, and/or the committee submit the report with proposed measures to the National Assembly. (Article 68).

The Rules of Procedure of the National Assembly provide the possibility that the committees may organise public hearings (Article 83) in order to obtain information, and/or expert opinion on the act proposals which is in the parliamentary procedure, clarifications of specific solutions from the proposed or valid act, clarification of the questions which are significant for the preparation of act proposals or other issues which is in the competence of the

committee, as well as the supervision of the implementation and enforcement of the laws, and/or the achievement of the control function of the National Assembly.

The proposal for the public hearing may be submitted by any member of the committee, which is decided on by the committee. The chairman of the committee may invite other persons, whose presence is significant for the subject of the public hearing, to the meeting at which the public hearing shall be held (Article 84).

Pursuant to the provision of Article 7 of the Law of Public Administration, the public administration bodies are autonomous in performance of their activities and work within and on the basis of the Constitution, Laws, other regulations and general acts. Article 8 of the same Law provides that the public administration bodies act according to the professional rules, impartially and politically neutral. The public administrative bodies are obliged to provide a appropriate manner in which the citizens may submit the complaints to the work or to the improper relationship of the employees and to reply to the complaint within 15 days, if the appellant requests it, and at least once in 30 days the public administrative body is obliged to consider the issues included in the complaints (Article 81 of the Law on Public Administration).

The Law on Free Access to Information of Public Importance (*“Official Gazette of the RS”*, No. 120/04, 54/07 and 104/09) provides that the right to the access to the information of public importance may be limited only when it is regulated by law, and for the protection from the serious violation of the prevailing interest based on the Constitution or the Law, If the authority does not provide the access to information, the seeker may submit an appeal to the Commissioner for information of public importance and protection of personal data. **The Law on Free Access to Information of Public Importance** (*“Official Gazette of the RS”*, No. 36/10) provides that the resolutions of the Commissioner are binding, final and executable (more closely described within question 56).

The Law on Administrative Procedure (*“Official Gazette of the SRY”*, No. 33/97 and 31/01 and *“Official Gazette of the RS”*, No. 30/10) within the principle of two instances, provides that against the solution adopted on the first instance, the party has the right to appeal, and only the law may provide that appeal is not allowed in specific administrative matters, only if the protection of rights and legal interests of the party are provided in some other manner, and/or the protection of lawfulness. Moreover, if the authority in the prescribed period after the party’s request has not issued a resolution, the party may appeal to the competent authority as if their request was rejected, so competitioned **Administration's silence**.

The real competence for solving in the administrative procedure is established according to the regulations that regulate a specific administrative field, and/or the regulations that regulate the competence of specific authorities. The administrative procedure is initiated by the competent authority *ex officio* or at the party’s request. The competent authority shall initiate the procedure *ex officio* when it is established by the law or other regulation and when it determines or becomes informed that, regarding the existing state of facts, a procedure should be initiated for the protection of the public interest. When initiating a procedure *ex officio*, the authority takes into consideration possible complaints of citizens and organisations and warning of competent authorities. In the course of proceedings, as well as when issuing rulings, bodies and organisations are required to ensure that the members of the public and other parties can safeguard and exercise their rights as easily as possible, taking into account

that exercise of their rights is not contrary to the public interest and to the damage of other persons (principle of protection of the rights of citizens and the principle of protection of public interest), as well as to provide the possibility to a party to express his opinion on facts and circumstances which are significant for decision-making (the principle of fair hearing of a party). Moreover, the official who conducts the procedure is obliged to take care during the procedure that ignorance and illiteracy of the parties and other persons who participate in the proceedings is not detrimental to the lawful rights (the principle of providing assistance to illiterate party).

The party has the right to appeal against the first instance resolution. The general appeal deadline is **15 days**, unless otherwise specified by law. If an appeal is not permitted, court protection may be requested i.e. initiate an administrative dispute. Resolution on appeal must be rendered and delivered to the party as soon as possible and at the latest within **two months** from the date of appeal submission, if a shorter deadline is not established by a specific law.

Article 16 of the Law on Civil Servants provides that **a civil servant** has the right to **appeal** against the resolution deciding on his rights and duties, unless the appeal is expressly excluded by this Law. Article 59 of the Law on Public Administration establishes the competence for resolution of appeals.

Courts supervise lawfulness of individual acts of the public administration bodies rendered in administration issues through **administration dispute** (Article 3 paragraph 3 of the Law on Public Administration. **The Law on Administrative Dispute** (*"Official Gazette of the RS"*, No. 111/09) provides, in accordance with Article 198 paragraph 2 of the Constitution of the Republic of Serbia, the court protection of all individual acts against which there is no right of appeal or other court protection. Administrative dispute may be initiated against a first-instance administrative act administrative ruling not appealable in administrative proceedings, and where the appropriate body has not issued an administrative ruling with respect to the party's request or appeal. Administrative dispute is resolved by the Administrative Court, and the Supreme Court of Cassation decides in a procedure of review of a court decision of the Administrative Court, (Request for court decision review). Prosecutor in an administrative dispute may be natural, legal or other person, if anyone believes that administrative act infringes any right of lawful interest. Judicial laws of the Republic of Serbia provide the complete reorganisation of the judicial network which was established on 1 January 2010. In accordance with the organisation of the new judicial network in the Republic of Serbia it is established based on **the Law on the Organisation of Courts** (*"Official Gazette of the RS"*, No. 116/08 and 104/09) as a court of special jurisdiction, Administrative Court (Article 11 paragraph 4), which exists for the territory of the Republic of Serbia, based in Belgrade, and which started working on 1 January 2010. The Administrative Court may have a department outside Belgrade, in accordance with the law, where it permanently arbitrates and takes other legal actions. The jurisdiction of the Administrative Court is to arbitrate in administrative disputes and to perform other activities specified by law. Immediately superior court for the Administrative Court is the Supreme Court of Cassation.

Protection of citizens' rights is particularly provided by **the Law on the Protector of Citizens** (*"Official Gazette of the RS"*, No. 79/05 and 54/07) which establishes this significant institution. The Protector of Citizens oversees and enhances protection of human and minority rights and freedoms. It is important to remark that the term citizen, under this Law, means not only natural person who is a local citizen, but any other natural person who is a foreign citizen, as well as any local or foreign legal person whose rights and obligations are

decided upon by the public administration bodies, the competent authority for the protection of the property rights and interest of the Republic of Serbia, as well as other authorities and organisations, companies and establishments exercising public powers.

Any natural, legal or other person who believes that any act, action or not-doing infringes any right may appeal to the Protector of Citizens. The Protector of Citizens controls fairness and legality of work of administrative authorities regarding the achievement of individual and collective human and minority rights. In his/her work, The Protector of Citizens refers to the Constitution, laws, other regulations and general acts, as well as to the ratified international treaties and generally accepted rules of international law. At the same time, The Constitution and the Law provide that the Protector of Citizens is responsible to the National Assembly for its activities. Having determined all relevant facts and circumstances, the Protector of Citizens may inform the appellant that the complaint is unfounded or may determine that there have been shortcomings in the work of the administrative bodies. The Protector of Citizens controls much more than formal adherence to law, because he examines ethics, conscientiousness, impartiality, competence, expediency, efficiency, respect for the dignity of the parties and other features that should characterise a good administration, which citizens rightly expect from those they pay in taxes.

In addition to the right to initiate and pursue proceedings which establish whether there are any shortcomings in the work of the administration, the Protector of Citizens has the right to act preventively through provision of good services, intermediation between citizens and administration bodies, and giving advice and opinions on the matters within its jurisdiction, in order to improve the work of administrative bodies, as well as to improve the protection of human freedoms and rights.

If he determines that there are shortcomings in the work of administrative bodies, the Protector of Citizens shall submit a recommendation to the body regarding the elimination of perceived shortcoming. The administrative authority is obliged to inform the Protector of Citizens at the latest within 60 days from the receipt of the recommendation if he has acted on recommendation and eliminated the shortcoming, and/or to inform him of the reasons due to which he has not acted on recommendation.

Exclusively, if there is a danger that the appellant's rights shall be permanently and significantly infringed due to failure to eliminate shortcomings, the Protector of Rights may determine a shorter deadline for the elimination of shortcomings in his recommendation to the administrative authority, provided that the deadline may not be shorter than 15 days.

If the administrative authority does not act on recommendation, the Protector of Citizens may inform the public, the Assembly and the Government, and may recommend the establishment of the responsibility of the state official who directs the work of the administrative authority. Recommendations, positions and opinions of the Protector of Citizens are not legally binding. The Protector of Citizens is not an institution of "voluntary" law. Administrative authorities shall cooperate with the Protector of Citizen and enable his access to their premises and information available to them, regardless of the degree of confidentiality of such information, and when it is of interest to the proceedings, and/or the achievement of their preventive actions. Failure to comply with these legal provisions is the basis for the initiation of appropriate disciplinary and other procedures. The Protector of Citizens shall have the power to recommend the dismissal of an official who is responsible for violation of citizen's rights,

to initiate disciplinary proceedings against an employee of the administrative authorities, to submit request, i.e. to file a motion to initiate misdemeanour, criminal and other appropriate proceedings.

The Protector of Citizens shall have the power to launch initiatives with the Government or National Assembly for the amendment of laws or other regulations or general acts, if he deems that violations of citizens' rights are a result of deficiencies of such regulations. He shall also have the power to launch initiatives for new laws, other regulations and general acts, if he considers it significant for exercising and protecting citizens' rights. The Government shall be obliged to consider the initiatives of the Protector of Citizens.

Moreover, pursuant to the Law on Local Self-Government (*"Official Gazette of the RS"*, No. 129/07), a local self-government unit may establish the Protector of Citizens who 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 and public services, if they are violations of the laws, regulations and other general acts of the local self-government. Two or more units of local self-government may adopt a decision on the establishment of common Protector of Citizens.

The Law on the Protector of Citizens provides that The Protector of Citizens shall have four deputies that help him/her in performing the duties prescribed by this Law, and within the powers delegated to them by the Protector of Citizens. When delegating powers to deputies, the Protector of Citizens shall in particular ensure special expertise, primarily in respect to the protection: of rights of persons deprived of their liberty, children's rights, rights of national minorities and rights of disabled persons.

On **2 June 2010**, The Protector of Citizens presented and consigned to the chairwoman of the National Assembly **the Code of Good Administration** modelled on the Code of Good Administrative Behaviour. On the proposal of the European Ombudsman, the Code was accepted by the European Parliament. This document shall improve work of the administration and shall be the guideline to the public authorities, state officials, servants and citizens towards their more efficient work, and a source of knowledge for the citizens on their rights and responsibilities towards the administration.

Statistical data

The Protector of the Citizens acted on 1,980 cases during 2009, and finished proceedings in 1,040 cases. In most of the cases (653) the complaints were dismissed due to the lack of process conditions for the proceedings, while in other cases (393) the procedures were ended by dismissal of complaints as unfounded, corrigendum of omissions by the authorities during the proceedings or determination of omissions, or by giving recommendation for their correction and implementation of recommendation. Other initiated proceedings (940) are in progress.

The specificity of the work of the Protector of Citizens is in the fact that if the administration authority corrects an omission after the Ombudsman's information on the initiation of proceedings, the Ombudsman dismisses the procedure without recommendation. The trend of the increase of such cases was evident in 2009, which indicates the increasing awareness of various administrative authorities of the role and powers of the Protector of Citizens.

During 2009, the Protection of Citizens submitted 44 formal, written recommendations to the public authorities and 70 oral (regarding a smaller omission; the Ombudsman considers the oral recommendation to be the most efficient way for the efficient elimination of omissions, and the public authority expresses the will to act on oral recommendation and then really does it). However, 10 written recommendations from 2009 were not implemented by the administrative authorities, not even after the Protector of Citizens used the legal power to inform the public on their failure to implement the recommendations, through the media and his website, as well as through the regular annual report to the National Assembly of the Republic of Serbia. Moreover, till the end of 2009, the competent authorities did not act on five recommendations that were submitted by the Protector of Citizens in 2008.

During 2009, the Protector of Citizens gave eight opinions within the preventive activities, and/or provision of good services, mediation, advice and opinions regarding the matters within its jurisdiction, with the purpose of the improvement of protection of human rights and freedoms (Article 24 paragraph 2 of the Law on the Protector of Citizens). In addition to this, the Protector of Citizens gave six opinions within the normative activity in 2009.

The judicial system

General

59. Please provide brief description of legislation or other rules governing the structure and functioning of the judicial system. Are there any tribunals outside the ordinary judicial system (such as military tribunals)?

The Constitution of the Republic of Serbia ("Official Gazette of RS", No. 98/06), in the fifth part – Organisation of the state authorities, among others, regulates also judicial authorities. The Chapter 7 – Courts (Art. 142. to 152), regulates the principles of courts, types of courts, judicial decisions, permanence of judicial appointment, selection of judges, termination of judicial appointment, independence of judge, non-transferability of judge, immunity and incompatibility of judicial appointment, and in the Chapter 8 – High Judicial Council (Art. 153. until 155). In the Chapter 9 – Public Prosecutor's Office (Art. 156. to 165) regulates the position, competence, establishment and organisation of the Public Prosecutor's Office, public prosecutors and deputies of the public prosecutor, accountability, termination of the function and immunity of the public prosecutor and the deputy of the public prosecutor, incompatibility of the function of prosecutor and the State Prosecutorial Council. The sixth part of the Constitution of the Republic of Serbia (Art. 166. to 175) regulates the Constitutional Court, the position, competence and organisation of the Constitutional Court, selection and appointment of judges of the Constitutional Court, the conflict of interests, immunity and termination of the duty of judges of the Constitutional Court, as well as the method for decision-making in the Constitutional Court.

The judicial system in the Republic of Serbia is regulated by the following laws: the Law on Organisation of Courts ("Official Gazette of RS", nos. 116/08, 104/09 and 101/2010), the Law on Judges ("Official Gazette of RS", nos. 116/08, 58/09, 104/09 and 101/2010), the Law on locations and areas of courts and public prosecutor's offices ("Official Gazette of RS", no. 116/08), the Law on High Prosecutorial Council ("Official Gazette of RS", no. 116/08 and 101/2010), the Law on Public Prosecution ("Official Gazette of RS", no. 116/08, 104/09 and 101/2010), the Law on the State Prosecutorial Council ("Official Gazette of RS", nos. 116/08

and 101/2010), the Law on Constitutional Court ("Official Gazette of RS", no. 109/07) and the Law on Judicial Academy ("O. Gazette of the RS" No.104/2009).

Pursuant to Article 13 of the Law on Public Prosecution in the Republic of Serbia, there are basic public prosecutor's offices, high public prosecutor's offices, appellate public prosecutor's offices, Republic Public Prosecutor's Office and public prosecutor's offices for special competences – Public Prosecutor's Office for Organised Crime and Prosecutor's Office for War Crimes.

Pursuant to Article 11 of the Law on Organisation of Courts, there are courts of general and special jurisdictions in the Republic of Serbia. The courts of general jurisdiction are basic courts, high courts, appellate courts and Supreme Court of Cassation. The courts of special jurisdiction are misdemeanour courts, High Misdemeanour Court, commercial courts, Commercial Appellate Court and Administrative Court.

Basic courts are established for the territory of the town, one or several municipalities, high courts are established for the area of one or several basic courts, and appellate courts for the area of several high courts. Commercial courts are established for the territory of one or several towns, i.e. several municipalities. Basic and commercial court may have judicial unit outside its seat where the proceedings are conducted as well as other judicial actions. Judicial unit outside the seat of the basic and commercial court is established for the territory of the town, i.e. one or several municipalities within the court area.

Misdemeanour courts are established for the territory of the town, i.e. one or several municipalities. Misdemeanour court may have a division outside its seat where the proceedings are conducted as well as other judicial actions. Division outside the seat of the misdemeanour court is established for the territory of the town, i.e. one or several municipalities within the court area.

The courts of republic level are Supreme Court of Cassation, Commercial Appellate Court, High Misdemeanour Court and Administrative Court. There are no courts outside regular judicial system in the Republic of Serbia.

60. Please describe the organisational framework of the court system and indicate any planned changes. How are judges appointed and what is their status? Is there any immunity system for judges?

The organisational framework

Within the reform of judicial system of the Republic of Serbia, a new organisation and a new organisation of courts have been established since 1 January 2010 and at this moment, the changes of the judicial system are not planned.

Pursuant to the Law on Organisation of Courts ("Official Gazette of RS", Nos. 116/2008, 104/2009 and 101/2010), existence of courts of general and special jurisdiction is planned. The courts of general jurisdiction are basic courts, high courts, appellate courts and Supreme Court of Cassation, as the court of the highest instance in the country. The courts of special

jurisdiction are commercial courts, Commercial Appellate Court, misdemeanour courts, High Misdemeanour courts and Administrative Court.

The selection of judges and their status:

The Law on Judges (“Official Gazette of RS”, number 116/2008, 58/2009, 104/2009 and 101/2010) and Decision on defining the criteria and principles for assessment of competence, qualification and respectability for appointment of judges and court presidents (“Official Gazette of RS”, number 49/2009) stipulates the method of selection of judges, promotion of judges and conditions and criteria necessary for selection.

The procedure on selection of judges starts after publishing the advertisement, and the applications to vacancy may be submitted by the candidates who meet the conditions stipulated in the law. In the event of selection, the different procedure for candidates who are selected for the first time for the appointment of judge is planned as well as for the candidates conducting judicial function at the time of announcement of vacancy. The conditions that the candidates should meet are qualification, competence and respectability. For all candidates, their personal and professional resume shall be considered. For the candidates selected for the first time for the judicial function, grading shall be conducted considering competence, based on the stipulated criteria (average marks at the faculty, duration of studies and assessment of work) and qualification shall be specified based on the obtained opinion from the authorities and organisations where the candidates work. For the candidates appointed at judge functions, the opinion of the sessions of all judges and assessment of work shall be considered. Criteria, standards and procedure for assessment of the work of judges shall be defined by the High Judicial Council in the special act. The promotion of a judge implies the selection of the judge of a higher level court, regardless the type of a court. The basic criteria for the selection of the judge of a higher level court shall be the assessment of work. Qualification of the candidates for conducting judicial functions may be assessed based on the results of the interview (Article 6 Decision on defining criteria and standards for assessment of competence, qualification and respectability for selection of judges and president of courts) and conducting the interview with the applicants is specified also in the Rules of Procedure of the High Judicial Council (“Official Gazette of RS”, number 43/2009).

The candidates shall be selected for the judges of the court they applied for with the Decision of the High Judicial Council on the selection of judges in the permanent judicial function and Decision of the National Assembly on selection for three year mandate. The judge, who is selected for the first time in the judicial function before appointment, shall recite a pledge before the president of the National Assembly (Article 53 of the Law on judges). The selected judge shall be appointed at the special session of all judges at the court for which one was selected (Article 55 of the Law on judges).

The judge, who has been selected for the first time and during the three year mandate evaluated “exceptionally conducts judicial function”, shall be appointed to the permanent judicial function by the High Judicial Council on compulsory basis. The judge who has been evaluated "unsatisfactory" shall not be selected in the permanent judicial function.

Pursuant to the Law on Judicial Academy, ("Official Gazette of the Republic of Serbia" No. 104/2009) the initial training represents the precondition for the appointment into the judicial function. This Law also allows for the possibility that only in case there are no applicants who

completed the initial training, the candidates who meet general criteria for the appointment into the judicial function stipulated in the Law on judges may be proposed for the selection to the appointment of the judge of misdemeanour or basic court.

Namely, the Program Council appointed the Commission for preparation of qualifying examination program. The Commission prepared the draft of the Qualifying examination program adopted by the Program Council. The Program Council adopted also Rulebook on taking the qualifying examination. The Rulebook regulates the method of taking the qualifying examination, duration of certain segments of the qualifying examination as well as the rights and obligations of the candidates. The Board of Directors in compliance with the Law confirmed the Qualifying examination program and the Rulebook on taking the qualifying examination. In the course of exercising the transparency, the Program and the Rulebook have been published on the Internet Web page of the Academy and sent to all courts of Serbia, thus the interested candidates could become familiar with the program and start the preparation for taking the qualifying examination.

The advertisement for enrolment of the first generation was issued on 23 August 2010 in the Official Gazette and daily newspapers Politika and Vecernje Novosti. Furthermore, pursuant to the Law, the High Judicial Council defined the number of attendees who shall be enrolled in the first generation.

The qualifying examination is divided in three parts: a written part, personality test and verbal part. The personality test was prepared by the expert in that field.

The Judicial Academy developed the test preparation software. The software was installed at one computer which was removed from the internal network and Internet connection due to safety. The software comprises of all potential questions prepared by the Commission for preparation of qualifying examination program. Regarding the difficulty level, the questions were sorted in easy, medium and difficult. The software task was to generate five combinations of the tests of the same difficulty level in the proportion of 50% medium, 25% difficult and 25% easy questions. The tests were generated and printed 24 hours prior to taking the written part of the exam. Afterwards, every combination was printed, packed and sealed separately. All five combinations of tests were sent to all examination locations in relation to the number of candidates who were taking examination at those locations, monitored by the employees of the Academy. Prior to beginning of the qualifying examination, every candidate received the application with one's data. The application is prepared in the special form with the tinted section so that the candidate's identity could not be defined until the application is open. Ten minutes prior to beginning of the qualifying examination, the president of the Board of Directors selected the number of test which would be done, on which the Academy representatives were informed at the same time at all locations where the test was taken.

For taking the qualifying examination, the total of 82 candidates applied (for appointment in judicial and prosecutor functions) and the total of 52 candidates took the qualifying examination (for appointment in judicial and prosecutor functions). All candidates were assessed satisfactory at the personality test. The personality test was prepared thus it may define the ability of work under pressure, communication with other persons, work with short deadlines and personal traits of the candidates.

Within the period from 27 to 30 September, the verbal part of the qualifying examination was organised. The verbal part was taken by 51 candidates (for the appointments of judicial and prosecutor functions). The candidates took the examination in accordance with the schedule in the groups of six. After the identity check of the candidates, the candidates withdrew question within the area which they selected, afterwards they withdrew which would be the order of their answers to the task before the Examination Board. All candidates had minimum 30 minutes for the preparation of answers at their disposal. They had literature at their disposal in compliance with the Rulebook and it was located in the room for preparation of candidates as well as two computers with the base of legal regulations. The computers were removed from local and Internet network. After the expiration of the preparation time, the candidates answered the questions according to the specified schedule individually before the Examination Board.

Every member of the Examination Board granted individually marks for every candidate with the register taken which was entered into the mutual minutes.

After the completion of the verbal part of the qualifying examination, the list of candidates with the marks from every section of the qualifying examination and the final mark were issued.

Pursuant to the results, the list of all candidates was published (for appointment of judicial and prosecutor functions) and information that 22 attendees shall be enrolled into the first generation, 13 attendees shall be enrolled by the decision of the High Judicial Council and 9 attendees by the decision of the State Prosecutorial Council.

This procedure shall be applicable hereinafter considering the fact that it was regulated by the Rulebook on taking the qualifying examination.

Immunity of the judges:

The Constitution of the Republic of Serbia ("Official Gazette of RS", No. 98/2006 - Article 151) and the Law on Judges (Article 5) regulate the issue on immunity of judges. The judge shall not be impeached for the expressed opinion or voting in the event of making judicial decision, unless it is the case of criminal act on law violation by the judge. The judge shall not be arrested in the procedure initiated for criminal act performed in conduct of judicial function without the approval from the High Judicial Council. Pursuant to the Law on High Judicial Council ("Official Gazette of RS", Nos. 116/2008 and 101/2010), Article 13, the jurisdiction of the High Council also includes decision on immunity issues of the judges and the Council members.

The Criminal Code ("Official Gazette of RS", No. 85/2005, 88/2005, 107/2005, 72/2009, 111/2009) stipulated the criminal act of violation of law by the judge, public prosecutor and deputy prosecutor (Article 360) for which the imprisonment sentence from six months to five years is specified, and for more severe forms, the imprisonment sentence from two to twelve years is specified.

61. Please provide a description of your prosecutorial system. How are prosecutors appointed and what is their status? Is there any immunity system for prosecutors? What are the respective roles of prosecutors and deputy prosecutors and what is the hierarchical system between them?

Description of the prosecution system

Organisation and jurisdiction of the public prosecutor's offices is stipulated in the Law on Public Prosecution ("Official Gazette of the Republic of Serbia" Nos. 116/08 and 104/09).

The public prosecutor's office is the independent state authority which prosecutes the offenders of the criminal and other culpable acts and takes measures for protection of constitution and legitimacy.

The Republic Prosecutor's Office is the highest public prosecutor's office in the Republic of Serbia, followed by appellate public prosecutor's offices, established for the area of appellate court, high public prosecutor's offices, established for the area of the high court, basic prosecutor's offices, established for the area of basic court and public prosecutor's offices of special jurisdiction established for the territory of the Republic of Serbia. The Law on Public Prosecution stipulates that the inferior public prosecutor is subject to immediately superior public prosecutor, and the inferior public prosecutor's office to the immediately superior public prosecutor's office.

Public prosecutor's offices of special jurisdiction are the Organised Crime Prosecutor and War Crimes Prosecutor.

Appointment of prosecutors

At the proposal of the Government, the Public Prosecutor is elected by the National Assembly for the period of six years and one may be elected again. The Government proposes the candidates for the appointment of prosecutor from the list of candidates defined by the State Prosecutorial Council. The National Assembly, at the proposal of the State Prosecutorial Council, appoints the person which shall be selected for the first time for the deputy prosecutor for the period of three years.

The State Prosecutorial Council selects the deputy prosecutors for permanent conduct of their functions and decides on the selection of deputy prosecutors who have been permanently appointed in some other or the high public prosecutor's office. The public prosecutors and deputy prosecutors as the selected persons are the holders of judicial offices.

Pursuant to the Law on Judicial Academy, ("Official Gazette of the Republic of Serbia" No. 104/2009) the initial training represents the precondition for the appointment into the judicial function. This Law also allows for the possibility that only in case there are no applicants who completed the initial training, the candidates who meet general criteria for the appointment into the prosecutorial function stipulated in the Law on Public Prosecution may be proposed for the selection of the deputy in the basic public prosecutor's office.

Namely, the Program Council appointed the Commission for preparation of qualifying examination program. The Commission prepared the draft of the Qualifying examination

program adopted by the Program Council. The Program Council adopted also Rulebook on taking the qualifying examination. The Rulebook regulates the method of taking the qualifying examination, duration of certain segments of the qualifying examination as well as the rights and obligations of the candidates. The Board of Directors in compliance with the Law confirmed the Qualifying examination program and the Rulebook on taking the qualifying examination. In the course of exercising the transparency, the Program and the Rulebook have been published on the Internet Web page of the Academy and sent to all courts of Serbia, thus the interested candidates could become familiar with the program and start the preparation for taking the qualifying examination.

The advertisement for enrolment of the first generation was issued on 23 August 2010 in the Official Gazette and daily newspapers Politika and Vecernje Novosti. Furthermore, pursuant to the Law, the High Judicial Council defined the number of attendees who shall be enrolled in the first generation.

The qualifying examination is divided in three parts: a written part, personality test and verbal part. The personality test was prepared by the expert in that field.

The Judicial Academy developed the test preparation software. The software was installed at one computer which was removed from the internal network and Internet connection due to safety. The software comprises of all potential questions prepared by the Commission for preparation of qualifying examination program. Regarding the difficulty level, the questions were sorted in easy, medium and difficult. The software task was to generate five combinations of the tests of the same difficulty level in the proportion of 50% medium, 25% difficult and 25% easy questions. The tests were generated and printed 24 hours prior to taking the written part of the exam. Afterwards, every combination was printed, packed and sealed separately. All five combinations of tests were sent to all examination locations in relation to the number of candidates who were taking examination at those locations, monitored by the employees of the Academy. Prior to beginning of the qualifying examination, every candidate received the application with one's data. The application is prepared in the special form with the tinted section so that the candidate's identity could not be defined until the application is open. Ten minutes prior to beginning of the qualifying examination, the president of the Board of Directors selected the number of test which would be done, on which the Academy representatives were informed at the same time at all locations where the test was taken.

For taking the qualifying examination, the total of 82 candidates applied (for appointment in judicial and prosecutor functions) and the total of 52 candidates took the qualifying examination (for appointment in judicial and prosecutor functions). All candidates were assessed satisfactory at the personality test. The personality test was prepared thus it may define the ability of work under pressure, communication with other persons, work with short deadlines and personal traits of the candidates.

Within the period from 27 to 30 September, the verbal part of the qualifying examination was organised. The verbal part was taken by 51 candidates (for the appointments of judicial and prosecutor functions). The candidates took the examination in accordance with the schedule in the groups of six. After the identity check of the candidates, the candidates withdrew question within the area which they selected, afterwards they withdrew which would be the order of their answers to the task before the Examination Board. All candidates had minimum 30

minutes for the preparation of answers at their disposal. They had literature at their disposal in compliance with the Rulebook and it was located in the room for preparation of candidates as well as two computers with the base of legal regulations. The computers were removed from local and Internet network. After the expiration of the preparation time, the candidates answered the questions according to the specified schedule individually before the Examination Board.

Every member of the Examination Board granted individually marks for every candidate with the register taken which was entered into the mutual minutes.

After the completion of the verbal part of the qualifying examination, the list of candidates with the marks from every section of the qualifying examination and the final mark were issued.

Pursuant to the results, the list of all candidates was published (for appointment of judicial and prosecutor functions) and information that 22 attendees shall be enrolled into the first generation, 13 attendees shall be enrolled by the decision of the High Judicial Council and 9 attendees by the decision of the State Prosecutorial Council.

This procedure shall be applicable hereinafter considering the fact that it was regulated by the Rulebook on taking the qualifying examination.

Immunity

Pursuant to Article 51 of the Law on Public Prosecution, the public prosecutor and deputy public prosecutor have immunity which implies that they shall not be impeached for the expressed opinion in conduct of prosecutor's duty, unless it is a criminal act on violation of law by the public prosecutor, i.e. deputy public prosecutor.

Without the approval of the competent board of the National Assembly, the public prosecutor and deputy public prosecutor shall not be arrested in the procedure initiated for criminal act performed in conduct of prosecutorial function.

Hierarchy

The Basic Public Prosecutor's Office is inferior to the High Public Prosecutor's Office and the High Public Prosecutor's Office is inferior to Appellate Public Prosecutor's Office. The Public Prosecutor's Office of special jurisdiction and Appellate Public Prosecutor's Office is inferior to Republic Public Prosecution. Every public prosecutor is inferior to the Republic Public Prosecutor and every public prosecutor's office is inferior to Republic Public Prosecutor's Office.

The conflict of jurisdiction between public prosecutors shall be resolved by the immediately superior public prosecutor who is competent for public prosecutors in the conflict of jurisdiction. The conflict of jurisdiction between the public prosecutors of special jurisdiction and the conflict of jurisdiction between public prosecutors of special jurisdiction and other public prosecutors shall be resolved by the Republic Public Prosecutor.

In order to exercise superiority, the Republic Public Prosecutor has the right to consider every case and the immediately superior public prosecutor every case of the inferior public prosecutor.

The republic public prosecutor manages activities and represents the public prosecution. Republic public prosecutor is obliged for the work of public prosecution and his work to the National Assembly. The Public prosecutor is obliged for the work of public prosecution and his work to the Republic Public Prosecutor and the National Assembly and the inferior public prosecutor also to the immediately superior public prosecutor. The deputy public prosecutors are obliged to the public prosecutor for their work. The republic public prosecutor issues the general obligatory guidelines in writing for conduct of all public prosecutors in order to reach legitimacy, effectiveness and uniformity in conduct. The general mandatory guidelines may be issued by the Republic Public Prosecutor also at the proposal of the Board of the Republic Public Prosecutor's Office.

62. Please indicate:

- a) The number of courts (by type of court);**
- b) The main competencies and functions of each type of court;**
- c) The number of judges, prosecutors and defence lawyers;**
- d) The number and the exact roles / competencies of bailiffs and public notaries ;**
- e) The proportion of female judges and of judges belonging to ethnic minorities and, if data are available, the proportion of women and persons belonging to ethnic minorities for the other legal professions mentioned under c).**

a) The number of courts (by type of court);

The Law on locations and areas of courts and public prosecutor's offices ("Official Gazette of RS", no. 116/08), establishes the misdemeanour, basic, commercial and appellate courts, regulates their locations and areas where they conduct their jurisdiction and defines the departments of the High Misdemeanour and Administrative Court and areas of their jurisdiction.

The courts of general jurisdiction:

- Basic courts - 34
- High courts - 26
- Appellate courts - 4
- Supreme Court of Cassation - 1

The courts of special jurisdiction:

- 5. Commercial courts - 16
- 6. High Commercial Court - 1
- 7. Misdemeanour courts - 45
- 8. High Misdemeanour Court - 1
- 9. Administrative Court – 1

b) The main competencies and functions of each type of court;

The Law on Organisation of Courts ("Official Gazette of RS", Nos. 116/2008, 104/2009 and 101/2010) stipulates the jurisdiction of courts in the Republic of Serbia.

The basic court of the first instance arbitrates for the criminal acts for which the main penalty is a fine or imprisonment from ten years if for some of them other court is not competent. The basic court of the first instance arbitrates in the civil legal disputes in case other court is not competent for some of them and it also conducts administrative and extra-judicial proceedings. The basic court of the first instance arbitrates in the housing disputes; disputes in relation to commencement, existence and termination of employment; , obligations and responsibilities pursuant to employment; reimbursement of the damage that the employee suffers during work or related to work; disputes relating to satisfying housing needs based on work. The basic court provides citizens with the legal aid, extended mutual legal aid in case other court is not competent and conducts other activities specified in the law.

The High Court of the First Instance arbitrates in the criminal acts punishable by imprisonment of more than 10 years as principle penalty; adjudicates in the criminal offences against Army of Serbia; disclosure of state secret; call for violent change of the constitutional order; provoking national, racial and religious hatred and intolerance; violation of territorial sovereignty; conspiracy for anti-constitutional activity; organization and incitement to genocide and war crimes; damaging of the reputation of the Republic of Serbia; damaging of the reputation of a foreign country or international organization; money laundering; disclosure of official secret; violation of law by the judge, public prosecutor and deputy public prosecutor; endangering the safety of air traffic; murder in the heat of passion; rape; sexual copulation with a powerless person; copulation by abuse of authority; abduction; trafficking of minors for adoption; violent conduct at the sports event; acceptance of bribe; adjudicates in juvenile criminal procedures; decides on rehabilitation requests;; adjudicates in civil disputes where the value of the subject of the lawsuit allows review; in disputes on denying or proving paternity and maternity; on authority and corresponding rights, protection and use of inventions, designs, samples, hallmarks and signs of geographic origin if other court is not competent; in disputes on issuing the corrigendum of the information and reply to information due to violation of prohibition on speech of hatred, protection of rights for private life, i.e. right for personal recording, missing to publish information and reimbursement of damage in relation to publishing the information; adjudicates in the disputes in relation to strike; in relation to collective agreements if the dispute is not resolved before arbitration; in relation to compulsory social insurance in case other court is not competent; in relation to registers of births, deaths and marriages; in relation to appointment and dismissal of authorities of legal entities if other court is not competent. The High Court of the second instance decides on appeals to the decisions of basic courts and defining the security measures of attendance of the respondent and the decisions in civil-legal proceedings; to judicial judgment in disputes of small amounts; in administrative and extra-judicial proceedings; conducts the proceedings for extradition of respondents and convicted persons, provides international legal aid in the proceedings for criminal acts within its jurisdiction, executes criminal judgment of the international court, decides on acceptance and execution of foreign judicial and arbitration decision if other court is not competent, decides on the conflict of competences of the basic courts within its area and conducts other activities specified in the law.

Appellate Court decides on appeals of: the decisions of high courts; decisions of basic courts in the criminal proceedings in case high court is not competent for decision on appeal as well as the decisions of basic courts in civil legal disputes in case high court is not competent for decision on appeal.

The Commercial Court of the First Instance arbitrates in disputes between local and foreign undertakings, companies, cooperatives and entrepreneurs and their associations (business entities), in disputes which occur between business entities and other legal person entities in conducting the activities of business entities, also when in the specified disputes one of the parties is a natural person in the relation of material competition with the party; in disputes resulting from the implementation of the Law on Business Companies or other regulations on organization and status of business entities, as well as in the disputes on implementation of regulations on privatization; in disputes on foreign investments; on ships and airplanes, sailing in the sea and internal waters and disputes on implementation of maritime and aircraft law, apart from disputes on transportation of passengers; on protection of the company; in case of the entry into judicial register; in case of bankruptcy and liquidation. The Commercial Court in the first instance conducts the proceedings for entry into court registry of the legal entities and other entities if other authority is not competent for that; conducts the procedure of bankruptcy and reorganisation; decides and conducts the execution based on the valid documents when they relate to the persons in the item 1, paragraph 1 of this Article, decides and conducts the execution and provision of decisions of the commercial courts and the decision of the selected courts only if they were made in the disputes in item 1, paragraph 1 of this Article; decides on acceptance and execution of the foreign judicial and arbitration decisions brought in the disputes in the item 1, paragraph 1 of this Article; decides and conducts execution and provision at ships and aircrafts; conducts extra-judicial proceedings resulting from the implementation of the Law on Business Companies ("O. Gazette of RS", no. 125/2004); in the first instance decides on company offences and this regard on termination of protective measure of the legal consequences of judgment.

The Commercial Appellate Court decides on appeals to the decisions of commercial courts and other authorities in compliance with the law.

Misdemeanour court in the first instance adjudicates in the misdemeanour activities if the administrative authority is not competent, makes decisions on appeals to the decisions made by the authorities in the misdemeanour procedure and conducts other activities specified in the law.

The High Misdemeanour Court decides on appeals to the decisions of misdemeanour courts and transfer of local jurisdiction of misdemeanour courts and conducts other activities specified in the law.

Administrative Court arbitrates in administrative disputes.

The Supreme Court of Cassation decides on extraordinary legal remedies issued on the decisions of the courts of the Republic of Serbia if other court is not competent to make decisions, as well as transfer of jurisdiction of the courts for easier conduct of proceedings or other important reasons; defines the principal legal approaches due to unique judicial implementation of law; considers implementation of law and other regulations and functioning of courts; appoints the judges of the Constitutional Court, grants opinion on

candidate for the president of the Supreme Court of Cassation and performs other competences specified in the law.

Pursuant to the Law on Organisation and Competence of the State Authorities in Suppressing Organised Crime, Corruption and other especially severe criminal offences ("O. Gazette of RS" nos. 42/2002, 27/2003, 39/2003, 67/2003, 29/2004, 58/2004 - other law, 45/2005, 61/2005 and 72/2009), Article 2, envisages the criminal offences in the area of organised crime, corruption and other especially severe criminal offences. The High Court in Belgrade is competent for conduct in these cases, as the court of first instance, for the complete territory of the Republic of Serbia. The Appellate Court in Belgrade is competent for conduct in the second instance in the cases of criminal offences specified in Article 2 of this Law, for the complete territory of the Republic of Serbia.

Pursuant to the Law on Organisation and Competence of the State Authorities for the Fight against Cyber Criminal ("O. Gazette of RS" nos. 61/2005 and 104/2009) envisages the criminal offences of cyber criminal in Article 3. The High Court in Belgrade is competent for conduct in these cases, as the court of first instance, for the complete territory of the Republic of Serbia. The Appellate Court in Belgrade is competent for conduct in the second instance in the cases of criminal offences specified in Article 3 of this Law, for the complete territory of the Republic of Serbia.

Pursuant to the Law on Organisation and Competence of the State Authorities in the Proceedings of War Crimes ("O. Gazette of RS" nos. 67/2003, 135/2004, 61/2005, 101/2007 and 104/2009) in Article 2 envisages the criminal offences regarded as war crimes in national legislation. The High Court in Belgrade is competent for conduct in these cases, as the court of first instance, for the complete territory of the Republic of Serbia. The Appellate Court in Belgrade is competent for conduct in the second instance in the cases of criminal offences specified in Article 2 of this Law, for the complete territory of the Republic of Serbia.

c) The number of judges, prosecutors and defence lawyers;

Pursuant to the Decision of the High Judicial Council on the number of judges in courts ("Official Gazette of RS", Nos. 43/2009, 91/2009 and 35/2010), it is regulated that there is the total of 2,587 judges in the Republic of Serbia. As of 17 December 2010, in the Republic of Serbia, there are totally 2,242 judges and 153 judicial vacancies.

In the event of defining the number of courts in compliance with the new judicial network, the High Judicial Council considered the newly specified court competences in accordance with the Law on Organisation of Courts, regarding the fact that a certain number of cases transferred their jurisdiction to newly established high courts, in judicial matter, whereas from previous regional courts, the number of cases was transferred from criminal matter to the jurisdiction of the newly established basic courts. The courts delivered data in tables regarding the number of cases which should be transferred to newly established courts in compliance with new competences.

The previous High Judicial Council stipulated T1 and T2 tables. T1 table includes data on the court activities within the certain period and T2 table includes data on judge activities individually. The number of judges was defined in relation to average frequency of cases in three year period (2006, 2007 and 2008). T1 table includes data in relation to the number of

cases under procedure, the number of newly received cases, the number of resolved cases and the number of unresolved cases during one year.

For decision on the number of judges, the judicial matters were considered, in the municipal courts: Ki, K, P and P1 and in regional courts K, Ki, Kz, Gz and P¹. The annual normative was specified based on 11 months and the Framework measures for decision on the number of judges in courts of general and special jurisdiction were implemented.

With specifying the number of judges in appellate courts, the data on the number of cases which would be transferred from regional courts from all matters, as well as cases which are transferred from the Criminal Department of the Supreme Court of Serbia to the jurisdiction of appellate courts were considered.

Considering the jurisdiction of the Administrative Court, the number of judges of Administrative Court was defined in accordance with the statistical data on expected number of unresolved cases, administrative disputes of regional courts and the Administrative Department of the Supreme Court of Serbia which shall be transferred and resolved at the newly established Administrative Court, as the court of first instance in administrative dispute, regarding also the assumed frequency of cases in the first year of its work.

The number of required judges of the Supreme Court of Cassation was defined in accordance with the expected frequency of cases regarding the jurisdiction of the Supreme Court of Cassation and the number of unresolved cases in which until 31 December 2009 the decision of the Supreme Court of Serbia is not made, which shall be transferred to the jurisdiction of the Supreme Court of Cassation in relation to Article 90 of the Law on Organisation of Courts.

The previous commercial courts were converted to commercial courts. For commercial courts, the frequency of average number of cases was considered in mostly judicial matters in the commercial courts: Pk, St, P, I and P² to which the normative specified in framework measures was implemented. For commercial courts, the data obtained from the program for automatic conduct of cases were used, which was implemented in all commercial courts in 2008 (ABP program) and all commercial courts in Serbia were connected into one network.

In misdemeanour courts, the number was defined according to the average frequency of cases in the misdemeanour authorities and councils for misdemeanour and Orientation measures for defining the required number of judges in the High Misdemeanour Court and misdemeanour courts, as well as the courts of general jurisdiction, on 11 months basis.

Regarding the formula, the average number of cases per certain matter shall be divided with the approximate number of cases that the judge shall complete in 11 months calculated after implementation of normative specified in the Orientation Measures for certain matter.

Pursuant to the Decision on the number of Public Prosecutors ("Official Gazette of the Republic of Serbia", No. 43/09), it is regulated that there is the total of 67 public prosecutors and 546 deputy public prosecutors in the Republic of Serbia. Pursuant to this decision, 62 public prosecutors and 506 deputy public prosecutors were selected.

The State Prosecutorial Council made the Decision on the change of decision on the number of Deputy Public Prosecutors ("Official Gazette of the Republic of Serbia", No. 24/10) which

increased the number of deputy public prosecutors by 40 positions in the public prosecutor's offices in the Republic of Serbia. Out of the total number of deputy public prosecutors, i.e. 586, the total of 564 deputy public prosecutors was selected and 22 positions remained for the deputy public prosecutors in the Republic of Serbia.

In the event of calculation of the number of prosecutorial office holders, the necessity of adjustment with rationalisation of the court network was considered, regarding the fact that the level of burden on prosecutorial office holders was not equal. For example, public prosecutor's offices in Belgrade had significantly higher number of cases in work in comparison to other public prosecutor's offices across the Republic of Serbia, thus the need occurred for the equal load of prosecutorial office holders at the territory of whole Republic of Serbia which was a parameter for calculation of the final number of public prosecutors and deputy public prosecutors.

The number of lawyers who may be court-appointed defence attorneys, at the level of the Republic of Serbia, according to the data on the Bar Chamber of Serbia, is 7,500.

d) The number and the exact roles / competencies of bailiffs and public notaries;

Pursuant to the Law on Enforcement Procedure ("O.Gazette of RS" No. 125/2004), the bailiffs conduct execution and there are 354 in Serbian courts.

Bailiffs have high school education (they are not lawyers) and they conduct exclusively per the order of enforcement judge in the procedure of enforcement conduct, depending on the fact what are the means or matters of enforcement specified in the judicial decision on enforcement.

Insufficient number and poor qualification of bailiffs, as well as inefficient procedure of enforcement, initiated the preparation of the draft of the new Law on Enforcement and Security which shall include besides judicial bailiffs, also professional bailiffs into the judicial system of the Republic of Serbia. In this way, the quality and efficiency of the enforcement procedure shall be improved and the number of remaining cases in the courts shall be decreased.

After the expertise of the Council of Europe experts, the final version of the Law on Enforcement and Security as urgent procedure shall be found in the procedure before the Government and National Assembly. The implementation of this law is expected at the beginning of 2012.

Regarding the public notaries who are not currently included in the judicial system of the Republic of Serbia, we state that the draft of the Law on Public Notaries was prepared which passed the public dispute and which shall have been under urgent procedure before the Government and National Assembly by the beginning of February 2011. The implementation of this law is expected in 2012.

e) The proportion of female judges and of judges belonging to ethnic minorities and, if data are available, the proportion of women and persons belonging to ethnic minorities for the other legal professions mentioned under c).

Women represent one third of the total number of persons as judicial office holders.

Name of the court	The number of female judges	The percentage of women in relation to the total number of judges
Supreme Court of Cassation	17	70,83
Appellate Court in Belgrade	64	79,01
Appellate Court in Kragujevac	37	69,81
Appellate Court in Nis	22	61,11
Appellate Court in Novi Sad	34	68
Administrative Court	24	70,59
High Commercial Court	17	68
Commercial courts	99	71,74
High courts	166	60,36
Basic courts	792	72,06
High misdemeanour courts	51	78,46
Misdemeanour courts	407	75,09
TOTAL:	1.730	71,45

The managing positions are as follows in comparison to the specified number:

- Supreme Court of Cassation – 1 president,
- Appellate, high courts, basic courts, Administrative Court, Commercial Appellate Court and commercial courts – 42 presidents of courts.
- Misdemeanour courts – 33 presidents of court
- The number of male judges is 699.

The High Judicial Council on the selection of judges in the permanent judicial function and proposal of candidates to the National Assembly on selection for three year mandate considered the national proportion of population at the territory of the court for which the candidates were selected. The provision of Article 46(2) of the Law on Judges implies that at the territories with the national minorities, the number of the judicial office holders, minority representatives, is also considered.

In Vojvodina, at the territory of Appellate Court in Novi Sad, 42 judges are Hungarian nationalities, considering the fact that the highest representation is at the territory of the High Court in Subotica. In the Basic Court in Subotica, 13 judges are Hungarians out of the total number which amounts 40%, in the Commercial Court in Subotica, 60% judges are Hungarians and in Misdemeanour Court in Senta 50 judges are Hungarians. Furthermore, in the High Court in Zrenjanin, 25% judges are Hungarians out of the total number, in the Commercial Court in Sombor 20% judges and in Misdemeanour Court in Becej 60% judges are Hungarians.

At the territory of the High Court in Novi Pazar, 23 judges are the representatives of the Bosniacs national minority out of the total of 44 judges, which amounts 52% judges from this territory.

At the territory of the High Court in Vranje, there is a representation of the representatives of Albanian national minority, in the Basic Court in Vranje with 13% Albanian judges and in Misdemeanour Court in Presevo 50 % judges are Albanians.

The High Judicial Council, at the proposal of the Minister of Justice, appointed the lay judges, and at the territories with national minorities appointed lay judges also from those national minorities. In the Basic Court in Subotica, there 20 Hungarias out of 67 appointed lay judges, which amounts 30% of the total number, in the Basic Court in Kikinda 25% lay judges are Hungarians and in Basic Court in Zrenjanin 11%. At the territory of the High Court in Novi Pazar, among the lay judges, there are also the representatives of Bosniacs national minority, in the High Court in Novi Pazar 41% are Bosniacs out of the total number of the appointed lay judges and in the Basic Court in Novi Pazar 56%.

At the territories with the national minorities, there is a representation of the national minorities, both among the judicial office holders and the employed civil servants and general service employees in courts.

63. Please describe in detail the re-appointment procedure carried out for judges and prosecutors: constitutional and legal basis, exact procedure, competent bodies, criteria applied, and legal remedies.

Prosecutors

The constitutional and legal basis for selection of public prosecutors and deputy public prosecutors in the Republic of Serbia is: The Constitution of the Republic of Serbia ("Official Gazette of the Republic of Serbia", No.98/06), the Law on the Public Prosecution ("Official Gazette of the Republic of Serbia", nos. 116/08, 104/09 and 101/2010), the Law on the State Prosecutorial Council ("Official Gazette of the Republic of Serbia", no. 116/08 and 101/2010), the Rulebook on the Criteria and Standards for assessment of competence, qualification and respectability of the candidate for Prosecutorial Office Holder ("Official Gazette of the Republic of Serbia" no.55/09).

The State Prosecutorial Council announces the election of prosecutors and deputy public prosecutors and the advertisement shall be published in the "Official Gazette of the Republic of Serbia" and other media covering the territory of the complete Republic of Serbia. The applications are submitted to the State Prosecutorial Council within 15 days from the date of advertisement. The State Prosecutorial Council collects data and opinions on competence, qualification in work and respectability of the candidate. Before the decision on selection, the State Prosecutorial Council may carry out an interview with the applicant. In the event of proposal and selection of candidate for the prosecutorial function, the State Prosecutorial Council considers competence, qualification and respectability, and in compliance with the Rulebook on Criteria and Standards for assessment of competence, qualification and respectability stipulated by the State Prosecutorial Council in accordance with the law. In the event of selection and proposal of candidates, discrimination on any basis is prohibited. Furthermore, national structure of population shall be considered, corresponding

representation of national minorities and familiarity with professional legal terminology in the language of national minority which is in official use in the court. Every proposal, i.e. decision on selection, made by the State Prosecutorial Council may be explained.

The State Prosecutorial Council is an independent authority providing and guaranteeing the independence of public prosecutors and deputy public prosecutors, with the specified competencies, which is the only authorized for conduct of general selection of the prosecutorial office holders in the Republic of Serbia.

The criteria for selection of prosecutorial office holders are regulated in the Rulebook on criteria and standards for assessment of competence, qualification and respectability of candidate for prosecutorial office holder. Assessment of competence, qualification and respectability is defined based on the general professional knowledge and possession of special knowledge significant for prosecutorial office holder.

Qualification is performed based on shown competence in implementation of professional knowledge and conduct of procedure activities, shown professional skill, analytical thinking, ability of judgment and decision-making, knowledge in expression of legal approaches, quality of written and verbal expression, communication and team work ability.

Respectability is defined based on the respect the candidate enjoys in professional surroundings by one's behaviour in conduct of prosecutorial function and outside it.

The accomplishment level of criteria for the assessment of competence, qualification and respectability shall be determined based on specified standards and expressed as a mark.

The assessment is the indicator of competence and qualification of the public prosecutor and deputy public prosecutor in conduct of prosecutorial function. The assessment of competence, qualification and respectability of prosecutorial office holders shall be done by the State Prosecutorial Council.

The data on candidate shall be collected by the State Prosecutorial Council from the official registry of public prosecutions where the candidate has been working for the previous three years.

The State Prosecutorial Council is obliged that within one month from the validity date of this Rulebook defines and issues the average number of decisions made per prosecutorial office holder for the prosecution type for the period of the previous three years.

The average for the previous municipal public prosecutor's office shall be defined in comparison to all municipal public prosecutor's offices at the territory of the immediately higher regional public prosecutor's office and it shall be calculated for every of the previous three calendar years so that the total number of the made decisions by the municipal public prosecutor's offices at the territory of the immediately higher regional public prosecutor's office is summed up and afterwards the calculated number is divided with the number of prosecutorial office holders with the granted cases to work.

The average for the previous regional public prosecutor's office shall be defined in relation to all regional public prosecutor's offices at the territory of the immediate appellate public

prosecutor's office and it shall be calculated for each of the previous three calendar years so that the total number of the made decisions by the regional public prosecutor's offices is summed up and afterwards the calculated number is divided with the number of prosecutorial office holders with the granted cases to work.

The average for the Republic public prosecutor's office, i.e. for other public prosecutor's office competent for the territory of the complete Republic of Serbia shall be defined in relation to all data for that public prosecutor's office so that the total number of the made decisions is summed up for every type of cases individually and afterwards the calculated number is divided with the number of prosecutorial office holders for every type of cases.

The criteria for the assessment of competence, qualification and respectability of deputy public prosecutor are: efficiency in work; shown competence, shown ability in taking procedure activities, quality of written and verbal expression and skills in expression of legal approaches, implementation of new knowledge, implementation of new authorizations, vocational improvement and training, relation and cooperation with the employees, court and other state authorities, organizations and participants in the procedure. The criteria are divided into quantitative and descriptive. The quantitative criterion is efficiency in activities. Descriptive criteria are: shown competence; shown ability in taking procedure activities, quality of written and verbal expression and skills in expression of legal approaches; implementation of new knowledge, implementation of new authorizations, vocational improvement and training; relation and cooperation with the employees, court, other state authorities, organizations and participants in the procedure. The accomplishment of the descriptive criteria shall be defined based on the data for the previous three calendar years.

The assessment of efficiency in activities is done in the following way: the data from the registry of public prosecutor's office relating to the number of made decisions of the prosecutorial office holders are compared to the data on average decisions made per prosecutorial office holder in compliance with the Article 5 of this Rulebook.

The accomplishment level of standards: a prosecutorial office holder who in the assessment period on average basis made decisions: less than 50% of the average – unsatisfactory, from 50% to 120% of the average – satisfactory, exceeding 120% of the average – satisfactory for promotion.

The prosecutorial office holder who has been working on the especially complex cases or conducted especially complex tasks in public prosecutor's office and accomplished up to 50% of the average shall be assessed "satisfactory" and the one who accomplished from 50% to 120% of average shall be assessed "satisfactory for promotion".

The Republic Public Prosecutor may in explained proposal of the competent public prosecutor, in compliance with the criteria of the State Prosecutorial Council, assess the prosecutorial office holder with the mark "satisfactory for promotion" and when one accomplished less than 50% of average if that mark is obviously justified by the conduct of especially complex cases.

The special criteria for the assessment of competence and qualification in the conduct of prosecutor are: general ability of managing the public prosecutor's office, ability of

accomplishing supervision, ability of improvement of public prosecutor's work and ability of management in crisis situations.

The assessment of respectability is done based on the set of moral characteristics which the deputy public prosecutor should possess, as well as behaviour in compliance with those characteristics, in order to protect the respect of the prosecutorial function.

Assessment defining is done based on the observance or comments of the public prosecutor, i.e. observance or comments during the review of conduct, as well as justifiability of the complaints to work. Assessment defining shall be done based on possession of moral characteristics such as: truthfulness, conscientious, equity, conscious on social responsibility and exercised behaviour in relation to reliability, impartibility, dignity, taking the responsibility for the respect of prosecutorial organization in public, etc. The accomplishment level of standards: Deputy public prosecutor who does not possess these characteristics at the satisfactory level and does not exercise at satisfactory level the behaviour which would make one honourable – is unhonourable, and the one who possesses these characteristics at the satisfactory level and exercises at satisfactory level the behaviour which makes one honourable – is honourable.

Assessment of competence, qualification and respectability of the candidate who is proposed for the first time and is employed in some of public prosecutor's office, shall be done based on the data obtained from the public prosecutor's office where the candidate works and opinion of the public prosecutor, considering the average mark at the studies, duration of studies, mark at the passed bar exam, participation in the training, completed specialist studies and courses, published professional and expert papers, academic titles, as well as shown expertise in carrying out the appointments.

The competence, qualification and respectability of the candidates from other authorities and organizations, proposed for the first time for the prosecutorial office holder, shall be conducted considering data and opinions obtained from the authorities and organizations where the candidate worked regarding judicial activities, especially based on results of competence and qualification test for carrying out prosecutorial function. The State Prosecutorial Council shall stipulate the test content in the special decision.

The data and opinions are obtained from president of the court where the candidate works if the candidate is a judge and judicial apprentice, and for candidates from the attorney general office from the attorney general.

The opinion on the candidate lawyer, the State Prosecutorial Council shall obtain from the Bar Association of Serbia.

The appeal may be submitted to the Constitutional Court against the decision of the State Prosecutorial Council in the cases specified by the law.

Judges

Enforcement of the Constitution of the Republic of Serbia ("Official Gazette of RS", number 98/2006) and the Law on Organisation of Courts ("Official Gazette of RS", number 116/2008, 104/2009 and 101/2010), the Law on locations and areas of courts and public prosecutor's

offices ("Official Gazette of RS", no. 116/2008), the Law on Judges ("Official Gazette of RS", number 116/2008 and 101/2010) and the Law on High Judicial Council ("Official Gazette of RS", no. 116/08 and 101/2010) established the constitutional and legal framework for starting the reforms in the administration of justice.

One segment of the reform of administration of justice referred to the procedure of general selection of judges in the Republic of Serbia which was started by the High Judicial Council after the Constitutional Court refused several incentives for the assessment of constitutionality of provisions of the Law on Judges (Article 100 and Article 101(1)) and made decision on 9 July 2010, number Iuz – 43/09 in which it was defined that the new Constitution replaced the previous Constitution from 1990 on whose basis the system of judicial power in Serbia was established; that the new Constitution carried out significant changes regarding performance and organisation of judicial power and method of selection of judges, including also the method of selection to the permanent judicial function. In the decision of the Constitutional Court, it was specified that the new Constitution provides the ground for conclusion that the permanence of judicial appointment has been terminated which was guaranteed in the previous Constitution from 1990, i.e. that all judges who shall not be selected to the permanent judicial appointment by the High Judicial Council, the previously acquired judicial appointment shall be terminated. In the decision, the Constitutional Court stipulated that the challenged provisions of the Law on Judges are in compliance with the Constitution from 2006, but also with Universal Declaration of the UN on human rights and European Convention for the protection of human rights and basic freedoms.

The advertisement for the selection of judges preceded the enforcement of Framework standards for defining the number of judges in the High Misdemeanour Court and misdemeanour courts ("Official Gazette of RS", number 37/09), Decision on the number of judges in the courts ("Official Gazette of RS", number 43/09) and Decision on defining the criteria and standards for assessment of competence, qualification and respectability for selection of judges and president of courts ("Official Gazette of RS", number 49/09).

The High Judicial Council advertised on 15 July 2009 and 27 November 2009 the selection for 2,483 judges, of whom 615 magistrates. For election of judges, the High Judicial Council implemented criteria and standards from the Decision on criteria and standards for assessment of competence, qualification and respectability for selection of judges and presidents of the courts.

In the procedure of consideration of the applications, the competence and qualification of the judges who were judicial office holders at the time of selection, the High Judicial Council defined based on the report of their work in the previous three years, including data on the number of cancelled, converted and confirmed decisions per legal remedy, percentage of accomplishment of orientation normative, time of preparation of judicial decisions, maturity of criminal proceedings, as well as immediate insight into the cases, in case there were justified reasons for doubt in efficient and professional conduct of a judge. Respectability of a judge, the High Judicial Council assessed based on the findings on judge's behaviour, which were collected from reports from the competent public prosecutor's offices for judges against whom the criminal proceedings was initiated or based on data obtained from the Supervisory Board and High Personnel Council of the Supreme Court of Serbia. The justifiability of complaints of the parties in relation to conduct of judges was assessed which were directed to the presidents of the courts, the president of the Supreme Court of Serbia, Ministry of Justice,

competent Department for Administration of Justice of the National Assembly and High Judicial Council.

Other data sources, based on which it was defined whether the judge meets the selection requirements, were the personal sheet of the judge and data from personal and work resume.

The short list of the appointed judges was not prepared, because one of the reasons for the reform was unequal load of judges in the courts of Serbia, especially in the courts of the same jurisdiction level. The short list was prepared for the candidates who were judicial assistants and for other persons (lawyers, candidates from the authorities, organizations, public companies where the candidate worked).

Orientation norms were formed by the previous High Judicial Council based on the statistical data and counting the cases at the site. For assessment of competence of judges, there was a different level of norm accomplishment in certain courts and those judges were listed by the High Judicial Council by mutual comparison in relation to the court they worked and accomplished results. The number of mature cases in council, deadlines of decision preparation, number of scheduled sessions, reasons for postponement, checked complaints of the parties in the proceedings, reports prepared in the event of regular check of the conduct of judges, management of old cases and giving the priority to the same ones were taken into account. For example, it is easy to check whether the council with one judge, one member of council who was not selected, has 99 mature cases, and other member of the same council who was selected has only one mature case. Those data can be checked and they show that some judges avoided working in more complex cases, completely consciously disobeying the procedure in the reasonable time period. Therefore, there is a judge with 1,000 unresolved cases in the council, and the average number of cases per judge in that council is 500 cases, which implies that the judge does not conduct the judicial appointment conscientiously and professionally, disobeying the procedure in the reasonable time period. The complexity of the cases varies from one court to the other one, the right to random judge is obeyed, but all judges are obliged that regardless the complexity of the case, obey the generally accepted principles of judicial conduct in the reasonable time period.

By the implementation of the specified criteria and standards, the High Judicial Council on 16 December 2009 elected 1,531 judges to the permanent judicial appointment and proposed to the National Assembly 877 candidates for the first selection to the judicial appointment for three year mandate.

The High Judicial Council on 25 December 2009, made Decision on termination of judicial appointment of the judges who were not reselected in compliance with the Article 101(1) of the Law on Judges and Decision on Courts in which those judges shall exercise the right for compensation of the damage, belonging to them in accordance with the Article 101(2) of the Law on Judges. This Decision was delivered to all judges who were not reselected.

Competent authorities: The High Judicial Council is an independent authority established by the Constitution of RS, with the stipulated competences and it is the only one authorized for general selection of the judges in Serbia. In its activities, it obeyed Constitution of RS and the law, which was expected from it.

Implementation of criteria: According to the adopted criteria and standards, the basic standards for assessment of competence are average mark at the studies, duration of studies and assessment of work. Additional standards are academic title (Mag. or PhD of Bar Sciences) and published professional papers. Qualification implies skills enabling efficient implementation of specific juridical knowledge in conduct of judicial cases. Respectability implies moral characteristics, such as truthfulness, conscientiousness, equity, dignity, persistence and role model.

In the event of selection of judges to permanent judicial appointment, there is an assumption that the already appointed judges meet the criteria and standards from the decision. This assumption may be incorrect if there are reasons for doubt that the candidate meets the criteria and standards from this decision but did not show the competence, qualification and respectability for conduct of the judicial appointment. This is proved for example, by the number of cancelled decisions, if they are significantly below the average of the court or less number of completed cases than the planned orientation norm. Precisely in the accordance with the opinion of the Venetian Commission from March 2009, the High Judicial Council did not only calculate the number of cancelled decision or the number of completed cases, but also considered the type of cases, difficulty of cases, reasons for which the decision was cancelled by the High Court. Therefore, not only statistical data without any grounds were used. The High Judicial Council considered the general image of the personality of the judge, both in the court he works in and the surroundings he lives, his relationship with the colleagues and the employees, relationship with the parties and social happenings.

The Commissioner for the Information of Public Importance conducted the supervision in the Administrative Office of the High Judicial Council on 3 February 2010. On this occasion, he had the insight into the required documentation, insight into the entries of the High Judicial Council, became familiar with the method of conduct of the High Judicial Council in the procedure of general selection of judges, which data were used and how they were collected.

The legal remedy: The grounds for termination of appointment for the judges who were not reselected in the procedure of general selection of judges is found in the provision of the Article 101(1)) of the Law on Judges and by the decision of the High Judicial Council for the judges who were not selected, the legal consequence of the termination of judicial appointment was specified.

For the decision of the High Judicial Council on termination of the judicial appointment from 25 December 2009, the employer did not specify the legal remedy, because the judicial appointment is terminated for the judges who were not reselected by the rule of law and not in accordance to the decisions of the High Judicial Council. Contrary to this, if the approach that for the judges to whom the judicial appointment was not terminated by the rule of law would be accepted, but based on the decision of the High Judicial Council and that it is the constitutive decision, then its consequences, which is the termination of judicial appointment, would occur after its validity, i.e. making the decision of the Constitutional Court in the procedure under appeal and its publishing in the Official Gazette of RS. It would further mean that the judges who were not reselected remain at the judicial appointment after 1 January 2010, but it should be questioned at what court they are judges and, the most important, what is the purpose of the legal norm of Article 101(1) Law on Judges.

Considering the approaches of the Constitutional Court of Serbia from 25 March 2010, that the judges specified in Article 99(1) of the Law on Judges who were selected based on the provisions of the previously valid law, who were not reselected in the procedure of general selection of judges to the permanent appointment, are entitled to the appeal to the Constitutional Court, based on the provision of Article 148 of the Constitution of the Republic of Serbia and Article 67 of the Law on Judges, the High Judicial Council specified individual reasons for non-election in their replies to the appeals of the non-elected judges.

It is wrongly emphasised that the High Judicial Council conducted the election of the judges, although the Constitution of RS, Constitutional Law on conduct of Constitution and Law on Judges do not refer to reselection, the general selection of judges was conducted in Serbia because the election included both judges and those candidates who were not judges at the moment of general selection. Act on selection of 1,540 judges as the list of their names, may be the act which violates the right of other 847 non-selected judges. This is implied from the fact that the immediate connection between the individual act and the one which submits the constitutional appeal is required, i.e. this act shall violate the rights of the appellant.

In the resolution from 9 July 2009, the Constitutional Court defines: "the Constitutional Court stipulated that the challenged provisions of the Law on Judges, Article 99(1), Article 100 and Article 101(1) are in compliance with the Constitution and also with Universal Declaration of the UN on human rights, International Covenant on Civil and Political Rights and European Convention for the protection of human rights and basic freedoms, thus, in compliance with Article 53, paragraph 3 of the Law on Constitutional Court, the incentive was not accepted. It was specified in the decision in reference to legal provisions that the judges selected on the basis of laws brought in compliance with the previously valid Constitution of the Republic of Serbia from 1990, remain at the appointment in the courts for which they were selected until the date of appointment of the judges selected in compliance with this Law, Article 99, paragraph 1, that the first selection of judges shall be regarded as selection in the appointment of judges in compliance with the previously valid laws and that the appointment of the judges who were not selected in accordance with this Law shall be terminated on the date of the judges being appointment who were selected in compliance with this Law (Article 101(1) of the Law on Judges)."

The High Judicial Council submitted the identical decision to all judges whose judicial appointment was terminated which specifies the termination of the judicial appointment as of 31 December 2009. The legal matter of the specified decision has declarative character and it converts in the form what was stipulated in the legal provision. It cannot be concluded from the provision of Article 101(1) of the Law on Judges that the judicial appointment terminates based on single explained decision including individualized reasons for which the person was not selected. The decision, of the declaratory matter brought by the high Judicial Council shall be also the formal basis for exercising the rights for reimbursement of salary in compliance with Article 101(2) of the Law on Judges. For that reason, providing individualized reasons for non-selected judges for termination of the judicial appointment would change the legal nature of the decision of High Judicial Council because such decision would be constitutive and not declarative.

Furthermore, pursuant to Article 9(2) of the Constitutional Law, the mandate of the president and judges of the Constitutional Court selected in compliance with the previously valid Constitution expired by appointment of 2/3 of the total number of the judges of the

Constitutional Court. The termination of mandates of the previous judges of the Constitutional Court was not specified by making any decision, even only declarative one.

The Constitutional Court evaluated that the specifications of initiator were not justified, but defined that the challenged legal provisions by their content and subject of organisation do not organise the status (position) of judicial office holder in the past, but the transient mode of conducting the appointment until the establishment of judicial system of the Republic of Serbia in compliance with the Constitution from 2006. Therefore the legislator, obeying the constitutional decisions challenged by the provision of Article 1 of the Law, regulated that the judges remain appointed in the courts they were selected until the appointment of the judges elected in compliance with this Law. The selection to the appointment of a judge, according to understanding of the Constitutional Court does not represent the acquired subjective right, but the judicial appointment, as a public appointment is acquired and terminated in the method and under the conditions specified in the valid Constitution and laws brought based on it. Guarantees regarding "acquired rights" shall not exist in relation to the completely new organisation of network and organisation of courts, identically with the new jurisdiction of courts based on the provision of the valid Constitution.

However, the Constitutional Court regards that the content of the challenged provisions of the Law and issues stipulated in it imply that those legal provisions do not violate the right for righteous legal conduct, guaranteed in the provisions of the universal declaration of the UN on human rights (Article 10) the International Covenant of Civil and Political Rights (Article 14) and European Convention for protection of human rights and basic freedoms (Article 6) which is also guaranteed in the provision of Article 32 of the Constitution of RS.

The assessment of independence, impartiality and righteousness of every judge selected in accordance with the valid Constitution and Constitutional Law may be done, regarding the Constitutional Court, through the check of legal validity of decision which shall be brought. Regarding the assessment of the Constitutional Court, the implementation of the international custom is not justified in this case, because it is not a rule which results from the international custom, nor the interpretation of the legal standards, but the assessment of constitutionality of the transient provisions of the Law on Judges containing the rules on transient regime of remaining the judicial appointment if until the selection of judges in accordance with the provisions of the Constitution from 2006 and termination of the appointment of the judges elected in compliance with the previous Constitution, i.e. laws brought based on that Constitution who were not selected in compliance with the challenged Law on Judges. The Constitutional Court regards also the specifications of initiators to be unjustified which challenge the provisions of Article 100(2,3) Law on Judges regulating that the selection of judges in compliance with this Law shall be done not later than 1 December 2009, apart from the judges of the Supreme Court of Cassation who shall be selected within 90 days from the date of constitution of the High Judicial Council, as well as the fact that the judges selected in compliance with this Law shall be appointed on 1 January 2010, contrary to the provisions of Article 150 of the Constitution, according to which the judge has the right to conduct the judicial appointment in the court where he was selected and that only exceptionally one may be permanently transferred or directed to other court without one's consent in compliance with the Law. Regarding the fact that the challenged provisions of Article 100(2,3) of the Law have transient and executive character and that they determine the deadlines for selection of judges and beginning of their appointment, in compliance with the specified provisions of the Constitution and Constitutional Law for performing the Constitution, the Constitutional Court

concluded that the specified legal provisions do not regulate the order for certain conduct, not even for application to the call for selection of judges.

Pursuant to Article 67 of the Law on Judges, the judges have the right to appeal to the Constitutional Court against the decision of BCC on the termination of judicial appointment. In reference to the specified provision, the Constitutional Court disobeyed the fact that Article 67 has been valid from 1 January 2010, that the judicial duty and not appointment, of the judges who were not reselected, was terminated, because the judges have been conducting the judicial appointment from 1 January 2010.

Article 148 of the Constitution of the Republic of Serbia regulates that the judicial appointment of the judge is terminated at one's request, by occurrence of the conditions stipulated in the law or dismissal from the reasons stipulated in the law or after non-selection to the permanent judicial appointment. None of the specified reasons were the basis for termination of the judicial appointment of judges who were not selected. Article 51 of the Law on Judges which was valid until 31 December 2009, regulates that the judicial appointment is terminated at one's request, when the judge completes the working age or when one is dismissed. As the judicial appointments to the non-selected judges were not terminated for any of the specified reasons, there are no grounds for direct implementation of the provision of Article 148 of the Constitution. The judges who were not selected in the event of general selection do not have the right to appeal to the Constitutional Court against the decision of the High Judicial Council from 25 December 2009, because such legal remedy is not stipulated neither in the Constitution nor laws based on which the general selection was carried out. They have the right to use constitutional appeal as a legal matter in compliance with the Constitution.

Article 8 of the Law on Constitutional Court ("Official Gazette of RS" No. 98/06) stipulates that the provisions of the corresponding procedure law are applicable to the issues on procedure before the Constitutional Court which are not regulated by this Law and the issues which were not regulated in this Law or provisions of procedure laws, the Constitutional Court shall decide in each concrete case.

The Rulebook on the Functioning of the Constitutional Court ("Official Gazette of RS" Nos. 24/08, 27/08) contains the general provisions on the rules of procedure for all activities conducted before the Constitutional Court, as well as special provisions on certain activities, including also the procedure under constitutional appeal, but not the provisions on procedure under appeal submitted to the Constitutional Court. The general provisions of the previous proceedings before the Constitutional Court regulate the submission of the act for initiating the proceedings for the reply or opinion of the holder of the challenged act which may be extended and if the opinion, i.e. reply is not submitted within the due time, the court may continue the proceedings. The specified regulations, therefore, do not determine the corresponding implementation of the Law on General Administrative Proceedings ("Official Journal of SRY", no. 33/97, 31/2001, "Official Gazette of RS", no. 30/2010) or the Law on Administrative Dispute ("Official Gazette of RS", no. 111/2009) in the event of decision making in the proceedings under appeal submitted to the Constitutional Court.

The Law on General Administrative Proceedings in Article 251 grants the right to the authority against whose resolution the administrative disputed was timely initiated that until the end of the dispute in case it accepts all request of the prosecution to cancel or change its

resolution due to the reasons from which the court could cancel such resolution, but under condition that it does not violate the rights of the party in administrative proceedings or the right of the third party. In that situation, pursuant to Article 29 of the Law on Administrative Disputes which has been implemented from 30 December 2009, besides the prosecutor, the authority at the same time informs also the court before the dispute was initiated, and the court calls for the prosecutor to specify within due time whether one is satisfied with the enforced act or remains to appeal.

However, regardless the fact that in the administrative dispute it is decided on the legacy of the final administrative acts and other individual acts, the civil proceedings in administrative dispute shall not be regarded the same as appeal stated to the Constitutional Court. It is because those are completely different legal matters of which one shall be submitted to the court of special jurisdiction, and the Constitutional Court as a state authority.

64. Explain in detail your plans to remedy the shortcomings identified in the re-appointment procedure.

The first step in solving the problems occurred regarding the procedure of general selection of judges is making corrigendums and addendums to the law regulating the organisation of the administration of justice, such as: Law on High Judicial Council, Law on State Prosecutorial Council, Law on Organisation of Courts, Law on Judges and Law on Public Prosecution. The corrigendums of these laws were adopted in the National Assembly in December 2010 and published in “Official Gazette of RS”, number 101/2010. These laws are adjusted with the recommendation of European Commission and Venetian Commission. The laws on High Judicial Council and Law on State Prosecutorial Council envisages that the selection of the optional members of the permanent organisation of these authorities regarding the group of judges, i.e. public prosecutors and deputy public prosecutors, is conducted within 60 days from the enforcement of the law, i.e. until beginning of March 2011, after which date the review of the decision on selection of judicial office holders made by the first instances of these authorities shall be done.

Review of the decisions shall primarily relate to the non-elected judges, i.e. public prosecutors and deputy public prosecutors, whose judicial, i.e. prosecutorial appointment is terminated by the rule of law, on 31 December 2009. The appeals which these judicial office holders specified to the Constitutional Court and are in the proceedings before the Constitutional Court shall be taken by the High Judicial Council and State Prosecutorial Council which shall make the final decision in the permanent structure regarding every individual case. Previous judicial office holders who shall not be satisfied by the decision of the permanent structure of the High Judicial Council, i.e. State Prosecutorial Council shall have the right to appeal to the Constitutional Court.

According to the Action Plans of the High Judicial Council and State Prosecutorial Council which clearly state and develop the direction and dynamics of the further procedure for removing the shortcomings in the procedure of general selection of judicial appointments, it was planned that the review of decision of the first structure of the High Judicial Council and the State Prosecutorial Council relating to the non-selected judicial office holders is completed until 1 September 2011.

65. Explain in detail your plans to remedy shortcomings identified in the nomination procedure for judges and prosecutors.

The permanent structures of the High Judicial Council and State Prosecutorial Council shall review the decisions of the first structure of the High Judicial Council and State Prosecutorial Council referring to the election of judicial office holders, i.e. decisions on proposal for election in three year mandate due to specification of existence of doubt regarding their competence, qualification and respectability, i.e. existence of violation of procedure for their election.

In case the permanent structure of the High Judicial Council, i.e. State Prosecutorial Council confirms the existence of those reasons, it shall ex officio initiate the proceedings for dismissal of the certain judicial office holder for whom the reasons were confirmed.

According to the Action Plans of the High Judicial Council and State Prosecutorial Council which clearly state and develop the direction and dynamics of the further procedure for removing the shortcomings in the procedure of general election of judicial appointments, it was planned that the review of decision of the first structure of the High Judicial Council and the State Prosecutorial Council relating to the elected judicial office holders is completed until 1 September 2011.

66. Independence of the judiciary: Is independence guaranteed by the Constitution? How are the rights of the judiciary protected? How is the autonomy of prosecutors protected? How are the independence of courts and the autonomy of the prosecution service ensured from a financial point of view?

Prosecution

In article 156 of the Constitution of the Republic of Serbia ("Official Gazette of RS", no. 98/06) the public prosecution is defined as an independent state authority carrying out its activities based on the Constitution, law, rectified international contract and regulation brought based on the law.

The independence of the prosecutorial office holders is guaranteed by the Constitution and the law.

Public prosecutor and deputy public prosecutor shall be independent in executing their competences. Any influence on the work of a public prosecutor's office and on actions in cases by the executive and the legislative power by use of public office, public media and in any other way that may jeopardize the independence of the work of a public prosecutor's office, is prohibited.

The public prosecutor shall not be impeached for the expressed opinion in carrying out prosecutorial activities, unless it is the criminal act of violation of law by the public prosecutor, i.e. deputy public prosecutor.

Without the approval of the competent board of the National Assembly, the public prosecutor, i.e. deputy public prosecutor shall not be arrested in the procedure initiated for criminal act performed in conduct of prosecutorial activities.

The Law on Public Prosecution ("Official Gazette of the Republic of Serbia" no. 116/08, 104/09 and 101/2010) in Article 50 regulates that the public prosecutor and deputy public prosecutor have the right for a salary sufficient for provision of their independence and safety of their families. The salary of the prosecutorial office holders shall be in relation to respectability of the prosecutorial appointment and burden of liability and the right from employment shall be exercised in compliance with the regulations specifying the rights from employment of the elected persons.

Judiciary

The Constitution of the Republic of Serbia defines that the judicial power is unique at the territory of the Republic of Serbia as well as the fact that the courts are independent in their work and that they conduct judicial activities based on the Constitution, laws and other general acts, when it is specified by the law, then generally accepted rules of international law and rectified international agreements. The judicial decisions are brought on behalf of the people, based on the Constitution, law, rectified international contract and regulation enforced in compliance with the law. The judicial decisions are obligatory for everyone and they shall not be subject to extrajudicial examination. The judicial decision may be examined only by the competent court, within the procedure stipulated by the law. The basic principles on independence of the judiciary, independence and autonomy of the judges, permanence of judicial appointment proclaimed in the Constitution have been also confirmed in the provisions of the Law on Organisation of Courts ("Official Gazette of RS", no. 116/2008, 104/2009 and 101/2010) and the Law on Judges ("Official Gazette of RS", no. 116/2008 and 101/2010).

One of the basic principles of performing judicial activities which the Law on Organisation of Courts stipulates is that the judicial power belongs to courts and it is independent in relation to legislative and executive power, that the judicial decisions are obligatory for everybody and that they shall not be subject to extrajudicial examination. Use of official position, public media and any public appearance which inappropriately affect the direction and result of the judicial proceedings are prohibited as well as any other influence on the court and pressure over participants in the proceedings.

The Law on Judges represents the elaboration of the basic principles stipulated by the Constitution of RS and international legal acts and they refer to the fact that the judges are autonomous and independent in their conduct, to judge and arbitrate based on the Constitution, laws and other general acts, rectified international agreements, generally rules of international law, that they are obliged to conduct the proceedings impartially providing righteous of arbitration and obedience of proceedings rights of parties guaranteed by the Constitution, law and international acts.

Regarding protection of rights of judges in relation to conduct of judicial activities, the Constitution of RS regulates that the judge shall not be impeached for the expressed opinion or voting during the judicial decision, unless it is a criminal act on violation of law by the judge, as well as the judge shall not be arrested in the proceedings initiated due to criminal act

performed during the judicial activities without the approval of the High Judicial Council, and the rights regarding immunity have been regulated also by the Law on Judges.

Regarding protection of the judiciary rights, the Law on Judges guarantees the permanence of the judicial appointment, immobility, specifies the reasons for alienation, procedure and legal remedies, mutual independence of judges, i.e. unchangeability of the type of work meaning that the type of judicial work is defined by the annual schedule and case distribution randomly, to which decisions the judges has the right for appeal to the president of the immediately higher instance court. The judge has the right for the complaint to the High Judicial Council if one's right for which the special protection procedure is not specified by the Law on Judges has been violated. The Law on Judges also guarantees the material independence of judges. According to the Constitution of RS, the appeal may be submitted to the Constitutional Court against the decision of the High Judicial Council.

The Law on Judges in Article 15, as a novelty, introduces disciplinary liabilities of the judge, specifies disciplinary offences, disciplinary sanctions, conduct of disciplinary procedure as well as the authorities for conduct of disciplinary procedure. The disciplinary authorities include disciplinary prosecutor, one's deputies and disciplinary commission, established as the permanent acting authorities of the High Judicial Council. The specified authorities are established by the High Judicial Council and the members of all disciplinary authorities are appointed within the group of judges. The proposal for conduct of disciplinary proceedings is submitted by the disciplinary prosecutor based on disciplinary request. Pursuant to the Law on Judges, the High Judicial Council enacted the Rulebook on Disciplinary Proceedings and Disciplinary Liability of Judges ("Official Gazette of RS" No. 71/2010). The specified disciplinary sanctions, which the disciplinary commission may declare to the judge, are as follows: official notice, reduction of salary up to 50% within one year maximum and prohibition of promotion within three years maximum (Article 91(1)). When the severe disciplinary offence is specified, the disciplinary commission shall initiate the proceedings for dismissal of the judge (Article 92). After the conducted proceedings, the disciplinary commission may refuse the proposal of the disciplinary prosecutor or adopt the proposal and declare the disciplinary sanction (Article 97(1)). The disciplinary prosecutor or the judge, against whom the proceedings are conducted, may lodge an appeal to the High Judicial Council against the decision of the Disciplinary Commission, within 8 days after its submission. The decision of the High Judicial Council is final.

The Law on Organisation of Court, in Article 82, regulates that the assets for conduct of courts are provided in the budget of the Republic of Serbia and those assets shall maintain the independence of judicial power and enable regular functioning of courts by their range and income. The High Judicial Court is expected to be completely enabled for taking the budget jurisdiction from the Ministry of Justice of the Republic of Serbia until 1 September 2011 thus it could propose the budget assets and conduct their distribution to courts and supervision over their spending. We are mentioning that the Ministry of Justice shall not affect defining the amount of assets for the court at the territory of the Republic of Serbia, but only, at the request of the High Judicial Council, shall it propose to the Ministry of Finance to provide the requested assets for functioning of courts within the budget of RS.

67. High Judicial Council / State Prosecutorial Council: Describe their composition, role, premises and budget. How is their independence guaranteed? How are members appointed? How long is their mandate?

High Judicial Council

Pursuant to the Constitution of RS ("Official Gazette of RS", number 98/2006) and the Law on High Judicial Council ("Official Gazette of RS", Nos. 116/2008 and 101/2010), the High Judicial Council is independent and autonomous authority which provides and guarantees independence and autonomy of the courts and judges. Within the short time period after its constitution on 6 April 2009, the High Judicial Council adopted a great number of acts and decisions significant for exercising its jurisdiction. Those most significant acts are: the Rules of Procedure of the High Judicial Council ("Official Gazette of RS", number 43/09), Decision on Education and Conduct of Administrative Office ("Official Gazette of RS", number 49/09) and Rulebook on Internal Organisation and Systematization of Job Positions in the Administrative Office.

The Constitution of the Republic of Serbia and the Law on High Judicial Council regulate that the High Judicial Council has 11 members. The Council members by virtue of office are the president of the Supreme Court of Cassation, the Minister of Justice and the president of the competent Committee of the National Assembly. The electable Council members are six judges with the permanent judicial appointment and two respectable and prominent jurists, one being a lawyer and the other one a professor at the Faculty of Law.

The mandate of the Council members lasts five years, apart from the appointed members. The electable Council members shall not be elected twice consecutively but they may be reelected later. During the mandate, the judge who is a Council member shall not be elected for the judge of the other court.

The Council members have immunity as judges, thus they shall not be called to account for expressed opinion or voting in the event of the Council decision making.

Pursuant to the Law on the High Judicial Council, the electable members of the first composition of the High Judicial Council were elected by the National Assembly at the proposal of the High Judicial Council and the electable members of the permanent composition of the High Judicial Council within judges, the National Assembly shall elect based on the proposal of the Council. The electable members within lawyers and professors of the Faculty of Law, the National Assembly elects at the proposal of the Bar Association of Serbia and a common session of all deans of the faculties of law in the Republic of Serbia. An electable Council member within lawyers, i.e. professors of the Faculty of Law, after being appointed shall not remain appointed at the authorities for implementation of regulations, executive authorities, public services, province autonomous authorities and local self-government units. The electable Council member within judges shall be released from judicial appointment during the appointment in the Council. All Council members have the right and liability to decide, i.e. vote on every proposal being decided at the Council session and the decision shall be made if majority of all Council members vote for it.

The most important part of the jurisdiction of the High Judicial Council, defined also by the Constitution of the Republic of Serbia, is to elect the judges to the permanent judicial

appointment, propose the candidates to the National Assembly for the first election to the judicial appointment for three year mandate, dismiss the judges, proposes to the National Assembly the election of the president of the Supreme Court of Cassation and the presidents of the courts, defines the composition, duration and termination of the mandates of the disciplinary authority members, appoint the members of disciplinary authorities and regulates the method of conduct and decision making in disciplinary authorities; appoints judge jurors; decides on allocation, request and complaint on judge allocation, suggests the range and structure of the budget assets necessary for functioning of courts for current discrepancies and carries out supervision of their spending, in compliance with the law.

The High Judicial Council has its premises in Resavska street no. 42, shared with the State Prosecutorial Council. The business premises and offices, both for Council members and all employees are appropriately equipped with furniture and technical equipment. The offices which the budget office of the High Judicial Council shall use have been distributed, which shall be established in the first half of 2011, in order to prepare timely for taking budget jurisdiction from the Ministry of Justice of the Republic of Serbia. The library of the High Judicial Council shall be used as the meeting room for organisation of Council sessions, meetings and activities of acting authorities of the Council and working groups. It is also required to establish the budget section of the office and the assistance in its establishment is provided by the USAID, through its Program of power distribution.

Pursuant to the Law on the High Judicial Council, the Administrative Office is established for carrying out the expert and administrative activities of the High Judicial Council. The decision on establishment of Administrative office regulates its activities and other issues of importance for activities of Administrative office. The activities in Administrative office shall be conducted by the civil servants and general service employees, and the job positions for conduct of those activities are stipulated in the Rulebook on Internal Organisation and Systematization of Job Positions in the Administrative Office, adopted on 13 December 2010.

The funding for the work of the Council shall be provided in the budget of the Republic of Serbia, at the proposal of the Council and those assets shall be at disposal of the Council. In 2009, the budget of the High Judicial Council amounted RSD 65,936,000.00, but in the end of 2009, the percentage of budget realisation was 28.96. The budget for 2010 amounted 133,886,000.00. Until 27 October 2010, the budget realisation percentage amounted 26.15%.

The State Prosecutorial Council

The State Prosecutorial Council has eleven members.

The State Prosecutorial Council members by virtue of office are Republican Public Prosecutor, the Minister of Justice and the president of the competent board of the National Assembly as appointed members and eight electable members elected by the National Assembly in compliance with the law.

The electable Council members are six public prosecutors or deputy public prosecutors permanently appointed, of whom at least one lives within the territory of autonomous provinces and two respectable distinguished jurists with at least fifteen years of professional experience, one being a lawyer and the other one a professor at the Faculty of Law.

The State Prosecutorial Council is an independent authority providing and guaranteeing the independence of public prosecutors and deputy public prosecutors. Within its jurisdiction, the State Prosecutorial Council accomplishes the cooperation with the High Judicial Council, state and other authorities and organisations, prosecutorial councils of other countries and international organisations.

Premises: The head office of the State Prosecutorial Council is in Belgrade, 42, Resavska street, sharing the building with the High Judicial Council, the premises are equipped with the necessary equipment for the activities of the State Prosecutorial Council and Administrative office of the State Prosecutorial Council.

Budget: The funding for the work of the State Council shall be provided within the budget of the Republic of Serbia, at the proposal of the State Prosecutorial Council and those assets shall be at disposal of the State Prosecutorial Council in compliance with the law.

The State Prosecutorial Council member has immunity and as a prosecutor one shall not be called to account for expressed opinion or voting in the event of the State Council decision making. The State Council member shall not be arrested in the proceedings initiated for the criminal act performed in conduct of the activities of the State Council member without the approval of the competent board of the National Assembly.

The State Prosecutorial Council is an authorised promoter for the electable members of the State Council within public prosecutors and deputy public prosecutors. The electable members of the State Prosecutorial Council shall be elected by the National Assembly. The State Prosecutorial Council is accountable to propose candidates immediately elected by the public prosecutors and deputy public prosecutors to the National Assembly using the method and proceedings specified in the Law on the State Prosecutorial Council.

The Bar Association of Serbia is an authorised promoter for the electable Council member within lawyers, and the common session of deans of the faculties of law in the Republic of Serbia proposes the candidates for the electable members of the Council within the professors of the Faculty of Law.

Pursuant to Article 12 of the Law on State Prosecutorial Council ("Official Gazette of RS", Nos. 116/2008 and 101/2010), it was regulated that the mandate of the State Council members lasts five years, apart from the appointed members.

The electable members of the State Council may be reelected, but not consequently. During the mandate, the State Council member shall not be elected for the public prosecutor or deputy public prosecutor in the other public prosecutor's office.

68. Impartiality of the judiciary: Please provide information on the legal provisions and the institutional arrangements in place providing for the impartiality of the courts and the prosecution service. Are there provisions to prevent the conflict of interest for judges and prosecutors and how are they implemented? Are there ethics provisions in place for judges and prosecutors and what is their exact role? Explain.

Judiciary

Pursuant to the Law on Judges ("Official Gazette of RS", Nos. 116/2008 and 101/2010), the judge is responsible to maintain the trust in one's independence and impartiality on every occasion. The judge is obliged to conduct the proceedings impartially in accordance with one's conscious, own assessment of the facts and law interpretation, providing the righteous proceedings and obeying procedural rights of the parties guaranteed by the Constitution, law and international acts. All procedural laws, in criminal, civil and administrative proceedings stipulate the institute of exclusion and ineligibility of the judge. Those laws clearly specify the reasons and basis for both institutes, as well as the procedure of decision making on exclusion and ineligibility. Disobeyance of those provisions is one of the reasons for the appeal.

The law provides the judge also with the right for material independence in compliance with the dignity of the judicial appointment and one's accountability, and pursuant to provision of Article 5, Law on Judges, the judge shall not be called to account for the expressed opinion or voting in the event of making judicial decision, unless it is the case of criminal act on law violation by the judge.

A judge shall not be appointed in the positions within the authorities for implementation of regulations and executive authorities, public services, province autonomous authorities and local self-government units. The judge shall not be the member of a political party, act politically in other way, conduct public or private paid work, nor provide legal services or advice for compensation. Exceptionally, the judge shall be the member of management institutional authority competent for training in judiciary, based on the decision of the High Judicial Council in compliance with the special law (for example, four judges are, in compliance with the Law on Judicial Academy, members of Board of Directors of the Judicial Academy). Other services, activities and actions contrary to respectability and independence of the judge or damage to the respectability of the court are also incompatible with the judicial appointment.

The High Judicial Council regulates what actions are contrary to the respectability and independence of the judge and harmful for the respectability of the court, based on the Code of Ethics. The judge is obliged to inform the High Judicial Council in writing on every service or business activity which is possibly incompatible with the judicial appointment. The High Judicial Council informs the president of the court and the judge on incompatibility of the service or business activity with the judicial appointment. The High Judicial Council conducted activities during 2010 at the request for decision making on incompatibility of the judicial appointment with the activities of interpreter and specified that this job position is incompatible with the business activities of the court interpreter. It was also specified that the activities of the president of the Commission for conduct of proceedings for decision making at the request for returning the land is not incompatible with the judicial appointment, regarding the fact that it was specified by the special law that the judge shall be appointed the president of commission.

The president of the court is obliged to submit the disciplinary order as soon as one finds out that the judge conducts the service, business activity or actions which are possibly incompatible with the judicial appointment.

Pursuant to the Law on Judges, Article 3(4), the High Judicial Council at the session held on 14 December 2010, adopted the Code of Ethics ("Official Gazette of RS", number 96/2010).

Before the adoption, the proposal of Code of Ethics was published on the website of the High Judicial Council so that the judges get familiar with the proposal of this act and submit their suggestions and remarks.

Code of Ethics regulates the ethical principles and the rules of conduct of the judges which are required to be obeyed in the course of maintenance and improvement of dignity and respectability of the judge and judiciary. The ethical principles are: independence, impartiality, competence and accountability, dedication in the conduct of judicial activities and freedom for gathering. The judge is obliged to obey Code of Ethics on every occasion and the principles of this code represent the life style of a judge. The High Judicial Council regulates what actions are contrary to the respectability and independence of the judge and harmful for the respectability of the court, based on the Code of Ethics. The Law on Judges regulates that the judge is obliged to inform the High Judicial Council in writing on every service or business activity which is possibly incompatible with the judicial appointment. The High Judicial Council informs the president of the court and the judge on incompatibility of the service or business activity with the judicial appointment.

Prosecution

As for the judges, the Law on Public Prosecution (“O. Gazette of RS”, no. 116/08, 104/09 and 101/2010) contains the provisions on independence in the conduct (Art. 5), impartiality and conduct in compliance with the Ethics Code adopted by the State Prosecutorial Council (Art. 47), prohibition of political activities (Art. 49), material independence (Art. 50), incompatibility of other appointments, business activities of private interests with the appointment of public prosecutor and deputy public prosecutor (Art. 65), as well as provisions regulating the disciplinary offences (Art. 104.).

The Law on Public Prosecution (“O. Gazette of RS”, nos. 116/08, 104/09 and 101/2010) stipulates incompatibility of prosecutorial appointment with other appointments, business activities or private interests. The public prosecutor and deputy public prosecutor shall not be appointed in the authorities for implementation of regulations and executive authorities, public services, province autonomous authorities and local self-government units, nor be the members of a political party, conduct public or private paid job, provide legal services or legal advice for compensation.

Exceptionally, the prosecutorial office holders may be the members of management institutional authority competent for training in judiciary, based on the decision of the State Prosecutorial Council.

Certain rules preventing the conflict of interests in the conduct of public appointments are implemented also in the procedural laws including provisions on exclusion, i.e. suspension for the officials, in the event of conducting the proceedings.

The State Prosecutorial Council has eleven members. The State Prosecutorial Council members are Republican Public Prosecutor, the Minister of Justice and the president of the competent board of the National Assembly as appointed members and eight electable members elected by the National Assembly in compliance with the law.

The electable Council members are six public prosecutors or deputy public prosecutors permanently appointed, of whom at least one lives within the territory of autonomous provinces and two respectable distinguished jurists with at least fifteen years of professional experience, one being a lawyer and the other one a professor at the Faculty of Law.

The State Prosecutorial Council is an independent authority providing and guaranteeing the independence of public prosecutors and deputy public prosecutors. Within its jurisdiction, the State Prosecutorial Council accomplishes the cooperation with the High Judicial Council, state and other authorities and organisations, prosecutorial councils of other countries and international organisations.

The jurisdictions of the State Prosecutorial Council are stipulated in Article 13 of the Law on the State Prosecutorial Council ("Official Gazette of RS", numbers 116/2008 and 101/2010).

The funding for the work of the State Council shall be provided within the budget of the Republic of Serbia, at the proposal of the State Prosecutorial Council and those assets shall be at disposal of the State Prosecutorial Council in compliance with the law. The State Council member has immunity as a public prosecutor. The State Prosecutorial Council member shall not be called to account for the expressed opinion or voting in the event of the State Council decision making.

The Council member shall not be arrested in the proceedings initiated for the criminal act performed in conduct of the activities of the State Prosecutorial Council without the approval of the competent board of the National Assembly.

The State Prosecutorial Council is an authorised promoter for the electable members of the State Council within public prosecutors and deputy public prosecutors. The electable members of the State Prosecutorial Council shall be elected by the National Assembly. The State Prosecutorial Council is accountable to propose candidates immediately elected by the public prosecutors and deputy public prosecutors to the National Assembly using the method and proceedings specified in the Law on the State Prosecutorial Council. The Bar Association of Serbia is an authorised promoter for the electable Council member within lawyers, and the common session of deans of the faculties of law in the Republic of Serbia proposes the candidates for the electable members of the Council within the professors of the Faculty of Law.

Article 12 of the Law on State Prosecutorial Council regulates that the mandate of the State Council members shall last five years, apart from the appointed members. The electable members of the State Council may be reelected, but not consequently. During the mandate, the State Council member shall not be elected for the public prosecutor or deputy public prosecutor in the other public prosecutor's office.

The Law on General Administrative Procedure ("O. Gazette of SRY", nos. 33/97 and 31/01) as the basic law applicable by the state authorities during the conduct of proceedings and decision making in the administrative matters, or performing other activities specified by this law, including the provisions on exclusion when the official person who should solve in certain administrative case or who should perform a certain action in the proceedings, as soon as one finds out that there is any reason for exclusion, is obliged to terminate any further activities regarding the case and inform on that the authority competent for decisions on

exclusion, in the following cases: if in the case in which the proceedings are conducted, the party, co-authorised person, i.e. co-tributary, witness, expert witness, proxy or a legal representative of a party; is a blood relative with the party, representative or a proxy of a party in a direct line, and in a side line up to the fourth level inclusively, the spouse or a in-law relative up to the second level inclusively, even if the marriage was terminated; with the party, representative or proxy of a party in relation to the legal guardian, adoptee or a foster person; in the first instance proceedings one participated in their conduct or decision making.

For judicial office holders, the procedural laws within the judiciary regulate when the activities cannot be conducted, i.e. when they shall be excluded in the activities regarding the case, thus the provision of the Art. 40. of the Criminal Procedure Code ("O. Gazette of SRY", nos. 70/2001 and 68/2002 and "O. Gazette of RS", nos. 58/2004, 85/2005, 115/2005, 85/2005 – other law, 49/2007, 20/2009 – other law and 72/2009 and 76/2010) regulates that the judge or lay judge shall not conduct the judicial duties: if one was damaged by the criminal act; if the respondent, his defence lawyer, prosecutor, the petitioner, their legal representative or a proxy, a spouse or a blood relative in direct line up to any level, in side line up to the fourth level, and in-law line up to the second level; if with the respondent, his defence lawyer, prosecutor or the petitioner is in relation of a legal guardian, a guarded person, adopter, adoptee, foster person or fostered person; if in the same criminal case one conducted inquiry activities or participated in the proceedings as a prosecutor, defence lawyer, legal representative or proxy of a petitioner, i.e. prosecutor, or one was inquired as a witness or an expert witness; if one participated in the same case in decision making of the lower instance court or if one participated in the same court in decision making which is disputed by the appeal; if there are any doubt raising circumstances regarding one's impartiality. Provision on exclusion of the judges and lay judges are correspondingly implemented in regard to public prosecutors and persons who are by the law authorized to defend the public prosecutor in the proceedings (Art. 45.). This law also regulates that the defence lawyer shall not be a person who was appointed a judge or a public prosecutor in the same case or initiated the activities in pre-criminal proceedings (Art. 70.).

The Civil Procedure Code ("O. Gazette of RS", nos. 125/04 and 111/09) also includes the rules on exclusion of the judge when there are reasons which imply doubt in one's impartiality and cases when the judge shall not conduct the judicial activities (exclusion) (Art. 65. and Art. 66), as well as the Misdemeanor Law ("O. Gazette of RS", nos. 101/05, 116/08 and 111/09) regulating the reasons for exclusion of the judge in the criminal procedure (Art. 102.).

Besides the aforementioned, the provisions on the conflict of interests, i.e. incompatibility of certain positions with the positions in the Government, administration and judiciary may be included also in the other laws and regulations, such as: The Law on the National Bank of Serbia ("O. Gazette of RS", nos. 72/03, 55/04 and 85/05) - other Law, 44/10) regarding the appointment of mayor, vice-mayor, council members and employees with special authorizations (Art. 20); the Law on State Audit Institution ("O. Gazette of RS", nos. 101/2005 and 54/2007) in relation to the appointment of the Council members (Art. 17); the Law on Health Insurance ("O. Gazette of RS", nos. 107/05 and 109/05 – corrigendum) for the members of the Board of Directors, members of the Supervisory Board, director, i.e. assistant director of the Republic Institution for Health Insurance, director of the Province Institute and the director of the subsidiary (Art. 219); the Law on Health Care in relation to the members of the Health Council of Serbia (Art. 152); the Law on Higher Education ("O. Gazette of RS", nos. 76/05, 100/07 – authentic interpretation and 97/08) for the members of the National

Council and the Commission for Accreditation and Quality Assurance (Art. 10. and Art. 13); the Rulebook on defining the jobs whose conduct is incompatible with the activities in the Administration for Enforcement of Institutional Sanctions ("Official Gazette of RS" No. 9/03) defining the jobs whose conduct is incompatible with the activities of the appointed and employed persons in the Administration for Enforcement of Institutional Sanctions (Art. 1., 2. and 3).

Regarding official registration of property and/or income for the aforementioned officials, the valid law on Anti-Corruption Agency includes detailed provisions on registry of property, officials as well as what data are available to general public. The Law stipulates in details what property shall be registered (salaries and other incomes, savings in the country and abroad, without a specification of the bank and the account number, the property right for the immovables in the country and abroad, without the specification of the address of the immovables, the property right for the means of transportation subject to registration (a car, motorbike, ship, gun, airplane), jewellery, shares, bank loan and mortgage, official perks such as use of accommodation for official needs, official vehicle with or without a driver, official mobile phone, etc.). The official shall register his/her property, the property of his/her spouse or extramarital partner as well as a minor living with him/her at the same household.

At the same time, the law also regulates the obligation of the Anti-Corruption Agency to make data public considering the right for privacy. The data on property of an official are also public which are public in compliance with other regulations, as well as other data for which an official, i.e. a spouse or an extramarital partner gives an approval for their publishing.

69. How do you ensure that natural and legal persons from EU Member States have access to Serbian courts free of discrimination compared to Serbian nationals?

Natural and legal persons from Member States of the European Union are ensured equal access to institutions of the judicial system of Serbia, without discrimination as compared to citizens of Serbia.

The Constitution of the Republic of Serbia (*Official Gazette of RS* No. 98/06) stipulates in a general way equal protection to all persons, whether foreigners or citizens of the Republic of Serbia. All are equal before the Constitution and law and everyone shall have the right to equal legal protection, without discrimination. . All direct or indirect discrimination based on any grounds, particularly on race, sex, national origin, social origin, birth, religion, political or other belief, property status, culture, language, age and mental or physical invalidity shall be prohibited. Special measures which the Republic of Serbia may introduce to achieve full equality of individuals or group of individuals in a substantially unequal position compared to other citizens, shall not be deemed discrimination. Pursuant to international treaties, foreign nationals in the Republic of Serbia shall have all rights guaranteed by the Constitution and law with the exception of rights to which only the citizens of the Republic of Serbia are entitled under the Constitution and law. Everyone shall have the right to use his/her language in the proceedings before the court, other public authority or organisation performing public powers, when his/her right or obligation is decided on. Unfamiliarity with the language of the proceedings in course shall not be an impediment for the exercise and protection of human

and minority rights. Every person shall be guaranteed the right to free assistance of an interpreter if he/she does not speak or understand the language officially used in the court and the right to free assistance of a sworn-in court translator if he/she is blind, deaf, or dumb. Every citizen shall have the right to a public hearing before an independent and impartial tribunal, already established by the law, which shall justly and within reasonable time pronounce judgement on his/her rights and obligations, grounds for suspicion resulting in initiated procedure and accusations brought against him/her.

The Civil Procedure Law (*Official Gazette of RS* No. 125/2004 and 111/2009) stipulates the provision of equal protection to all persons in civil proceedings, whether foreigners or citizens of the Republic of Serbia. According to the Civil Procedure Law, civil proceedings are conducted in Serbian language, using Cyrillic script. Other languages and scripts shall be officially used in accordance with the law. In the courts located in regions populated by members of national minorities, the proceedings shall be officially conducted in their languages and scripts in accordance with the Constitution and law. The parties and other participants to the proceedings are entitled to use their own language and script, pursuant to provisions of this Law. Parties and other participants to the proceedings are entitled to use their own language during hearings and when orally undertaking other actions before the court. If such proceedings are not conducted in the language of the parties or other participants to the proceedings, they shall, upon request, be provided with an interpretation of the proceedings in their own language, including oral translations of all documents used as evidence during the proceedings. Parties and other participants to the proceedings who are blind, deaf or dumb are entitled to free assistance of a sworn-in court translator in court proceedings. The summonses, decisions and other communications of the court pertaining to the case shall be served on the parties and other participants to the proceedings in the Serbian language. If some of the languages of national minorities are also in official use at the court, the court shall serve its communications in the respective languages on the parties and participants to the proceedings who are members of these minorities and who speak their own language in the proceedings before the court. Parties and other participants to the proceedings shall submit their complaints, appeals and other filings in a language which is in official use at the court. Parties and other participants to the proceedings may also write submissions in the languages of national minorities which are not in official use at the court, provided it is in accordance with the law.

The Law on General Administrative Procedure (OJ of FRY Nos.33/97 and 31/2001 and OG of RS No. 30/2010) stipulates that parties and other participants to the proceedings who are not the citizens of the Republic of Serbia shall have the right to follow the course of the proceedings through an assistance of assistance of a sworn-in court translator, and to use their own language in these proceedings.

The Criminal Procedure Code (OJ of FRY Nos. 70/2001 and 68/2002 and OG of RS Nos. 58/2004, 85/2005, 115/2005, 85/2005 – other law, 49/2007, 20/2009 - other Law, 72/2009 and 76/2010) stipulates the provision of equal protection to all persons in criminal proceedings, whether foreigners or citizens of the Republic of Serbia.

According to the Criminal Procedure Code any accused person or suspect shall have the right:

- 1) to be informed in detail, and in a language that he/she understands, as soon as possible and no later than the first hearing, of the criminal offence he/she is charged with, of the nature and

causes of the accusation against him/her as well as of the evidence on which the charges are based;

2) to defend himself or with the professional assistance of a counsel, chosen by himself from the line of lawyers;

3) to defence counsel who will be present at his hearing;

4) to be brought before the court within the shortest period of time and to be tried impartially, fairly and within a reasonable time;

5) to be provided enough time and facilities to prepare his defence;

6) to declare on all the facts and evidence he/she is charged with and present facts and evidence in his favour, either alone or assisted by a counsel, to question prosecution witnesses and request that defence witnesses are questioned under the same conditions as the prosecution witnesses, in his presence;

7) to be provided with an interpreter and a sworn-in court translator if he/she does not understand and speak the language used in the proceedings.

The court or other state authority is obliged:

1) to ensure the exercise of the accused person's or suspect's rights, to inform the accused person or suspect in detail, and in a language that he/she understands, as soon as possible and no later than the first hearing, of the criminal offence he/she is charged with, of the nature and causes of the accusation against him/her as well as of the evidence on which the charges are based

2) Prior to the first hearing, to warn the accused person or suspect, that any statement he/she makes may be used as evidence against him/her and instruct him/her about the right to obtain a defence counsel and the right to have the defence counsel attend his/her hearing.

If the accused person or the suspect does not obtain a defence counsel, the court shall appoint a defence counsel to represent him/her as provided for by this Code.

An accused person, who cannot afford a counsel, shall be, at his/her request, assigned a defence counsel at the expense of the court budgetary funds as provided for in this Code.

An accused person who is available to the court can be tried only in his/her presence, unless the trial in his/her absence is exceptionally permitted by this Code.

An accused person who is available to the court cannot be punished if he/she is not allowed to be heard and to defend.

A person deprived of liberty without a court decision, shall be immediately advised that he/she is not obliged to make any statement, that any statement he/she makes may be used as evidence against him/her and that he/she has the right to be heard in presence of a defence counsel of his/her choice or a defence counsel who shall be appointed at the expense of budget funds, if he/she cannot afford one.

A person deprived of liberty without a court decision, must, without deferral and not later than 48 hours, be handed over to the competent investigative judge or otherwise be released from detention.

A person deprived of liberty under the Criminal Procedure Code shall have the following additional rights:

- 1) at his/her request, the time, location and any change of location of deprivation of liberty shall be communicated, without deferral, to the family member or another close person, as well as to the diplomatic and consular representative of the state whose citizen he/she is, i.e. the international organization representative if he/she is a refugee or a stateless person;
- 2) to have undisturbed communication with his defence counsel, diplomatic and consular representative, the representative of international organization and the Ombudsman;
- 3) to undergo a medical examination, at his own request, without deferral, by freely selected physician, and if such is not available, by a physician designated by the authority of detention, or by the investigative judge;
- 4) to initiate proceedings before the court or lodge an appeal with the court in charge to urgently decide on the legality of detention.

Any violence against person deprived of liberty or person with limited freedom is prohibited and punishable. Such a person must be treated humanly, with respect for his/her personal dignity.

In the Republic of Serbia, the official language in the criminal proceedings shall be the Serbian language and Cyrillic script. Other languages and scripts shall be officially used pursuant to the law.

In the courts located in regions populated by members of national minorities, the proceedings shall be officially conducted in their languages and scripts in accordance with the Constitution and law.

Complaints, appeals and other submissions to the court shall be written in a language that is in official use at the court.

A foreign national deprived of liberty may submit briefs to the court in his own language.

Criminal proceedings shall be carried out in a language officially used in the court.

The parties, witnesses and other persons participating in the proceedings shall have the right to use their own language in the proceedings. If the proceeding is not conducted in the language of the said person, interpretation shall be provided for anything that the person, or anyone else, might state, as well as the translation of personal documents and other written evidence, and shall be financed with the funds allocated from the budget.

The foreign national deprived of his liberty shall be advised of his rights regarding translation/interpretation, and the said person may waive that right if he/she speaks and understands the official language of the proceedings. The records shall note that such instruction was made, and a participant's statement.

The interpretation/translation shall be entrusted to a sworn-in court interpreter.

The summonses, decisions and other documents shall be served by the court in the Serbian language.

If the language of a national minority is also in official use at the court, the court shall serve its documents in the respective language on the persons who are members of the respective

minority and who used their own language in the proceedings before the court. Such persons may request to be served the written documents in the language in which the proceeding is conducted.

If the defendant is in detention, if serving a sentence or undergoing the enforcement of security measures in the health institution, he/she shall also be served the documents translated into the language used in the proceedings.

According to the Misdemeanor Law (OG of RS Nos. 101/2005, 116/2008 and 111/2009) misdemeanour proceedings shall be conducted in accordance with the provisions of the law governing the official use of languages and scripts. The defendant, witnesses and other persons involved in the misdemeanour proceedings are entitled, during the performance certain actions in the proceedings or at the oral hearing, to use their own language. If the action in the misdemeanour proceeding or an oral hearing is not conducted in the language of that person, oral interpretation shall be provided for anything that the person, or anyone else, might state, as well as the translation of personal documents and other written evidence. The defendant, witnesses and other persons involved in the misdemeanour proceedings shall be advised of their rights regarding translation/interpretation, and the said persons may waive that right if they speak and understand the official language in which the misdemeanour proceeding is conducted. The records shall note that the advice and the statement of the participant have been given. Translation shall be performed by a sworn-in court interpreter appointed by the court conducting the misdemeanour procedure.

The Criminal Code (*Official Gazette of RS* No. 85/05, 88/05, 107/05, 72/09 and 111/09), stipulates that the criminal legislation of the Republic of Serbia shall apply to anyone committing a criminal offence on its territory. Criminal legislation of Serbia shall also apply to anyone committing a criminal offence on a domestic vessel, regardless of the location of the vessel at the time of committing the act. Criminal legislation of Serbia shall also apply to anyone committing a criminal offence in a domestic aircraft while in flight or domestic military aircraft, regardless of the location of the aircraft at the time of committing criminal offence. Criminal prosecution of a foreign citizen in the event he/she has committed a criminal offence on a domestic vessel, regardless of the location of the vessel at the time of committing the act, or has committed a criminal offence in a domestic aircraft while in flight or domestic military aircraft, regardless of the location of the aircraft at the time of committing criminal offence, may be transferred to a foreign state, under the terms of reciprocity.

The Criminal Code – Article 7 stipulates that the criminal legislation of Serbia shall apply to anyone committing a criminal offence abroad, as referred to in Articles 305 to 316 (criminal offences against the constitutional order and security of the Republic of Serbia) and Articles 318 to 321 of this Code (violation of territorial sovereignty, conspiracy for unconstitutional activity, plotting of offences against the constitutional order and security of Serbia and grave offences against the constitutional order and security of Serbia), or Article 223 of this Code (counterfeiting money), if the forged money is in national currency.

Article 9 of the Criminal Code stipulates that the criminal legislation of Serbia shall also apply to a foreigner who commits a criminal offence against Serbia or its citizen outside the territory of Serbia, other than the criminal offences referred to in Article 7 of this Code, if found within the territory of Serbia or extradited to Serbia. Criminal legislation of Serbia shall

also apply to a foreigner who commits a criminal offence abroad against a foreign state or foreign citizen, when such offence is punishable by 5 years' imprisonment or a heavier penalty, pursuant to laws of the country of commission, if such person is found on the territory of Serbia and is not extradited to the foreign state. Unless otherwise provided by this Code, the court shall not impose in such cases a penalty heavier than set out by the law of the country where the criminal offence was committed.

Article 11 of the Criminal Code stipulates that detention, any other depriving of liberty in respect of a criminal offence, depriving of liberty during extradition procedure, as well as the sentences that the offender has served abroad pursuant to the judgement of a foreign court shall be calculated in the punishment imposed by a domestic court for the same criminal offence, and if the punishments are not of the same kind, calculation shall be done according to the assessment of the court.

Corporate liability for criminal offences, and sanctions of legal persons for criminal offences, are regulated by the Law on the Liability of Legal Entities for Criminal Offences (*Official Gazette of RS* No. 97/08). This Law regulates conditions governing the liability of legal entities for criminal offences, penal sanctions that may be imposed on legal entities as well as procedural rules when ruling on the liability of legal entities, on imposing penal sanctions, passing a decision on rehabilitation, termination of security measures or legal consequences of the conviction, and on enforcement of court decisions. Legal entities may be liable for criminal offences constituted under a special part of the Criminal Code and under other laws if the conditions governing the liability of legal entities provided for by this Law are satisfied. This Law shall be applicable to national and foreign legal entities held accountable for a criminal offence committed in the territory of the Republic. This Law shall be applicable to foreign legal entities held accountable for criminal offences committed abroad to the detriment of the Republic, the citizen thereof or national legal entity. This Law shall also be applicable to national legal entity held accountable for criminal offence committed abroad. This law shall not apply to a foreign legal entity that is responsible for a crime committed abroad to the detriment of the Republic, citizen thereof or a national legal person, as well as to a national legal person responsible for a crime committed abroad, if the special requirements of the criminal pursuit, referred to in Article 10(1) of the Criminal Code (criminal prosecution shall not be undertaken if the offender has fully served the sentence to which he/she was convicted abroad; the offender was acquitted abroad by final judgement or the statute of limitation has set in respect of the punishment, or was pardoned; to an offender of unsound mind a relevant security measure was enforced abroad; for a criminal offence under foreign law criminal prosecution requires a motion of the victim, and such motion was not filed).

70. Detention: Please describe in detail the rules and procedures governing pre-trial detention and, in particular, the rules on its extension. Please also describe the rules governing detention during the trial phase and imprisonment after conviction. How are human and secure conditions for detainees (in respect of international human rights standards) ensured by the police, justice, prosecution and penitentiary systems? What measures are taken if such standards are not respected?

Detention is a procedural measure that is undertaken in order to facilitate the smooth conduct of criminal proceedings, if the goal can not be achieved by any other means that undermine, to a lesser extent, the basic constitutional rights. Restrictive interpretation of detention

facilities is a paragraph that appears explicitly in Articles 30 and 31 of the Constitution of RS (*Official Gazette No. 98/2006*), as well as in Article 141 of the Criminal Procedure Code (*Official Journal of FRY Nos. 70/2001, 68/2002, Official Gazette of RS Nos. 58/2004, 85/2005, 115/2005, 46/2006, 49/2007, 122/2008, 20/2009, 72/2009, 76/2010*) in the regular criminal proceedings and in Article 436 of the Criminal Procedure Code in summary criminal proceedings. The essence of this legislative solution is a detention as procedural measure, rather than punishment, which is consistent with the principles of the European Convention for the Protection of Human Rights and Fundamental Freedoms, the International Covenant on Civil and Political Rights and the Universal Declaration of Human Rights.

Legislative solution is based on provision of Article 30 of the Constitution of RS, pursuant to which a person under reasonable doubt of committing a crime may be remanded to detention only upon the decision of the court, should detention be necessary to conduct criminal proceedings. If the detainee has not been questioned when making a decision on detention or if the decision on holding in detention has not been carried out immediately after the pronouncement, the detainee must be brought before the competent court within 48 hours from the time of sending to detention which shall reconsider the decision on detention. A written decision of the court with explanation for reasons of detention shall be delivered to the detainee not later than 12 hours after ordering detention. The court shall decide on the appeal to decision detention and deliver it to the detainee within 48 hours.

Article 141 of the Criminal Procedure Code stipulates the of restrictive application of detention, so that detention may be ordered only by a court decision under the conditions prescribed by this Code, if the detention is necessary for conducting of criminal proceedings and if the same purpose can not be achieved by another measure. When the defendant is in detention, all the authorities participating in criminal proceedings shall be obliged to reduce the duration of detention to the shortest time possible and to proceed as expeditiously as possible. Detention shall be vacated as soon as reasons for detention cease to exist.

Reasons for detention:

Detention can be ordered to a person under reasonable suspicion of committing a criminal offence, if he/she is in hiding or if it is impossible to determine his identity, or if other circumstances implying to danger of escape exist. Detention ordered solely for the reason of not being able to establish the identity of the person, shall last until his/her identity has been established. Furthermore, if there are circumstances indicating that defendant is to destroy, conceal, change or forge evidence or traces of crime or if specific circumstances indicate disruption of criminal proceeding by defendant through the influence on witnesses, expert witnesses, accomplices or concealers. In addition, detention may be ordered against a defendant if specific circumstances indicate that defendant committed criminal offence, if specific circumstances indicate that he/she shall repeat a criminal offence or complete the attempted one, or perpetrate criminal offence he threatens to commit; Furthermore, if the defendant, who was once duly summoned, manifestly avoids appearing at trial, having in mind that this detention can last until the verdict is pronounced. Moreover, if the sentence prescribed for the criminal offence is over 10 years and over 5 years for a criminal offence involving violence and if it is justified because of the particularly difficult circumstances of the offence. Furthermore, the detention may be ordered if the defendant has been sentenced by the first instance court to five years in prison, or more, and if it is obviously justified because of the particularly severe circumstances of the criminal offence.

Extension of detention and the proceedings:

The police authority may exceptionally confine a person who was deprived of liberty for the purpose of collecting information (or hearing, no longer than for 48 hours from the moment of deprivation of liberty, i.e. answering a summons). The police authority is obligated immediately to inform the investigative judge on confinement. The investigative judge may require the police authority to immediately bring the confined person before him. If, at the time of hearing of the person deprived of liberty, the public prosecutor does not file a request for an investigation, and further fails to submit it within 48 hours of detention, the judge will release the detainee. If, within 48 hours of submitting the request for investigation, the investigative judge does not render a ruling on the conducting of the investigation, he shall be obliged to release the detainee.

Based on the ruling of investigative judge, the defendant may be kept in detention to one month after the being deprived of liberty. After the said deadline, the defendant may be kept in custody only on the basis of the ruling on extending the detention. Detention can be extended by a decision of the Chamber (Article 24, paragraph 6) for up to two months. Filing of appeal against this ruling is allowed but it does not stay the execution of the ruling. If the proceeding is conducted for the criminal offence punishable with up to five years in prison or more, the Chamber of the court of immediate higher instance may, upon an explained motion of the Investigative judge or public prosecutor, for important reasons extend the detention, no longer than for three more months . Appeal is allowed against this ruling but it does not stay the execution of the ruling. Defendant shall be released from detention if, by the end of the said terms, the indictment has not been raised. . After the indictment has been submitted to the court, until the termination of trial, the detention shall be ordered, extended or vacated in accordance with Article 142a of the Criminal Procedure Code (the decision on determining detention is made by the investigative judge or the Chamber following the hearing of the defendant, while the decision on extension or vacation of detention shall be made at the Chamber session). Even without a motion submitted by parties, the Chamber shall be bound to review whether the grounds for detention still exist and to extend or vacate it after every month until the indictment enters into force, and after every two months from the moment the indictment enters into force.

Detention after pronouncing a sentence:

Article 358(1) of the Criminal Procedure Code stipulates that the court, when pronouncing a sentence of less than 5 years in prison, shall order detention against the defendant who is released pending trial, if the reasons referred to in Article 174(1) (1) and (3) of the Criminal Procedure Code exist, and shall vacate detention against the defendant who is in detention, if the reasons for ordering detention no longer exist. The Chamber shall always vacate detention and order the defendant to be released if he is acquitted of the charges, or the charges are denied, or if found guilty but relieved from penalty, or if sentenced only to a fine, to community service of public interest or to revocation of a driver's license, or if a judicial admonition or suspended sentence is pronounced, or if due to computation of time in detention the sentence has already been served, or the indictment is dismissed, except due to actual incompetence.

If the accused person is already in detention and the Chamber establishes that the grounds for which detention was ordered still exist, or that the grounds referred to in Article

142(1)(6) of the Code exist, it shall render a separate ruling on extending detention, and the Chamber also renders the separate ruling when it is necessary to order or vacate detention. Appeal is allowed against this ruling but it does not stay the execution of the ruling.

Detention ordered or extended in accordance with the provisions of the previous paragraphs may last until sending the accused or convicted person to the penitentiary institution, but by the expiration of the term of sentence imposed by the first instance judgment, at the latest. Upon the request of the accused person, who is in detention after being sentenced to imprisonment, the President of the Chamber may render a ruling on his/her transfer to the penitentiary institution even before the judgment becomes final.

In summary criminal proceedings the detention is governed by the provision of Article 436 of the Criminal Procedure Code, in a way that, for the purpose of undisturbed conducting of criminal proceedings, it may be ordered against a person for whom a reasonable suspicion of committing criminal offence exists, if the suspect is in hiding or his/her identity may not be established or if other circumstances exist indicating a danger of flight, if it comes to a criminal offence punishable by imprisonment for 3 years while particular circumstances indicate that the defendant might complete the attempted criminal offence, commit the offence he/she is threatening with or repeat the criminal offence.

Before submitting a motion to indict, detention may last only for the time necessary for carrying out of investigatory actions, no longer than eight days but exceptionally up to 30 days if it comes to criminal offence with the elements of violence. The Chamber shall decide on an appeal against a ruling on detention.

Last amendments to the Criminal Procedure Code in summary proceedings have expanded the list of reasons for ordering a detention prescribed by Article 142 of the Criminal Procedure Code, so that one of the reasons for ordering a detention is the fact that the offence was committed with the use of violence, in summary proceedings. However, this legislative solution does not imply application of mandatory detention in any form and for all offences where violence represents an element of the crime or act without which one can not commit a criminal act, but only specifies the reasons for the possible application of the measures of detention in summary proceedings.

It should be borne in mind that summary proceedings may also be initiated only on the basis of criminal charges, which is characterised by a lower degree of grounded suspicion with regard to criminal proceedings, preceded by an investigation or investigative actions. In such conditions, when the proposal for an indictment is sufficient for criminal charges, due to more complex forms of crime and for the necessity of assessing more precisely whether a case is categorized as organized crime or the identity of a suspect is disputable, and the like, increasingly complex investigative actions are conducted in summary proceedings for which a period of 8 days was not sufficient, but is extended to 30 days.

However, the legislature also ordered to all procedural entities the obligation to "conduct investigative actions in the shortest time possible", so that the measure of detention in a summary proceedings is applied restrictively and solely as a measure of securing the presence of the suspect during the investigative actions and takes only as long as to fulfil the purpose of ordering thereof. At any time in the proceedings there is a possibility for detention to last less

than 30 days and the obligation of the court to permanently review the merits of ordering thereof which influences the impossibility to apply this measure within the meaning of repression and punishment, but only to ensure the smooth conducting of the summary proceedings.

The procedural institute of confession of the defendant in summary criminal proceedings also contributes to shortening of the period of detention in summary proceedings. The confession of the defendant by itself is of special importance in criminal proceedings in general, while it has the special procedural impact in summary proceedings. In the case of the defendant's confession, evidentiary proceedings shall be terminated and the procedure of imposing of criminal penalty shall be initiated. Importance and the grounds for detention are lost in case when the defendant admits the act done with the use of violence, because the grounds for ordering detention is not connected to the manner of committing the crime. This shows that the detention, in this and in any other case, remains a procedural measure that lasts until the court finds it necessary, but not punishment or retribution.

Obligation of the public authority to the family of the suspect or to organizations obliged to inform themselves about the act of detention of the suspect is governed by the provision of Article 147 of the Criminal Procedure Code. Namely, the police authority, i.e. the court is obliged to immediately inform the family of the person deprived of liberty about deprivation thereof, or the spouse or any other person that the person deprived lives with in extramarital or some other ongoing union, unless the person deprived of liberty explicitly objects to it; the police authority, or the court is obliged to immediately inform the competent Bar Association about deprivation of liberty of the lawyer; the competent social services authority shall be informed about deprivation of liberty if it is necessary to undertake measures for securing children and other family members that the person deprived of liberty is taking care of.

The protection of dignity of detainees is regulated by the provision of Article 148 of the Criminal Procedure Code in such a way that in the course of detention personal integrity and dignity of detainee shall not be violated; restrictions that can be applied towards the detainee are only those that prevent flight, incitement of third persons to destroy, conceal, alter or forge evidence or traces of criminal proceeding and direct or indirect contacts of detainees initiated to influence witnesses, accomplices and concealers; detainees of opposite sex shall not be detained in the same room. As a rule, the persons under reasonable suspicion to have participated in committing the same criminal offence, or persons serving their sentence with persons in detention cannot stay in the same room. Persons for whom reasonable suspicion exists that they are repeated offenders shall not be, if possible, placed in the same room with other detainees, for the reason of possible harmful influence.

As for the rights of detainees, they shall be entitled to, at least, eight hours of uninterrupted night rest daily; they shall be provided with movement on fresh air in duration of at least two hours per day; they shall have the right to wear personal clothes, to use their sheets and obtain and use food, books, professional publications, press, drawing and writing tools, at their own expense, as well as other things suited for their daily needs, except for objects that can cause injuries, violate health and safety, or can be used for escape; in the course of the investigation, the investigative judge may temporarily forbid or restrict a detainee's right to read newspapers, if this may be prejudicial for the successful course of the proceedings. The investigative judge ruling may be appealed; a detainee may be obliged to work on necessary maintenance of the room he/she resides in. At detainee's requests, the

investigative judge, i.e. President of the Chamber, in agreement with the Prison Administration, may allow him/her to work in prison premises corresponding to his mental and physical capacity, providing that this is not prejudicial for the course of the proceedings. Detainee is entitled to a fee for this work, determined by the prison warden.

Providing humane and safe conditions for detainees

The Constitution of the Republic of Serbia (*Official Gazette of RS* No 98/2006) contains provisions relating to the right to freedom and security (Article 27 of the Constitution).

Everyone has the right to personal freedom and security. Depriving of liberty shall be allowed only on the grounds and in proceedings stipulated by the law. A person deprived of liberty by the state authority shall be informed promptly, in a language he/she understands, about the grounds for arrest, about the charges brought against him/her, as well as about his/her rights, and shall have the right to inform a person of his/her choice about the arrest without delay. Any person deprived of liberty shall have the right to initiate proceedings before the court that shall be obliged to immediately review the lawfulness of deprivation of liberty and to order the release if the deprivation of liberty was against the law. Any sentence which includes deprivation of liberty may be proclaimed solely by the court.

According to Article 28 of the Constitution, a persons deprived of liberty must be treated humanely and with respect to his personal dignity. Any violence towards a person deprived of liberty shall be prohibited. Extorting a statement shall be prohibited.

The Republic of Serbia has ratified the following international instruments relevant to torture and other inhuman or degrading treatments: United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (*Official Journal of FRY, International Agreements*, No.9/1991.) Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (*Official Journal of SCG, International Treaties*, Nos.16/2005 and 2/2006) and the Council of Europe Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (*Official Journal of SCG, International Treaties*, No.9/2003) .

The Strategy for the Reform of the System for Enforcement of Criminal Sanctions, prepared and implemented in cooperation with the OSCE Mission to the Republic of Serbia, was adopted in 2005. This strategy is an integral part of the Judicial Reform Strategy and involves amending of the laws governing criminal and legal matters as well as matters of enforcement, the change of the system for enforcement in the treatment of persons deprived of their liberty, as well as training of prison staff in the implementation of regulations and professional performance of duties, adherence to statutory law, human rights and the rights of particularly vulnerable groups of persons deprived of their liberty.

Providing appropriate conditions for detainees is conducted primarily by the use of the existing regulations governing this area.

The Law on Amendments and Additions to the Criminal Procedure Code (OG of RS No. 72/2009), enacted in the 2009, provides that a person deprived of liberty without a court decision, shall be immediately advised that he/she is not obliged to make any statement, that any statement he/she makes may be used as evidence against him/her and that he/she has the

right to be heard in presence of a defence counsel of his/her choice or a defence counsel who shall be appointed at the expense of budget funds, if he/she cannot afford one.

A person deprived of liberty without a court decision, must, without deferral and not later than within 48 hours, be handed over to the competent investigative judge or otherwise be released.

A person deprived of liberty shall have the following additional rights:

1. at his/her request, the time, location and any change of location of deprivation of liberty shall be communicated, without deferral, to the family member or another close person, as well as to the diplomatic and consular representative of the state whose citizen he/she is, i.e. the international organization representative if he/she is a refugee or a stateless person
2. to freely communicate with his/her defence counsel, diplomatic and consular representative, representative of international organization and the Ombudsman;
3. to be examined, at his/her own request, without deferral, by freely selected physician, and if that is not possible, by a physician designated by the authority of detention, or the investigative judge;
4. to initiate proceedings before the court or to appeal to the court which is obliged to immediately decide on the legality of his/her detention.
5. Any violence against person deprived of liberty or person with limited freedom is prohibited and punishable. Such a person must be treated humanly, with respect for his/her personal dignity.

The Criminal Procedure Code (OJ of FRY, Nos.70/2001 and 68/2002 and OG of RS Nos.58/2004, 85/2005, 115/2005, 85/2005, 49/2007, 20/2009 and 72/2009) specify the conditions of accommodation and treatment of detainees as well as their rights and status. If the law and adopted international standards are not complied with, all the available measures shall be taken in order to eliminate the deficiencies (renovation of the detention premises, transfer of prisoners with the approval of the court in less populated detention premises, etc.) and the fulfilment of conditions and rights shall be regularly monitored by the competent court.

Treatment of detainees is regulated in more detail in Articles 148 to 153 of the Criminal Procedure Code (CPC).

The obligation to care about the regularity of the detention regime is assigned to the president of the competent court, within the meaning of Article 152 of the CPC, as follows::

- (1) Supervision of detainees is exercised by the president of the court duly authorised.
- (2) The president of the court or the judge appointed by him shall be obliged, at least once a week, to visit the detainees and, if deemed necessary, and without the presence of supervisors and wardens, to inform about the detainees feeding habits, their supply with other necessities and their treatment. President or a judge designated by him shall be obliged without delay to

notify the Ministry of Justice about the irregularities observed during his visit to the prison, while the Ministry shall be obliged within 15 days from receiving the notification to inform the president of the court, or the judge about the measures taken for elimination thereof. The designated judge may not be investigative judge.

(3) The president of the court and the judge shall be allowed, at any time, to visit all detainees, to talk with them and to receive complaints from them.

The Ministry of Justice (Directorat for Executing Criminal Sanctions) is authorized to regulate in more detail the regime of detention under Article 153 of the CPC. Namely, the existing by-law is applied, regulating in more detail the house rules for the application of detention measure in institutions for execution of penitentiary sanctions. Given a large increase in the number of detainees in the Republic of Serbia during 2009 and 2010, preventing thereof the realization of the right to adequate accommodation in accordance with international standards, the adaptation, renovation of the existing and construction of new facilities to accommodate detainees, is carried out in accordance with the influx of funds from the budget.

In order to reduce the overload of accommodation facilities in the institutions for the execution of penitentiary sanctions and more effective exercise of the rights of detained persons, the Government adopted The Strategy for Reducing Overcrowding in Institutions for Enforcement of Criminal Sanctions in the Republic of Serbia for the period 2010-2015 (*Official Gazette of RS* No. 53/10), which includes concrete actions and measures to be taken in order to unburden accommodation facilities, which will provide more humane conditions for the execution of detention measure.

According to the Law on the Execution of Criminal Sanctions (*Official Gazette of RS* No. 72/2009) accommodation of detainees is regulated by Article 237. A detainee shall be placed in a separate section of the penal institution, organised as a closed-type ward, separate from the convicts, according to plan on placement made by the Minister in charge of the judiciary issues. When deciding on the detainee's placement, the attention is paid to previous convictions, health condition, personal preferences, the language he/she speaks and understands and the type of criminal offence he/she is charged with. Detainees who jointly committed a criminal offence shall be placed separately.

Supervision over the implementation detention measure is regulated by Article 245 of the Law on the Execution of Criminal Sanctions. Implementation of the measure of detention is supervised by the president of a higher court on the territory of which the headquarters of the penal institution enforcing the detention is located.

In 2006, the Ministry of Interior adopted the Rulebook on Police Authority (OG of RS No.54/2006) whereby special attention is devoted to detention of persons and the official record made by a police officer, containing the following: personal information of a detained person; the time of ordering and terminating detention; the reason for bringing the person under escort and ordering detention; informing the person about the reasons for bringing him/her, about ordering detention as well as about his/her rights; the realized rights of detained person and informing the competent institutions; bringing the detained person under escort to the competent authority; visible injury or other visible marks due to which the person detained should be provided with medical or first aid, dangerous items confiscated due to

safety of detained persons; termination of detention. The official report shall be signed by a police officer who detained the person and by the person detained.

In accordance with the recommendation of the Council of Europe Committee for the Prevention of Torture, which is set out in the report submitted to the Government of Serbia and which refers to the obligation of the Ministry to prepare a form that will clearly explain the basic rights of persons deprived of liberty by the police and to ensure that the form will be served on the person at the time of deprivation of liberty or of ordering detention, the Commission of the MoI (Ministry of Interior) for monitoring implementation of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment has developed the following forms:

1. "Rights of persons deprived of liberty"
2. "Rights of detained person",
3. "Rights of a juvenile deprived of liberty",
4. "Rights of a juvenile as a citizen"
5. "Rights of a juvenile as a suspect".

The Commission has implemented the forms in the police practice and made them available on the intranet presentation of the MoI in a PDF format - section "Documents" under the title "The Commission of MoI for the Prevention of Torture, Inhuman or Degrading Treatment or Punishment", in Serbian (Cyrillic and Latin script) and in the English language. During the tour of the organizational units of the Ministry, the Commission exercised direct insight into the way of their practical application in everyday police practice and concluded that they are conducted in accordance with the recommendations.

The Commission has developed a project entitled "Improvement of the standard and professional police treatment of the persons deprived of their liberty in the confinement premises", which was applied for the use of funds from the Metra-Flex programme, financed by the Ministry of Foreign Affairs of the Kingdom of Netherlands;

In 2010, the Commission submitted a proposal to form a working group with a priority task of developing a strategic project "Construction, renovation and equipping of facilities for detention under the Ministry of Interior of the Republic of Serbia" as well as records, rulebooks and guidelines in respect of police officers treatment with persons deprived of liberty in the confinement premises, in line with European standards.

The Commission of the MoI for monitoring implementation of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment carries out an insight and control of the confinement premises and conducts interviews of individuals as well as insight into the records of detained persons, three times a month in police directorates and police stations, and delivers the report thereof to the Cabinet of Minister.

From the Ombudsman's standpoint, *accommodation* conditions for *persons deprived of their liberty* are not satisfactory, but jeopardize their human rights, while the lack of financial resources can not endlessly be justification for such a situation. All prisons in Serbia have a capacity of about 6 000 people, while over 11 000 people currently stay there.

The Ombudsman asserted that some police stations do not have adequate premises for accommodation of detained persons.

The existing, overcrowded prisons are mostly old, many are built in 19. century and are mainly located in the city centre - so that expandability with necessary facilities is limited and they are generally constructed without purpose - inadaptable to applicable standards, many are dilapidated – squalid, with damp *as a common occurrence*. In almost all prisons, persons deprived of liberty have no possibility to spend two hours a day in the fresh air, and a large number of persons do not have their own bed – they sleep on mattresses on the floor. The persons deprived of liberty express dissatisfaction over hygiene, quantity and quality of food, treatment, idleness and health care.

Stationary social and health institutions for treatment of mentally disordered persons in Serbia are too big, overcrowded, dilapidated and their work is not completely legally regulated. They usually serve as asylums that permanently make the said persons drift apart from the community of free people.

Criminal status of juvenile criminal offenders and juvenile detainees

On 29 September 2005, the National Assembly of the Republic of Serbia adopted the Law on Juvenile Criminal Offenders and Criminal Protection of Juveniles (OG of RS No. 85/2005), which is the first time that criminal status of juveniles, both as perpetrators and as victims in criminal proceedings, is regulated in our country by a special act which makes a separate entity in terms of integrating the provisions of substantive, procedural and executive legislation.

Adoption of this Law has contributed to making a significant step in aligning national legislation with international documents, including some of a binding character, such as: Convention on the Rights of the Child, signed on 18 June 2009, and the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed on 3 April 2003, ratified on 3 March 2004, entered into force on 1 April 2005, as well as many others that include standards which none of the civilized countries can deny: UN Standard Minimum Rules for Juvenile Justice, UN Guidelines for Prevention of Juvenile Delinquency, UN Rules for the Protection of Juveniles Deprived of their Liberty, UN Standard Minimum Rules for measures alternative to institutional treatment, the European rules on community sanctions and measures. In this way, the legislative requirements for the development and creation of a new judicial system in the Republic of Serbia were fulfilled to a large extent, the main goal thereof being the establishment of juvenile justice which:

- is based on the rights of the child;
- respects the child's best interest as a basic principle of this system;
- focuses on prevention as a primary goal;
- uses confinement of children as a last measure available and for the shortest possible duration;
- applies principles of: redirection, diversion and restorative justice, aimed at deterring children from the formal criminal justice system and conflict resolution within the local community;
- is aimed at strengthening the skills and training of all actors of the justice system for children;

- is based on strict enforcement of international norms and standards.;

Since the beginning of implementation of the Law on Juvenile Criminal Offenders and Criminal Protection of Juveniles, the duties of prevention and suppression of juvenile delinquency and criminal protection of juveniles as victims in criminal proceedings, usually performed by police officers specially trained to work with juveniles (after the training conducted from 2005 to 2010, 1750 police officers acquired certificates for the treatment of juveniles), and exceptionally, other police officers could be recruited (without certificate) when, due to the circumstances surrounding the case, police officers specially trained to work with juveniles are not in a possibility to act.

In order to establish professional, ethical and law-based police treatment of juveniles, the Ministry of Interior adopted two internal binding documents: Instructions on the treatment of police officers for juveniles and young adults (01 No. 4898/06 of May 1, 2006) and the Special Protocol on the treatment of police officers to protect juveniles from abuse and neglect.

Within the pre-trial proceedings, pursuant to the Law on Juveniles, certain limitations in using police powers with regard to the juveniles have been introduced. Confinement of juvenile suspects for up to 48 hours has been abolished, which had previously been allowed by the provisions of the Criminal Procedure Code.

A juvenile, as citizen or a suspect, is summoned through his parents, adoptive parents or guardians, unless unfeasible due to the need for exigent action or other circumstances.

The juvenile who was ordered criminal sanctions of institutional nature, is brought under escort of the police officer in civilian clothes, with regard to juvenile personal dignity and with the aim of preventing stigmatization that could have negative consequences for his development and social status.

Obtaining information from a juvenile as a citizen, as well as hearing of a juvenile as a suspect related to crimes that are prosecuted ex officio, shall be done solely in the presence of a parent, adoptive parent or guardian, by police officer trained to work with juveniles, who has gained expertise in the field of child rights and juvenile delinquency, whereby the juvenile hearing must be attend by a defence counsel who has acquired such expertise.

If the juvenile is in detention, obtaining of information or a hearing is conducted on the basis of previously gained written consent of the juvenile judge or the president of the juvenile Court bench.

71. Training: How is initial and continuous training for judges and prosecutors provided? What are the exact role and status of the Judicial Academy?

Article 9 of the Law on Judges and Article 54 of the Law on Public Prosecution, envisage the rights and obligations of judges, public prosecutors and deputy public prosecutors to develop professionally, and the rights said shall be regulated by special law. These laws also provide for attending trainings, participating in training programmes as one of the criteria for selection and promotion of judges, public prosecutors and deputy public prosecutors. In addition, the Law on High Judicial Council and the Law on State Prosecutorial Council envisage the existence of initial and ongoing training under the competence of the High Judicial Council or the State Prosecutorial Council.

In order to realize the rights and obligations laid down in the above mentioned laws, the Judicial Academy was established by the Law on Judicial Academy (OG of RS No. 104/2009) as the institution which is a legal successor of the Judicial Centre for Training and Professional Development aimed to improve the criteria in the selection and promotion of judges, public prosecutors and deputy public prosecutors but also of judicial staff.

Initial and ongoing training is organized within the Judicial Academy in accordance with the Law on the Judicial Academy. Initial training is mandatory and represents a condition that a candidate for the office of basic court judge, deputy prosecutor in the basic prosecutor's office and the judge in a misdemeanour court should meet in order to be nominated as first choice.

Judicial Academy is an institution responsible for trainings of judges and prosecutors. Judicial Academy is currently conducting ongoing training programmes and the entrance examination was organized in September 2010 for the first generation of basic training students. On 1 October 2010, 22 basic training students enrolled at the Academy. The Academy has offices in Belgrade, Nis and Novi Sad.

The number of the beneficiaries of basic trainings for the judges in misdemeanour court, judges of the basic court or deputies of the basic public prosecutor's office, is determined by the High Judicial Council and the State Prosecutorial Council based on the actual judiciary needs. The Academy announces an open competition for admission to basic training programme. General conditions for a person to apply to open application procedure is the bar exam certificate and fulfilment of the general requirements for employment in institutions of public authorities. The candidates take an entrance exam, which includes a written part consisting of a test, personality tests and an oral part of the entrance exam. The entrance exam Commission determines the ranking list according to the results of all the three parts of the entrance exam. The candidates from the ranking list are taken to training programme until the quota is filled for the basic training attendants envisaged for the respective year. Attendees of basic training programme are trained under the supervision of a mentor in the courts and prosecutor's office, while a segment of the training is conducted outside of the judiciary. Mentors at every stage of basic training manual estimate, excluding the period spent outside the judiciary. At the end of the basic training, the attendees take the final exam. The final grade is the average sum of grades from each segment of the training. The High Judicial Council and the State Prosecutorial Council are obliged to propose to the Assembly the candidate who has completed basic training for the judgeship for basic court,

misdemeanour court or the public prosecutor's office deputy. Only in cases when there are no applicants who completed basic training, the candidates who meet general criteria for election of judges of the misdemeanour court or of the deputy in basic public prosecutor's office can be proposed.

Attendee of basic training shall enter into employment relationship with the Academy during the course of training. Since the Academy is a public institution, founded by the Republic of Serbia, which performs the activities of public interest and is a legal entity responsible for organizing basic training, the legal relationship between the attendee and the Academy is thus established. In addition, it gives the Academy an opportunity to act towards setting up certain obligations for the attendees and taking measures (including also disciplinary ones) in case of failure to fulfil the obligations prescribed by the basic training attendees, such as regular attendance at training, participation in programme activities and other attendees' obligations. Basic training attendee is entitled to salary amounting to 70% of base salary of the basic court judge. The extent of rights and obligations of the candidates follows "best practice" that exists in most European countries in the field of basic training of judges and prosecutors which is, unlike the constant training, obligatory. In addition, the basic training attendee has certain obligations that lead to obtaining a special legal status of the attendee and therefore provides him with envisaged benefits.

Ongoing training of judges and prosecutors and deputy prosecutors is, in principle, envisaged as voluntary pursuant to Article 43 Law on the Judicial Academy, unless envisaged as obligatory under other laws, such as the Law on Juvenile Criminal Offenders and Criminal Protection of Juveniles (OG of RS No. 85/2005) and the Family Law (OG of RS No. 18/2005). The second exception to the principle of voluntariness of the ongoing training is provided when the High Judicial Council and the State Prosecutorial Council prescribe mandatory training and determine which categories have to attend the training and for how many days a year. It applies to cases such as changes in specialization, substantial changes in regulations, the introduction of new working techniques and elimination of deficiencies registered in the work of a judge and a prosecutor during the performance of their activities.

72. Clerical staff: Please give the number of clerical staff. How does this compare with the number of judges and prosecutors? What are their roles / competencies and their legal status?

No.	DESCRIPTION	OFFICE					OFFICIALS							GENERAL SERVICE EMPLOYEES						INTERNS			INTERNS	TOTAL		
		GROUPS					TITLES							TYPE / QUALIFICATIONS						LEVEL OF PROFESSIONAL QUALIFICATIONS						
		FIRST	SECOND	THIRD	FOURTH	FIFTH	SENIOR ADVISOR	INDEPENDENT ADVISOR	ADVISOR	Junior Advisor	ASSOCIATE	JUNIOR ASSOCIATE	OFFICER	JUNIOR OFFICER	I	II	III	IV	V	VI	University education	Advanced vocational education			Secondary education	
1.	SUPREME COURT OF CASSATION			1	6	2	57	8	8		6		26	1		1	1	63		60						240
2.	ADMINISTRATIVE COURT						2	41	5	2	2	2	37	14				24								129
3.	APPELATE COURT						1	9	201	57	14		95	67				126		19						589
4.	HIGHER COURT							18	243	86	37	4	303	215	1	1	6	512	4	112					87	1.629
5.	BASIC COURT							16	471	414	73	1	1.882	794	5	1	15	1.524	1	346					363	5.906
6.	COMMERCIAL APPELATE COURT						3	38	5		2		10	13		1		9								81
7.	COMMERCIAL COURT							15	130	27	25		218	108				127		29					38	717
8.	HIGHER MISDEMEANOUR COURT						2	39	28	7	1		47	42				34		6						206
9.	MISDEMEANOUR COURT						1	6	144	49	32		866	418				402		65					46	2.029
10.	PUBLIC PROSECUTOR'S OFFICE OF THE REPUBLIC OF SERBIA			1			3	12	2	2		9						14								43
11.	APPELLATE PUBLIC PROSECUTOR'S OFFICE OF THE REPUBLIC OF SERBIA							6	36		10	1	33					37		1						124
12.	HIGHER PUBLIC PROSECUTOR'S OFFICE OF THE REPUBLIC OF SERBIA						4	4	58	16	30		125	17		2		89		2					33	380
13.	BASIC PUBLIC PROSECUTOR'S OFFICE OF THE REPUBLIC OF SERBIA						2	3	104	50	46		225	32				189		11					71	733
14.	WAR CRIMES PROSECUTOR'S OFFICE						2		12	2	3		10	4	1			4								38
15.	PROSECUTOR'S OFFICE FOR ORGANIZED CRIME				1			14	10		2		6					10								43
TOTAL NUMBER OF EMPLOYEES BY OCCUPATION				2	7	2	77	229	1.457	710	285	8	3.892	1.725	7	6	22	3.164	5	651				638		
TOTAL NUMBER OF EMPLOYEES																		12.887								

The number of clerical staff:

The respective ratios of prosecutors and judges to clerical staff:

Prosecutor's office

The staff at the public prosecutor's office consists of prosecutorial assistants, prosecutorial interns and civil servants employed on administrative, technical, accounting, information and other supporting activities relevant to public prosecutor's office. The number of clerical staff in the public prosecutor's offices of the Republic of Serbia amounts to 1361.

Based on the Rulebook on the criteria for determining the number of staff in the public prosecutor's office ('Official Gazette of RS Nos. 72/09 and 79/09) the number of staff required in the public prosecutor's office is determined by the number of public prosecutors and deputy public prosecutors.

The criteria for basic and higher public prosecutor's office:

The number of prosecutorial assistants and interns shall be determined by the principle of employing one prosecutorial assistant, or one prosecutorial intern per two prosecutors. The number of clerk-typists is determined by the principle of employing one clerk-typist per three prosecutors and the number of personnel who perform clerical duties by the principle of 0.4 civil servants per one persecutor.

The criteria for the appellate public prosecutor's office:

The number of prosecutorial assistants is determined by the principle of employing one prosecutorial assistant per three prosecutors. The number of clerk-typists is determined by the principle of employing one clerk-typist per three prosecutors and the number of personnel who perform clerical duties by the principle of 0.4 civil servants per one persecutor.

The criteria for public prosecutor's office of special jurisdiction:

The number of prosecutorial assistants for the war crime prosecutor's office is determined by the principle of employing one prosecutorial assistant per two prosecutors. The number of clerk-typists is determined by the principle of employing one clerk-typist per two prosecutors.

The number of prosecutorial assistants for the prosecutor's office for organized crime is determined by the principle of employing one prosecutorial assistant per one prosecutor. The number of clerk-typists is determined by the principle of employing one clerk-typist per one prosecutor, and the number of personnel who perform clerical duties for the prosecutor's offices of special jurisdiction, by the principle of employing 0.8 civil servants per one persecutor.

The criteria for the Republic Public Prosecutor's Office:

The number of advisors in the Republic Public Prosecutor's Office is determined by the principle of employing one advisor per three prosecutors. The number of senior advisers is determined by the principle of employing up to 5 employees in that position. The number of clerk-typists is determined by the principle of employing one clerk-typist per two prosecutors. The number of staff performing clerical duties is determined by the principle of employing 0.8 employees per one prosecutor. Number of IT and technical prosecutorial staff in all public prosecutors' offices is defined by the principle of employing up to 2 IT employees, i.e. up to 0.2 technical operations employees, per one prosecutor.

The number of judicial staff required for other duties in the public prosecutor's office (proof-reader, spokesperson, librarian, court interpreter, etc.) shall be determined in order to provide at least one employee for each type of the said job in the public prosecutor's office.

The number of employees responsible for duties on hygiene maintenance in the courts and public prosecutor's offices is determined according to the size of the facility to be maintained by the principle of employing one employee per 400m².

Judiciary

Court staff consists of judicial assistants, interns and civil servants and general service employees engaged on administrative, technical, accounting, IT and other ancillary jobs relevant to the judicial authority. The number of court staff is determined by the court president by the act on internal organisation and job classification in the court, in accordance with the human resources plan.

Under the Rulebook on the criteria for determining the number of court staff in the courts (*Official Gazette of RS* No.72/09 and 79/09) the number of court staff required at the court is determined, as a rule, according to the number of judges. The number of court staff required for performing duties on enforcement and land registers is determined by the number of cases in court.

The criteria for basic, higher, commercial and misdemeanour court:

The number of judicial assistants and judicial interns is determined by the principle of employing one judicial assistant or one judicial intern per one judge, for the basic, higher and commercial court. As for the misdemeanour court, the number of judicial assistants and judicial interns is determined by the principle of employing one judicial assistant or one judicial intern per three judges. The number of clerk-typists is determined by the principle of employing one clerk per one judge of first instance, i.e. one investigative judge, and one clerk per two judges of second instance.

The number of court staff employed on clerical jobs in the basic and commercial court is determined by the principle of employing 0.8 civil service staff per one judge, in misdemeanour court 0.5 civil service staff and in higher court 0.4 civil service staff per one judge, respectively.

The criteria for the appellate court, commercial appellate court and higher misdemeanour court:

In these courts, one judicial assistant is employed per each judge, one clerk-typist per two judges, and the number of court staff engaged on clerical tasks is determined by the principle of employing 0.4 civil service staff per one judge, while 0.5 civil service staff per one judge are employed in the higher misdemeanour court.

The criteria for the administrative court:

The number of judicial assistants in the Administrative court is determined by the principle of employing one judicial assistant per one judge, one clerk-typist per two judges, while the number of court staff engaged on clerical tasks is determined by the principle of employing 0.8 civil service staff per one judge.

The criteria for the Supreme Court of Cassation:

The number of judicial advisers in the Supreme Court of Cassation is determined by the principle of employing one judicial adviser per one judge. As for the Trial Division of the Supreme Court of Cassation, the number of judicial advisors is determined by the principle of employing two judicial advisors per one Trial Chamber, while the number of advisors at the Court Practice Division is determined by the principle of employing at least one but no more than three judicial advisors per each Division.

The number of court staff engaged in IT and technical work in all courts ranges from 0.4 to 0.2 civil service staff per one judge.

The number of court staff required for other duties at the court (proof-reader, spokesperson, librarian, court interpreter, etc.) shall be determined in a way to provide at least one employee for each type of the said job in the court.

The role, competences and legal status:

Prosecutor's office

According to the Rulebook on internal organisation and systematisation of jobs in the public prosecutor's office, the prosecutor's assistant shall be responsible for reviewing cases and preparing draft decisions on cases to be considered and informing deputy public prosecutor thereof, for preparing presentations for expert meetings and conferences, proposing registration of legal opinions and decisions on legal issues of interest to the case law, attending the consultations, keeping records of consultations carried out and adopted decisions to act upon matters as to which the consultation was carried out, participating in the review and processing of the disputed legal issues, preparing pronouncements on the decisions adopted at the meetings, participating in the processing of materials related to legal issues, keeping records on cases of wider public interest or on matters for which there is broad public interest, participating in preparation of materials for bulletins, taking statements of the parties on record, processing citizens' complaints and performing other duties as requested by the public prosecutor and the head of the division. Prosecutorial intern shall get acquainted with the cases assigned to him by the prosecutor, or the deputy, shall follow pre-trial proceedings, may attend the trials together with the deputy prosecutor, shall improve professionally in accordance with a training programme prescribed by the institution responsible for judicial training and with Act on internal organization and systematization of jobs in the prosecutor's office. The position for human resources jobs includes preparation of general decisions, specific decisions and other documents issued by the prosecutor, activities related to personal and status issues of public prosecutor's office holders and of the prosecutorial staff, keeping of civic and personal records, performance of jobs related to disciplinary and material responsibility of employees, preparation of annual leave plan of employees and vacation decisions, preparation of resolutions, treaties and contracts with regard to establishment and termination of employment relationship and exercise of rights arising from work, preparation of annual work agenda and analyzing of the execution of work agenda, performance of other duties as requested by the prosecutor.

Judiciary

The role and competences of the judicial assistants and interns is prescribed by the Court Rules of Procedure (*Official Gazette of RS* No. 110/2009). Judicial assistant shall study the cases assigned by the judge and prepare them for trials, perform the assigned tasks in the trial division, develop the minutes of meetings, hearings and the division sessions, prepare expert reports, analysis and information as requested by the judge, take statements of the parties on the record, process citizens' complaints and carry out other activities determined by the annual work schedule and by the Act on internal organization and systematization of jobs in the court. Judicial assistant may be entrusted with performance of other tasks under the supervision of the judge, such as: preparation of a draft decision relating to examination of procedural requirements for conducting the proceedings, drafting of court ruling, drafting of decision on the permissibility of a legal remedy, preparing reports for the judge rapporteur, setting the amount of court fees, the classification of cases and the like. Judicial intern shall get acquainted with the cases assigned to him by the judge shall monitor trials and shall improve professionally in accordance with a training programme prescribed by the institution responsible for judicial training in judiciary and with Act on internal organization and systematization of jobs in the court.

73. Accountability and discipline: Is there a code of ethics for members of the judiciary and prosecutors? If so, who has adopted the code? What is its legal status? How is it being implemented?

The Law on Public Prosecution (*Official Gazette of the Republic of Serbia* No. 116/08, 104/09 and 101/2010)) provides that public prosecutors and deputy public prosecutors are obliged to comply with the rules of the Code of Ethics, adopted by the State Prosecutorial Council on the basis of the Law on the State Prosecutorial Council. The Code of Ethics is envisaged as a by-law obligatory for all holders of public prosecutor's office under the same conditions. The Code of Ethics will include the rules on application thereof. The Code of Ethics is currently in preparation.

At the meeting held on 14 December 2010, the High Judicial Council adopted a Code of Ethics in accordance to the Law on Judges (*Official Gazette of RS* No. 116/2008, 58/2009, 104/2009 and 101/2010) (Article 3. paragraph 4.) The proposal of the Code of Ethics was published on the website of the High Judicial Council, for the judges to get acquainted with the proposal of this act and to provide their suggestions and comments.

The Code of Ethics stipulates ethical principles and rules of judicial conduct of the judges, which must be followed in order to preserve and improve the dignity and reputation of judges and the judiciary. Ethical principles are: independence, impartiality, competence and responsibility, dedication in conducting the judicial office and freedom of association. The judge shall be obliged to comply with the Code of Ethics at any time, and the principles of the Code shall be the judiciary lifestyle.

The High Judicial Council shall decide on the activities that are contrary to the dignity and independence of a judge, and damaging to the reputation of the court, based on the Code of Ethics (Articles 3 and 30, paragraph 4 of the law on Judges). Violation of the provisions of the Code of Ethics to a greater extent shall be considered misconduct and violation of the provisions of the Code of Ethics shall be determined in the disciplinary proceedings (Article 90 of the Law on Judges).

The Code of Ethics is not a regulation of imperative character. It is adopted by the High Judicial Council, in order to influence the judges' behaviour in court and out of it, in accordance with ethical and professional principles.

74. Who is in charge of deciding when to carry out inspections in courts and prosecutors offices? Is it the Ministry of Justice or the High Judicial Council / State Prosecutorial Council? Please give examples of inspections carried out.

Inspection supervision over the administrative and technical activities in public prosecutor's offices lies within the competence of the Ministry of Justice. Namely, pursuant to Article 40 of the Law on Public Prosecution (*Official Gazette of the Republic of Serbia* No. 116/08, 104/09 and 101/2010)), the Ministry of Justice shall supervise the implementation of the Rulebook on Administration of the Public Prosecutor's Office (OG of RS No. 110/2009 and 87/2010). As for the supervision of the work of holders of judicial functions, the higher public prosecutors directly carry out the supervision of the work of public prosecutors in lower-ranking public prosecutor's offices. For example, an appellate public prosecutor in Kragujevac conducted the instructional monthly supervision of his appellate area.

In accordance with Article 70 of the Law on Organization of Courts (*Official Gazette of RS* No. 116/2008, 104/2009 and 101/2010), the Ministry of Justice shall perform duties of judicial administration which includes monitoring of judiciary work in relation to proceeding cases within the prescribed deadlines and proceeding on complaints and petitions. Article 71 of the Law stipulates the nullity of any individual act of judicial administration, which affects the autonomy and independence of court and judges. This nullity shall be determined by the Administrative Court.

Implementation of the Court Rules of Procedure (*Official Gazette of RS* No. 110/2009) is supervised by the Ministry of Justice based on Article 75 of the Law on Organization of Courts, Article 3 of the Court Rules of Procedure and Article 10 of the Rulebook on internal organisation and systematisation of jobs in the Ministry of Justice. Monitoring Division within the judicial authorities, with 6 employees engaged, performs supervision over the implementation of the Court Rules of Procedure in the courts of general jurisdiction: basic (34), higher (26), appellate (4) and the Supreme Court of Cassation and the courts of special jurisdiction: commercial (16), commercial appellate (1), misdemeanour (45) higher Misdemeanour Court in Belgrade with divisions in Kragujevac, Nis and Novi Sad and the Administrative Court in Belgrade with divisions in Kragujevac, Nis and Novi Sad.

Article 4 of the Court Rules of Procedure, supervision activities are regulated in more detail: Through the person authorized for supervision, the Ministry controls the performance of tasks within the competence of judicial administration, proceeding cases within the prescribed deadlines, proceeding on complaints and petitions, the court office operations and other tasks related to internal organization and operation of the court.

Supervision is carried out by obtaining reports from the president or through direct inspection. The application of the Court Rules of Procedure, proceeding within deadlines and proceeding on complaints is particularly monitored in the court. Upon conducting supervision, a record shall be to be forwarded to the president of the court wherein supervision was conducted, the

president of an immediately higher instance court, the President of the Supreme Court of Cassation and the Minister competent for the judiciary.

The president of an immediately higher instance court is required to notify the President of the Supreme Court of Cassation and the Minister competent for the judiciary on measures undertaken to eliminate identified deficiencies, deadlines for eliminating such deficiencies, as well as on the reasons whereby the deficiencies and omissions have occurred. Pursuant to Article 5 of the Court Rules of Procedure, the notification deadline is 30 days.

Pursuant to provisions of Articles 51 to 56 of the Law on Organization of Courts and Articles 6 to 14 of the Court Rules of Procedure, the court president manages court administration, and may delegate certain court administration tasks to the deputy court president or to presidents of divisions. Court administration tasks also include complaints procedure when the parties refer directly to the court, as well as when a complaint is filed through the Ministry of Justice, a higher court or through the High Judicial Council, in which cases the court president shall notify the complainant, the Minister, the president of a court of immediately higher instance and the High Judicial Council of the grounds for complaint and measures taken.

The provision of Article 54 of the Law on Organization of Courts and the provision of Article 11 of the Court Rules of Procedure, regulate the empowerment of president of a court of immediately higher instance. In performing court administration tasks, president of a court of immediately higher instance is entitled to supervise the court administration of a lower instance court, and, in case of failure of the president of a lower court to act, to issue acts from his/her scope of work.. In exercising the supervision, a higher court may ask the lower court information regarding the application of regulations, the course of court proceedings and all the data on task performance. The president of a higher court may order an immediate inspection of the work of a lower court, and shall prepare a written report thereof.

The issue of appeals against disciplinary actions and the authority to decide thereof, can relate to actions taken by the court president as an authorised proposer in instituting the dismissal proceedings against judges. The proposers authorised to initiate dismissal proceedings against judges, within the terms of Article 64(2) of the Law on Organisation of Courts, are the president of the trial court, president of a court of immediately higher instance, president of the Supreme Court of Cassation, the authority responsible for performance evaluation of judges and Disciplinary Commission.

Article 13 of the Law on High Judicial Council (*Official Gazette of RS* No. 116/2008 and 101/2010), regulates the jurisdiction of the Council to determine the composition, duration and termination of office of the disciplinary authority members, to appoint the members of disciplinary authorities and to regulate the way of work and decision making process conducted in the disciplinary authorities as well as to decide on legal remedies in the disciplinary proceedings. The High Judicial Council adopted the Rulebook on Disciplinary Proceedings and Disciplinary Responsibility of Judges, which was published on 4 October 2010. (*Official Gazette of RS* No. 94/2010).

In relation to the disciplinary responsibility of judiciary employees, supervision over the actions conducted by court president in applying the provisions of the Labour Law and Law on Civil Servants is conducted by Administrative inspection within the competence of the Ministry of Public Administration and Local Self-government.

Supervisions conducted in 2010:

In cooperation with the High Judicial Council, supervision was conducted in the first quarter of 2010 in civil, family, labour, executive, probate and criminal divisions of the First Municipal Court in Belgrade and the Higher Court in Belgrade, in order to determine the total number of active cases (cases pending commitments within the meaning of Articles 420 and 421 of the Court Rules of Procedure) and proceeding in closed cases (specific records within the meaning of Article 422. 422 of the Court Rules of Procedure). In cooperation with the Department for Operations and Technologies, 34 emergency controls was carried out in the basic courts with regard to implementation of the Rulebook on conducting specific records of contracts on real estate transactions and verification of signatures, transcripts and international certifications.

With regard to implementation of the AVP Case Management Programme, six supervisions in the courts of general jurisdiction were carried out and the implementation thereof is continuously monitored in all courts.

In 2010, 17 regular supervision were carried out in the courts of general jurisdiction and in three misdemeanour courts as courts of special jurisdiction.

In the period 1 January - 1 December 2010, complaints, petitions and other filings of citizens were processed in 3,455 cases. The largest number of complaints is related to the length of proceedings. In addition to written, all oral complaints were also processed by phone or direct reception of parties in proceedings.

75. How is co-operation between actors (judges, prosecutors, investigators, clerks, judicial police etc) in the criminal justice system ensured to facilitate the functioning of the system? Are there agreements / memoranda of understanding in place and what is their role? Please give examples.

Constitution of the Republic of Serbia (*Official Gazette of the Republic of Serbia* No. 98/06) stipulates that Public Prosecution Office shall be an independent state authority which shall prosecute the perpetrators of criminal offences and other punishable actions, and take measures in order to protect constitutionality and legality, and which shall perform its function on the grounds of the Constitution, Law, ratified international treaty and regulation passed on the grounds of the Law. In addition, the Constitution and the Law on Organisation of Courts (*Official Gazette of RS* No. 116/08, 104/09 and 101/2010) provide that the courts are autonomous and independent state authorities protecting the freedoms and rights of citizens, rights and interests of legal subjects stipulated by law, ensuring constitutionality and legality, thus adjudicating in accordance with the Constitution, laws and other general acts, where specified by law, generally accepted rules of international law and ratified international agreements.

The Criminal Procedure Code (*Official Journal of FRY* Nos. 70/2001, 68/2002, *Official Gazette of RS* No. 58/2004, 85/2005, 115/2005, 46/2006, 49/2007, 122/2008, 20/2009, 72/2009, 76/2010) stipulates that the basic right and fundamental duty of the prosecutor is prosecution of perpetrators of criminal acts, and that for the crimes that are prosecuted ex

officio, the public prosecutor shall be authorised to manage pre-trial proceedings, to request conducting of an investigation and to guide the activities of the law enforcement in the preliminary criminal proceedings in accordance with this Law, to raise and represent the indictment, i.e. motion to indict before a competent court, to take an appeal from the court decisions that are not final and to file extraordinary legal remedies against final court decisions, and to perform other activities stipulated by this Code. In order to exercise powers under this Code, all authorities that participate in pre-trial proceedings are obliged to inform the competent public prosecutor of each of the actions undertaken. The Ministry of Interior - the police and other state authorities responsible for detecting criminal offences, are obliged to act upon every request from the public prosecutor. If law enforcement authority or other authority fails to act upon the request of public prosecutor, the public prosecutor shall notify the chief executive of the authority, and if necessary, may notify the competent minister, the government or the competent parliamentary authority.

Cooperation among all participants, judges, prosecutors, police officers and so on, shall be conducted within the framework of respect for the provisions of the Criminal Procedure Code. Special agreements - memoranda of understanding related to this cooperation do not exist, since the role of all parties is clearly defined by the said laws.

Reform of the judicial system provides an opportunity to improve the autonomy, accountability and efficiency of prosecutors who, as required by law, work in close cooperation with the judiciary employees and with the Ministry of Interior.

In addition to traditional prosecutorial responsibility in prosecuting perpetrators of criminal offences and other offences punishable by law, the new constitutional and legal framework shall change the scope of work of prosecutorial office holders by clearly defining the role in protection of constitutionality and legality.

Nature and scope of powers of public prosecutors, as determined by law, are such that they are entitled to prosecute all perpetrators without interference, including also state officials, for offences committed by them in performing their functions, particularly acts of corruption and abuse of office. According to the proposal of new Criminal Procedure Code, significant limitations of the roles of investigative judges shall be provided, by which the prosecutors will be entitled to the most significant role in investigative proceedings. This role, which involves collecting evidence and criminal prosecution, will enter into force by adopting a new legal framework.

An example of improvement in multidisciplinary approach to cooperation between the above mentioned state authorities, reflected itself in signing the agreement on establishing a joint coordination body at the end of 2010, entitled the ILECU, based on the concluded agreements on cooperation between the Ministry of Justice, Ministry of Interior and Ministry of Finance in criminal cases with a foreign element that require urgent treatment and coordination of these bodies.

76. Do the different actors have clear roles and responsibilities? How is it ensured that an overlap of responsibilities is avoided? How is efficient communication between the different actors ensured?

The National Strategy is a comprehensive, multisectoral and is planned to produce results in the long run. Roles and responsibilities of the authorities are clearly defined in order to avoid overlap or conflict in the conducting procedures. The strategy is also developed at local levels in order to achieve short term goals. Local initiatives are of small scope, focused on one area, and are usually the result of partnerships with NGO sector, media and citizens.

The sectors at local level, identified as mostly endangered by corruption, are the following: introduction of public disputes on the municipal budget, establishment of codes of ethics for officials and municipal employees, establishment of preventive mechanisms in local self-government.

The sectors are also determined by the EU pre-accession funds, to be used by the Republic of Serbia, supporting the initiatives to eliminate corrupt practices and strengthen the capacity of civil sector to monitor budget spending.

In the judiciary sector, greater efforts are made towards developing an independent and reliable judiciary in the Republic of Serbia, without which there would be no effective response of the society to crime. According to the Strategy, judiciary is treated as equal and competitive authority compared with the authorities responsible for detection of crime and the only authority which gives the final word on definition of organized crime in the Republic of Serbia.

Implementation of the National Strategy against Corruption in the Republic of Serbia contributes to creating more favourable conditions for the establishment and functioning of an independent, reliable and operational judiciary and improving judicial cooperation and for creation of conditions for developing a reliable, functional and independent Public Prosecution and an independent judiciary and for improving prosecutorial and judicial cooperation.

Cooperation among all participants, judges, prosecutors, police officers and so on, shall be conducted within the framework of respect for the provisions of the Criminal Procedure Code.

More detailed explanation is given in the answer to question No.75.

77. Please describe the system of appeal procedures.

The appeal procedure is prescribed by the procedural laws depending on the type of procedure (Civil Procedure Code – OG of RS No. 125/2004 and 111/2009 Criminal Procedure Code – OJ of FRY No. 70/2001 and 68/2002 and OG of RS No. 58/2004, 85/2005, 115/2005, 85/2005 – other law, 49/2007, 20/2009 – other law, 72/2009 and 76/2010, Misdemeanor Law - OG of RS No. 101/2005, 116/2008 and 111/2009).

Affected party has the right to file an appeal against the decisions of the first instance court to the court of immediately higher instance, in accordance with the competences prescribed by the Law on Organisation of Courts (*Official Gazette of RS* No. 116/08, 104/09 and 101/2010).

An appeal is a regular legal remedy. Judicial decisions are binding for everyone and can not be the subject of extra-judicial examination. Judicial decisions may be reviewed only by the court of competent jurisdiction in due proceedings regulated by law. Reviewing the first instance decision, the court of immediate higher instance can confirm, abolish or return the appellate decision to the first instance court for reconsideration or to reverse the decision. In addition to the right to appeal, depending on the type of proceedings, the possibility of filing extraordinary legal remedy is also prescribed.

78. Please describe the situation as regards war crime proceedings in Serbia: Which courts / prosecution offices are competent? Describe their financial and human resources situation. What specialised trainings have been provided to judges, prosecutors and defence lawyers? Please indicate the state of play of the proceedings. How many proceedings have been finalised and how many are ongoing? Have there been extradition requests? Please elaborate.

The Law on Organization and Competences of Government Authorities in War Crimes Proceedings (adopted on 1 July 2003, published in the *Official Gazette of the Republic of Serbia* No. 67/2003, 135/2004, 61/2005, 101/2007 and 104/2009) for prosecution of criminal cases set forth in Articles 370 to 384, Article 385 and Article 386 of the Criminal Code (*Official Gazette of RS* No. 85/2005, 88/2005 - corrigendum, 107/2005 - corrigendum, 72/2009 and 111/2009) (hereinafter referred to as: CC), as well as for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1 January 1991, listed in the Statute of the International Criminal Tribunal for the former Yugoslavia (hereinafter referred to as: the Hague Tribunal), and for the criminal offence of accessory after the fact, as referred to in Article 333 of the CC if perpetrated in relation to the above mentioned criminal offences, the jurisdiction shall be assigned to the Prosecution Office for War Crimes, headed by the Prosecutor for War Crimes, while for the prosecution of the above mentioned criminal offences the jurisdiction shall be assigned to the Higher Court in Belgrade, as the first instance court and Appellate Court in Belgrade, for second instance deciding, in which courts War Crimes Department were established respectively, headed by presidents of the Department. The Higher Court in Belgrade - War Crimes Department, is responsible for conducting pre-trial proceedings (investigative proceedings), the first-instance criminal proceedings and proceedings for extraordinary legal remedy in a legally terminated procedures specified by the Criminal Procedure Code (OJ of FRY No. 70/2001 and 68/2002 and OG of RS Nos. 58/2004, 85/2005, 115/2005, 85/2005 – other law, 49/2007, 20/2009 – other law, 72/2009 and 76/2010), and in accordance thereof (retrial). In addition, the Department conducts the procedure for deciding on appeals for release on parole and the procedure for recognition of foreign court decisions in the cases of the above mentioned criminal offences.

Moreover, under the Law on Organization and Competences of Government Authorities in War Crimes Proceedings (OG of RS No. 67/2003, 135/2004, 61/2005, 101/2007 and 104/2009), the Office for War Crimes, acting at the request of the Prosecutor for War crimes in accordance with the law, was established within the Ministry of Interior for the detection of the crimes mentioned above. Furthermore, under this law, the Witness and Victim Support Office was established within the Higher Court in Belgrade, performing administrative and technical tasks, activities related to assistance and support to injured parties and witnesses, as well as activities on securing procedural provisions of this Law. Within the District Prison in

Belgrade, a Special Detention Unit was established for detention imposed in the criminal proceedings for criminal offences mentioned above, whose organisation, work and treatment of the detainees is specified in more detail by the Minister responsible for judiciary, in accordance with the Criminal Procedure Code and the Law on Enforcement of Criminal Sanctions (OG of RS No. 85/2005 и 72/2009).

Prosecution Office for War Crimes (hereinafter referred to as: the Prosecution Office) shall submit the budget proposal to the Ministry of Justice and the Ministry of Finance no later than September of the current year for the budget for next year. After agreement has been reached between the Ministry of Justice and the Prosecution Office, the budget proposal shall be submitted to the Government of the Republic of Serbia (hereinafter referred to as: the Government), upon which the Government shall adopt the proposal of a law, shall send it to the Assembly and the Assembly shall adopt the Law on Budget (entered into force on 1 January 2010, published in the *Official Gazette of RS* No. 107/2009). The Prosecution Office is an independent and direct budget beneficiary, i.e. after the adoption of the Law on Budget it independently disposes of the funds allocated for the Prosecution Office, in accordance with the law.

The Prosecution Office for War Crimes comprises sufficient number of deputy prosecutors, assistant prosecutors and a sufficient number of other administrative and technical staff (eight deputy prosecutors and 22 civil servants and general service employees), but having in mind enlarged volume of work, a project was initiated to increase the capacity of the Prosecution Office, funded by the European Union and the OSCE, and on the basis of which the 12 new people entered into employment relationship with this Office.

War Crimes Department of the Higher Court in Belgrade performs its activities with sufficient number of judges, judicial assistants and administrative and technical staff.

Law on Organization and Competences of Government Authorities in War Crimes Proceedings provides that a judge of the High Court Department must have at least 8 years of professional experience in criminal law, as well as that upon assignment, or deployment to the Department of the High Court, priority shall be given to judges who have the necessary expertise and experience in international humanitarian law and human rights. The above legal requirements guarantee skilful judges in proceeding the cases in the field of war crimes, thus bearing in mind that the education system of this country, shall provide the judges with appropriate training and qualifications required for performing judicial offices, both in teaching subjects related to war crimes, and in other legal areas.

The Judicial Training Centre, i.e. the Judicial Academy as the legal successor thereof, organized numerous trainings for public prosecutors and deputy public prosecutors responsible for prosecuting war crimes, and for judges who work in special departments of courts that prosecute war crimes. A large number of trainings and seminars as well study visits to The Hague, the USA, to countries in the region, to Cambodia, Rwanda, Sweden, Norway, etc, were organized in direct cooperation with international organizations and institutions. International organizations and institutions have provided great support in building and strengthening the capacity to prosecute war crimes, and the members of judiciary, specialize in this subject, are very well trained and possess adequate knowledge and skills to cope with all challenges. Numerous seminars were organized at the regional level in order to strengthen cooperation and establish direct communication between public

prosecutors and judges in the region and they represented an important aspect of training taking into account that they directly enabled exchange of experiences, overcoming of problems and provided effective proceedings in specific cases. The “Palic Process” is one of the most important programmes which enabled both strengthening of cooperation and conducting of specific training for representatives of the Prosecution Office for War Crimes and for judges of special departments.

Since the establishment of the Judicial Training Centre, i.e. the Judicial Academy as a legal successor thereof, UNDP has paid special attention to the support and trainings in the field of war crimes and transitional justice. In cooperation with UNDP a study visit to The Hague was organized for deputy public prosecutors for war crimes, as well as for the spokespersons of courts and Prosecution Offices. Participants were introduced with the way of functioning of The Hague Tribunal, the International Criminal Court, and the International Bar Association at the Hague. In cooperation with the OSCE Office For Democratic Institutions and Human Rights (ODIHR) and OSCE Mission to Serbia, the Judicial Academy organized a two day seminar on the topic: "Justice and War Crimes" for all employees of the Prosecution Office for War Crimes.

One of the priorities of the OSCE Mission to Serbia is to provide support in strengthening the capacity of national judicial authorities and the police for conducting proceedings against perpetrators of war crimes. In cooperation with the OSCE mission to Serbia a number of trainings were organized in order to inform prosecutors and judges about norms of international humanitarian law, the jurisprudence of international criminal tribunals and investigative techniques as an important contribution to conducting effective investigations and trials of war crimes perpetrators according to international standards. Seminars were also organized on the application of command responsibility in war crimes, as well as a series of courses, seminars, expert meetings and visits in order to enhance the knowledge and experiences in conducting war crimes investigations and witness protection.

Seminars, trainings and study visits, organized by OSCE for representatives of the Prosecution Office for War Crimes and the War Crimes Chamber of the Higher Court in Belgrade and the Department of the Supreme Court of Serbia:

- Study visit to the Hague Tribunal with special emphasis on protection of witnesses (December 2003);
- Seminar on command responsibility was organized in cooperation with the Judicial Training Centre (March 2004);
- The challenges of war crimes trials in Serbia, the University of Belgrade Law Faculty (May 2005);
- Training on working with victims and witnesses of serious crimes (November, 2007);
- Study visit to the Special Court for Sierra Leone (December 2007);
- Regional workshop on best practices and knowledge-transfer methodology on processing war crimes (Sarajevo, May 2009);
- Study visit to the Cambodia Hybrid Court (March 2010);
- Training on access to and use of evidence and data in the possession of the Tribunal, organized for the expert associates of the Prosecution Office and the Department, employed on the project OSCE-ODIHR Belgrade in cooperation with the Judicial Academy (November, 2010);

- Seminar on the jurisprudence of the European Court of Human Rights in criminal matters (December 2010);

In addition, within the project "Justice and War Crimes", implemented by the Judicial Academy and envisaged to last until October 2011, the OSCE-ODIHR organizes periodic training for 12 associates of the Prosecution Office for War Crimes and for 8 associates of the War Crimes Department of the Higher Court and Appellate Court in Belgrade.

Seminars, trainings and study visits, organized by OSCE, in particular for representatives of the Prosecution Office for War Crimes:

- Advanced training on investigating war crimes, techniques of interrogation (March 2006);
- Study visit of prosecutors to the Hague Tribunal (access to databases, signing of the Memorandum of Cooperation between the Prosecution Office and the Tribunal, July 2006);
- Study visit to Norwegian and Danish special prosecution Offices for serious criminal offences and war crimes (January 2007);
- Regional conference on media responsibility for war crimes in the former Yugoslavia (October 2007);
- Cooperation between prosecutors and police in investigations, study visit to Oslo, Norway (October 2007);
- Training on interrogation techniques, composition of investigation teams and analysis of the context (March 2008);
- Study visit to the Prosecution Office of the Hague Tribunal (June 2008);
- Round table on the Hague Tribunal work (organized with the Prosecutor Association of Serbia, December 2009.)
- Training for the use of ZyLab database (two sessions, December 2010);

Seminars, trainings and study visits, organized by OSCE, for judges and employees of the Council of the District/Higher Court in Belgrade and the Department of the Supreme Court/Appellate Court in Belgrade:

- Seminar on judicial sentry (November 2007);
- Study visit of judicial sentry to judicial police of the Court of Bosnia and Herzegovina (Sarajevo, June 2008);
- Study visits of judicial sentry of the Higher Court in Belgrade to the Hague Tribunal (November 2008);
- Conference - the establishment and operation of the Service for help and support for victims and witnesses (November 2008);
- Work meeting of the judges from the region and from the Tribunal (December 2008);
- Study visit of newly elected judges and representatives of the Witness and Victim Support Office of the War Crimes Department within the Belgrade Higher Court to the Hague Tribunal (July 2009);
- Study visit of the representatives of judges of the Supreme Court of Serbia, the Higher Courts in Belgrade and Novi Pazar to the Manchester Police Department for Victims / Witnesses Support (August 2009);
- Study visit of the judges of the Higher Courts in Belgrade and Novi Pazar to the Hague Tribunal (November 2009);

- Study visit to the Hague Tribunal and meetings with judges of the Hague Tribunal with colleagues from the War Crimes Department of the Higher and the Appellate Court in Belgrade (September 2010, organized in cooperation with the U.S. Embassy);

Meetings on regional cooperation in organization of OSCE:

- Meetings on regional cooperation in war crimes proceedings, with participation of judges and prosecutors (Palic - November 2004, Brioni - June 2005, Mostar - October 2005, Novi Sad - April 2006, Zagreb - June 2007);
- Round table on the occasion of marking two years after signing the Memorandum of Cooperation in the Implementation and Promotion of Cooperation and promoting of cooperation between Croatia and Serbia in the areas of cooperation in the fight against serious crime (February 2007).

The U.S. Government, through its embassy in Belgrade, supports the operations of the Prosecution Office for War Crimes. On several occasions, it provided technical and material assistance and organized numerous trainings and vocational courses, as well as study visits to the USA in order to enable introduction to best practices and strengthening of cooperation.

As for the training, special attention is directed at training of spokespersons for war crimes given the complexity and sensitivity of the subject, which has shown significant positive results in practice.

Training for defence counsels in the field of war crimes is not within the jurisdiction of the High Judicial Council, the State Prosecutorial Council or the Judicial Academy. Training of lawyers is voluntary and depends on aspirations, interests and abilities of the lawyer himself/herself.

In terms of financial resources of courts and prosecution Office, proceeding in cases related to war crimes, the data are as follows:

- The budget of the Higher Court in Belgrade amounted to RSD 273,988,068 in 2010.
- The budget of the former Higher Court in Belgrade amounted to RSD 358,881,856 in 2009.
- The budget of the former Higher Court in Belgrade amounted to RSD 479,634,500 in 2008.

It should be noted that under the Decision on allocation of resources, budget resources shall be allocated to budget beneficiaries - the courts, and the special Department for War Crimes is financed with the funds allocated for the Higher, i.e. former Higher Court in Belgrade.

Budget of the Prosecution Office for War Crimes amounted to RSD 117,586 million in 2010, RSD 107,550 million in 2009, and RSD 86,940 million in 2008.

Since its establishment, the War Crimes Department of the Higher Court in Belgrade has settled (adjudicated) a total of 25 cases, and this Department is currently processing 19 pre-trial proceedings (investigative proceedings) and 12 first instance criminal proceedings (by issued indictment).

A total of 14 requests for extradition of accused persons have been submitted to the War Crimes Department of the Higher Court in Belgrade, of which 12 requests for extradition in pre-trial (investigative) proceedings, and 2 requests for extradition in criminal proceedings.

In practice, extradition treaties are respected and, in several cases, the Republic of Serbia has extradited persons accused of criminal offences of war crimes, crimes against humanity, even of the criminal offence of the genocide. From 2008 to 2010, foreign governments requested the Republic of Serbia to extradite ten persons among whom the few were citizens of the Republic of Serbia. So far three persons have been extradited while, regarding others, the proceedings are already pending or the requests were rejected. In the same period, Serbia has requested other countries to extradite ten persons and thus far none of the person accused of war crimes under the treaties on extradition have been extradited.

- *Domestic trials for war crimes*

79. Please explain what is the status of the domestic legislation on war crimes and provide a copy of relevant Laws.

The laws applicable in the prosecution of war crimes are:

The Criminal Code (OG of the RS No. 85/2005, 88/2005 - corrigendum, 107/2005 - corrigendum, 72/2009 and 111/2009); within the Criminal Code (hereinafter referred to as: CC) within Chapter 34: "Crimes against humanity and other values protected under international law" are envisaged as war crimes.

- The Criminal Procedure Code (OJ of FRY Nos. 70/2001 and 68/2002 and OG of RS Nos. 58/2004, 85/2005, 115/2005, 85/2005 – other law, 49/2007, 20/2009 – other law, 72/2009 and 76/2010).

The two laws mentioned stand for a general legal framework applicable to all criminal proceedings in the Republic of Serbia and even in war crimes trials. In addition to the said two laws, the following laws are also applicable to war crime trials:

- The Act on Cooperation of Serbia and Montenegro with the International Criminal Tribunal for the Prosecutions of Persons Responsible for Serious Violations of the Humanitarian Law Committed in the Territory of the Former Yugoslavia (hereinafter referred to as: the Tribunal) since 1991 (OJ of FRY No. 18/2002, and OJ of SCG No. 16/2003).

This Law shall regulate the various aspects of cooperation of the Republic of Serbia with the Tribunal, and the Republic of Serbia has committed itself to respecting and implementing decisions of the Tribunal and accepted the provisions of the Statute of the Tribunal as generally accepted rules of international law.

- Law on Organization and Competences of Government Authorities in War Crimes Proceedings (*Official Gazette of RS* No. 67/2003, 135/2004, 61/2005, 101/2007 and 104/2009). The law stipulates establishment of the Prosecution Office for War Crimes of the Republic of Serbia and War Crimes Chamber of the Higher Court in Belgrade (War Crimes Department of the Higher Court in Belgrade, as of 1 January 2010) which has started operations in late 2003, and which are responsible for proceeding in cases of crimes against humanity and international humanitarian law committed in the territory of the former Yugoslavia, as well as in cases of criminal offence of accessory after the fact, in relation to the above offences.

- The Law on Witness Protection Programme in Criminal Proceeding (OG of RS No. 85/2005). The Law, which came into force on 1 January 2006, regulates in detail conditions and procedures for providing protection and assistance to participants in the criminal proceeding and persons close to them, whose life, health, physical integrity, liberty or property is jeopardized due to giving testimonies or information relevant to giving evidence in criminal proceedings. Adoption and implementation of this law is of great significance for war crimes proceedings.

- The Law on Mutual Legal Assistance in Criminal Matters (OG of RS No. 20/2009) 20/2009).

Criminal offences against humanity and other values protected under international law are criminalized in the Chapter XXXIV of the Criminal Code. This chapter of the Criminal Code provides, inter alia, the crimes referred to in Articles 370 to 384, Article 385 and Article 386 of the CC. For proceeding in cases of the said criminal offences, the Law on Organization and Competences of Government Authorities in War Crimes Proceedings shall be applied. These are the following criminal offences: Genocide (Article 370), Crimes Against Humanity (Article 371), War Crimes Against Civilian Population (Article 372), War Crimes against the Wounded and Sick (Article 373), War Crimes against Prisoners of War (Article 374), Organisation and Incitement to Genocide and War Crimes (Article 375), Employment of Prohibited Means of Warfare (Article 376), Unlawful Manufacture, Trade in and Keeping of Prohibited Weapons (Article 377), Unlawful Killing and Wounding of Enemies (Article 378), Unlawful Appropriation of Objects from Bodies (Article 379), Violation of Protection Granted to Bearer of Flag of Truce/Emissary (Article 380), Cruel Treatment of the Wounded, Sick and Prisoners of War (Article 381), Unjustified Postponement of Repatriation of Prisoners of War (Article 382), Destruction of Cultural Heritage (Article 383), Failure to Prevent Crimes against Humanity and other Values Protected under International Law (Article 384), Abuse of International Signs (Article 385) War of Aggression (Article 386). The said Law, in addition to these criminal offences, as mentioned above, is also applied to detection, prosecution and trials for serious violations of international humanitarian law committed in the territory of the former Yugoslavia from 1 January 1991, listed in the Statute of the International Criminal Tribunal for the former Yugoslavia, and to criminal offence of accessory after the fact as referred to in Article 333 of the CC, if committed in relation to the above criminal offences.

The proceeding in cases of the above criminal offences is regulated by the Criminal Procedure Code and Law on Organization and Competences of Government Authorities in War Crimes Proceedings. As regards the proceeding in cases of the above criminal offences, the Criminal Procedure Code provides for application of specific provisions contained in Chapter XXIXa, on the proceeding of criminal offences of organized crime, corruption and other extremely serious criminal offences. The above provisions of the Chapter XXIXa of the Criminal Procedure Code provide for urgent proceedings in these cases, prescribe that information on preliminary investigation and investigative proceedings are official secret, determine the composition of the chamber of judges, ordering that the proceeding in cases shall only be conducted by professional judges in a trilateral chamber (in first instance proceedings) or five-member chamber (in second instance proceedings). In addition, the specific provisions of the Criminal Procedure Code provide for and enable the application of special measures of the law enforcement authority for the detection and verification of the said criminal offences, such as: surveillance and recording of telephone and other conversations or communication,

rendering of simulated business services and conclusion of simulated legal affairs, controlled delivery, automatic computerized search of personal and other data.

- The Law on Organization and Competences of Government Authorities in War Crimes Proceedings enables and regulates the application of the institute of cooperative witness. This law also regulates the relationship between national judiciary and the International Criminal Tribunal for the Former Yugoslavia and the proceedings conducted before that court, thus prescribing the possibility of transferring the court case to the Republic of Serbia, whereby war crimes prosecutor initiates prosecution on the basis of facts and evidence upon which the charges before the International Criminal Tribunal for the Former Yugoslavia rested, as well as that evidence collected or derived by that court, after the transfer, can be used as evidence in criminal proceedings before national court, under the conditions stipulated by this law.

80. Does Serbia accept the notion of command responsibility, as defined by the ICTY Statute (Art. 7.3) and the Rome Statute of ICC (Art 28)?

Having in mind the international commitments of the Republic of Serbia, the National Assembly of the Republic of Serbia included the concept of command responsibility into national legislation. Pursuant to the existing Criminal Code (hereinafter referred to as: CC), (OG of the RS No. 85/2005, 88/2005 - corrigendum, 107/2005 - corrigendum, 72/2009 and 111/2009), command responsibility is regulated by Article 384. It is defined and envisaged in accordance with ordinary principles of criminal justice - not as a general form of responsibility, but as a particular criminal offence in cases when a military commander or person who is discharging such function in practise fails to take measures to prevent the commission of war crimes by his subordinates, representing the intentional form of commission of an criminal offence. The Criminal Code provides for the negligent form with a less severe penalty, which is part of command responsibility that runs across the domain of objective liability. This incrimination, which substantively relies on command responsibility, accepted in international criminal law, but which also differs from it, is relatively new in the national legislation.

Therefore, this criminal offence exists if the commitment occurred due to failure of the superior, which is also set as condition for this offence by the Rome Statute of the International Criminal Court, but not by the practice of the International Criminal Tribunal for the Former Yugoslavia (hereinafter referred to as: the Hague Tribunal), in which case causality is not an element of command responsibility.

National legislation, as well as the Rome Statute of the International Criminal Court, and the rules of the International Criminal Tribunal for the former Yugoslavia, provide civil liability for failing to prevent offences committed by the direct perpetrators, but only in the performance of the tasks on which such person is a superior. However, through the linguistic interpretation of this criminalization in national legislation, it would seem that national legislation requires the relationship between subordinate and superior civilian to be strictly formal, while both the Rome Statute of the International Criminal Court, and practice of the International Criminal Tribunal for the Former Yugoslavia, are harmonized in criminalizing failure to prevent commitment of such offences by the superior civilian, although he had only effective control over the direct perpetrators, and thus only effective control by the superior civilians, constituting as a sufficient element of command responsibility of the civil person.

Furthermore, according to national legislation, this criminal offence also exists if the perpetrator acted negligently, therefore being unaware of the preparation for committing the offence or that the perpetration has already started, but had to be aware of the mentioned or was obliged to be aware, while in the practice of the Hague Tribunal, in respect of voluntary relationship of a perpetrator who bears command responsibility, the standard as the "had reason to know" exists.

Another aspect of command responsibility is a failure to report the criminal offence and this aspect is contained in the Criminal Code (Article 332, paragraph 3), which stipulates that the official or responsible person shall be sentenced to one to eight years in prison if knowingly fails to report a criminal offence which his subordinate perpetrated in exercising his official, military or work duties, and if this offence can legally be punishable by thirty to forty years in prison.

According to such characterization, it can be concluded that this aspect of command responsibility is somewhat narrowed, since the responsibility of a superior exists only if the penalty of thirty to forty years imprisonment is prescribed for unreported penalty.

As for the application of command responsibility institute in prosecuting perpetrators of war crimes for the period related to war cases in the former Yugoslavia, the institutes are applied as referred to in Chapter three of the Criminal Code of RS – Criminal Offence, and the "Co-perpetration" (Article 33), "Incitement" (Article 34), "Aiding" (Article 35) and 145 and "Responsibility for Omission" (Article 15). In the current work of the Prosecution Office for War Crimes, several cases have existed in which the principles of superior responsibility, such as complicity (aiding and abetting), have been applied with the help of legal institutes. In the "Zvornik 2" case, the accused Grujic and Popovic (Commander of the Crisis Headquarters and the Commander of the Territorial Defence of the Zvornik Municipality, Bosnia and Herzegovina) are accused of a criminal offence as referred to in the former CC of FRY (Article 142), related to Article 22 of the CC of FRY (aiding) for war crimes against civilians. Such a concept of criminal responsibility was accepted by the Trial Chamber of the Department for War Crimes of the Higher Court in Belgrade upon reaching a first-instance verdict of the defendant being guilty of the crime mentioned above, even though during the presentation of evidence it was not concluded that the defendants gave orders for the liquidation of the prisoners. In addition, their presence in places where the execution and torture was carried out was not proved.

81. Do the necessary trained judicial personal (prosecutors, lawyers, judges) to process domestic war crimes trials exist? What kind of training activities have been done, are ongoing and planned?

In the Republic of Serbia, there exist highly qualified judicial personnel who proceed in war crime cases. Prosecutors and judges who proceed in war crime cases are highly professional individuals who possess expertise and experience in the fields of criminal law, international humanitarian law and human rights. Prosecutors, judges and all other employees who have direct contact and are working on war crime cases have continued training, which consists of monitoring of international legal practice in international humanitarian law and participation in professional conferences dealing with the matter of war crimes, as well as training in new

techniques that deal with collecting evidence, taking statements. They were also participants in numerous seminars and expert meetings with topics of the protection of parties in criminal proceedings as well as with topics dealing with the psychological approach to victims and witnesses of war crimes.

Serbia has skilful prosecutors for war crimes who are specifically professionally focus on the processing of war crimes. These are the prosecutors with decades of experience in the most serious criminal offences. War Crimes Prosecutor (hereinafter referred to as: the Prosecutor) and all deputy prosecutors are autonomous and independent in their work. Competence, worthiness and the results of their work were the criteria for their election. They enjoy the reputation and trust among colleagues and the public. War crimes prosecutor, who is also a member of the State Prosecutorial Council, insists on the highest and most rigorous criteria for the efficient and professional actions of prosecutors.

Detailed information on trainings conducted in this area are in answer to question 78.

The training programme for prosecutors and judges processing war crimes will continue in the coming years, and special attention, apart from the subjects that are already a part of ongoing training programmes (Criminal Justice), will also be paid to special techniques in relation to financial investigations for freezing and confiscation of property acquired through war crimes, special investigative techniques, strengthening of regional cooperation and direct exchange of information and evidence, raising of awareness, etc. Moreover, special attention in training programmes will also focus on training of local courts and prosecution services for obtaining the cases from the Hague Tribunal and for processing them.

The prosecutors and judges who proceed in cases of war crimes are believed to have reached a high level of professionalism, which is also evident through their participation as lecturers in numerous regional and international conferences.

Training for defence counsels in the field of war crimes is not within the jurisdiction of the High Judicial Council, the State Prosecutorial Council or the Judicial Academy. Training of lawyers is voluntary and depends on aspirations, interests and abilities of the lawyer himself/herself.

The most important current project, "Justice and war crimes" is funded by the European Union and implemented by the Office for Democratic Institutions and Human Rights of OSCE (ODIHR), in partnership with the International Criminal Tribunal for the Former Yugoslavia (hereinafter referred to as: the Hague Tribunal). The Prosecution Office for War Crimes and the War Crimes Department of the Higher Court in Belgrade engaged 12 young people on this project in the period May 2010 - October 2011, in order to strengthen the capacity to prosecute war crimes. The project supports their participation in courses, seminars, and they are involved in war crimes investigations, pre-trial proceedings, and the "outreach" activities.

Continuous training is planned for prosecutorial staff. Particularly intensive training will be conducted in the field of application of information technologies and use of databases of the International Criminal Tribunal for the Former Yugoslavia (Electronic database of disclosure and Court Files databases) as well as trainings in accordance with the Law on Judicial

Academy OG of RS No. 104/2009). The trainings in cooperation with long-term partners also continue (ICTY, OSCE).

Upon entry into force of the set of judicial laws, which changed the organization of courts, war crimes proceedings in the first instance are within the jurisdiction of the Special Department for War Crimes of the Higher Court in Belgrade, and in the second instance within the jurisdiction of the Special Department for War Crimes of the Appellate Court in Belgrade. Law on Organization and Competences of Government Authorities in War Crimes Proceedings provides that a judge of the Higher Court Department must have at least 8 years of professional experience in criminal law, as well as that upon assignment, or deployment to the Department of the Higher Court, priority shall be given to judges who have the necessary expertise and experience in international humanitarian law and human rights. The above legal requirements guarantee skilful judges in proceeding the cases in the field of war crimes, thus bearing in mind that the education system of this country, shall provide the judges with appropriate training and qualifications required for performing judicial offices, both in teaching subjects related to war crimes, and in other legal areas.

82. How many persons are indicted for war crimes by Serbian Courts? Is this list public? Please attach a copy of it. How many additional indictments in total are foreseen?

Until adoption of the Law on Organization and Competences of Government Authorities in War Crimes Proceedings (OG of RS No. 67/2003, 135/2004, 61/2005, 101/2007 and 104/2009) the prosecution of war crimes was within the regular jurisdiction of military and civilian courts. After adoption of the mentioned law the prosecution of war crimes is centralized. Since 2003, the Prosecution Office for War Crimes has indicted 133 individuals in 33 cases. Statistics of the Prosecution Office for War Crimes, as well as the list of indicted persons, in Serbian and English languages is attached in the Annex.

The Prosecution Office for War Crimes approaches every war crime systematically and professionally with the ultimate goal to fully clarify every crime and reveal all the perpetrators and bring them to justice, thus individualizing responsibility for war crimes and contributing to justice for victims through the judicial determination of the truth.

Jurisdiction of the Prosecution Office for War Crimes covers high-intensity armed conflicts, which have occurred in the period 1991 – 1999 in the territory of the former Yugoslavia and which had been followed by systematic human rights violations and widespread violations of international humanitarian law.

Having in mind that the conflict began almost 20 years ago, regular proceeding is largely prevented partly due to the lapse of time and tremendous efforts are thus daily made by the Prosecution Office. To a large extent, the physical evidence were destroyed or disappeared after such a period of time. Therefore, the Prosecution Office was forced to look for evidence of crimes, either based on the testimony of witnesses or to obtain other material evidence through their testimony, as was the case with the International Criminal Tribunal for the Former Yugoslavia (hereinafter referred to as: the Tribunal) which conducted such a demanding activities. The police was involved in some of the events that were investigated, and at the beginning of conducting investigative actions they often impeded the progress of

the investigation and protected the former or even present colleagues. Bearing in mind that the police, in regular procedures, is the authority that should, by order of the prosecution service, reveal perpetrators and the circumstances under which such offences were carried out, it can be easily concluded that the operations of the Prosecution Office for War Crimes were more difficult when, initially, facing non-cooperation or even obstruction from the police. Victims of war crimes are damaged persons, who lived, almost as a rule, in the territory of the Republic of Croatia, Bosnia and Herzegovina and the Autonomous Province of Kosovo and Metohija, at the time of committing the crimes. At the time of proceeding in cases, the inability to ensure the arrival of victims at the main hearing to give testimonies was observed by all representatives of the judiciary in the region. It was mostly the case with the old people who did not want or have a trust to travel to a trial in Belgrade in order to give testimony and thus enable the court to fully determine individual responsibility for war crimes. A similar thing happened with witnesses of other nationalities who also largely refused to travel to court of another state which greatly complicated the proceedings.

Such problems have also emerged in the work of the Hague Tribunal at their beginning, and this problem is nowadays solved in the Republic of Serbia by amended legal provisions. Today, it is possible for witnesses and victims testify via video link from their country which has recently substantially solved the problem of providing testimony. In addition, specially trained people have been engaged on the activities of Prosecution Office and the Court with the task of providing support to victims and witnesses to help them re-survive the trauma arising from of testifying about the events.

Since the establishment of the War Crimes Department of the Higher Court in Belgrade, a total of 139 persons have been indicted for war crimes (this number also includes persons who transferred from the jurisdiction of military judiciary after the abolishment thereof). Upon delivery of indictment the identity of persons shall be made public. Throughout the record, provided for by the Court Rules of Procedure (*Official Gazette of the Republic of Serbia* No. 110/09), the registry shall be kept of persons against whom the request was made to conduct investigations, of persons who have been indicted, as well as the registry of non-final and final verdicts.

The said record is kept in electronic form at The War Crimes Department of the Higher Court in Belgrade, under uniform programme prepared by the Ministry of Justice for the needs of all courts. This programme does not enable the overview of a unique list of indicted persons, but only allows for searching the names, in the sense that a certain person can be checked whether being accused in a criminal proceeding, or specifically, in some war crime proceeding. As Court Rules and Procedures provide that the list of persons' names, as additional book, shall not be kept if there exists an electronic registry, we are thus unable to provide you with a list of indicted persons.

In terms of the number of indictments that may yet be filed for war crimes proceedings, except for stating important fact that 19 pre-trial (investigative) criminal proceedings are conducted at the War Crimes Department of the Higher Court in Belgrade, any evaluation, particularly by the court and not by the Prosecution Office, would be arbitrary and would not be based on relevant indicators.

Annex

- Statistical data on the work of the Prosecution Office for War Crimes, list of indicted persons

83. How many such cases have been processed? How many verdicts were reached? Can you provide a list? Do you have any forecast on how long time it will take to process all foreseen war crime cases?

Having in mind the capacity of prosecution for war crimes, the fact that duty is performed by the prosecutor and eight deputy prosecutors, the fact that the crimes occurred more than 15-20 years ago, that the physical evidence after such period of time are very rare, the fact that victims and witnesses are mostly found in territories of other republics formed after disintegration of former Yugoslavia, and that they find it hard to accept to re-survive the traumas of war resulting from testimonies before the courts of foreign states, and also that the current legal framework is defined in more detail only after the identified problems in prosecuting war crimes, it appears that war crimes by their complexity are much more demanding than the offences of ordinary crime. For these reasons, the Government of the Republic of Serbia has decided to form special departments of the Prosecution Office and of the Court to deal with this matter since it was observed that the regular Prosecution Office and the Court have neither capacity, knowledge nor time to sufficiently commit to this important work and by determining the judicial truth deal with the past which still burdens the progress of the whole Republic of Serbia.

Number of procedures currently under trial (9) or those concluded by the first instance decision (11), or final verdict (12) do not exhaust the activities of the Prosecution Office for War Crimes (hereinafter referred to as: the Prosecution Office). In addition to proceedings before the court, the Prosecution Office for War Crimes conducts simultaneously pre-trial proceedings against several hundred people for a number of events in which one tries to reach the perpetrators of war crimes. Moreover, the strategy on completion of work of the International Criminal Tribunal for the Former Yugoslavia envisages the transfer of cases and evidence to national judicial systems, which will further stimulate the investigation of the Prosecution Office. This pace of activities leads to the conclusion that, at this point, it is impossible to predict the final number of persons against whom the War Crimes Prosecutor will file indictment, or when the final indictment would be filed. The experience of countries which still prosecute war crimes committed during the Second World War and the national legal solutions suggest that it is not possible to determine an appropriate time frame. Since the war crimes are not subject to obsolescence (the Criminal Code of the Republic of Serbia (OG of RS No. 85/2005, 88/2005 - corrigendum, 107/2005 - corrigendum, 72/2009 and 111/2009), Article 108), War Crimes Prosecutor is obliged to prosecute these criminal offences whenever he comes into possession of evidence that indicate the possible commission of a criminal offence.

Since the establishment of the War Crimes Department of the Higher Court in Belgrade, a total of 38 indictments were filed, and 25 verdicts were rendered on the merits (rulings). We are forwarding a list of cases resolved on the merits.

The Court does not assess any information on possible future trials that are to be initiated and is unable to predict the time required to process these cases, nor is, due to the complexity of ongoing cases (large amount of evidence to be presented, the presentation of which is often

very difficult, having in mind that in war crimes proceedings the vast majority of evidence does not constitute written evidence and that witnesses are often citizens of the foreign state, and also, often damaged by the criminal offence and having all the mentioned in mind, affects their regular response to court calls regardless of the support rendered by the Office for help and support for victims and witnesses), able to predict the time required for completion on the merits of the already initiated proceedings.

Annex:

- The list of cases resolved on the merits by the War Crimes Department of the Higher Court in Belgrade

84. Is Serbia prepared to fully cooperate with ICTY on domestic war crimes trials, including by accepting evidence and other supporting material from ICTY? Is evidence coming from the ICTY acceptable, in theory and in practice, in national court proceedings?

The Republic of Serbia is ready to fully cooperate with the International Criminal Tribunal for the Former Yugoslavia (hereinafter referred to as the: Hague Tribunal). After its founding in 2003, the Prosecution Office for War Crimes established professional and direct cooperation with the Prosecution Office of the International Criminal Tribunal for the Former Yugoslavia, starting point of which was the Act on Cooperation of Serbia and Montenegro with the International Criminal Tribunal for the Prosecutions of Persons Responsible for Serious Violations of the Humanitarian Law Committed in the Territory of the Former Yugoslavia from 1991 (OJ of FRY No. 18/2002, OJ of SCG No. 16/2003), adopted in 2002. The said cooperation is regularly taking place through exchange of various requests for assistance.

Cooperation with the Hague Prosecution Office has for many years been at high level and the Hague Prosecution Office has greatly supported the work and effectiveness of the Prosecution Office for War Crimes, which manifested through giving the evidence under investigation for several major war crimes cases, to judiciary of the Republic of Serbia. Since 2003, the Prosecution Office for War Crimes of the Republic of Serbia has proceeded in 189 cases under requests for assistance to the Prosecution Office of the Hague Tribunal. Requests for assistance were mainly related to the collection of evidence and information for the trial before the Hague Tribunal. The Prosecution Office for War Crimes regularly submits requests for assistance to the Hague Tribunal.: For example, a subject of "Ovcara" is included in the case "Vukovar Three", which was proceeded before the Hague Tribunal. All the evidence and accompanying documents were forwarded to the Hague Tribunal.

Evidence presented in the national proceedings are used as evidence in proceedings before the trial chambers of the Hague Tribunal on the basis of the Act on Cooperation of Serbia and Montenegro with the International Criminal Tribunal for the Prosecutions of Persons Responsible for Serious Violations of the Humanitarian Law Committed in the Territory of the Former Yugoslavia from 1991: The Law on Organization and Competences of Government Authorities in War Crimes Proceedings (OG of RS No. 67/2003, 135/2004, 61/2005, 101/2007 and 104/2009) allowed for the use of evidence presented in cases before the International Criminal Tribunal for the Former Yugoslavia in the Hague (Article 14a). The possibility arose to use the evidence collected or derived by the International Criminal Tribunal for the Former Yugoslavia before the War Crimes Department of the Higher Court in Belgrade, when the Tribunal shall assign the case to national judiciary in accordance with

Rule 11bis of the Tribunal's Rules of Procedure and Evidence. Namely, it is envisaged that in the case of referral, the war crimes prosecutor shall initiate a prosecution on the basis of the facts on which the indictment before the Tribunal rested.

On the other hand, the War Crimes Prosecutor may initiate a prosecution based on information and evidence supplied by the Prosecution Office of the Hague Tribunal, though the subject is not referred to in accordance with Rule 11bis of the Tribunal's Rules of Procedure and Evidence. In practice, the documents, obtained by either the Hague Tribunal or the Tribunal Prosecution Office, are used as evidence in war crimes proceedings before the trial chambers of the War Crimes Department of the Higher Court in Belgrade.

War Crimes Department of the Higher Court in Belgrade and the War Crimes Prosecution Office of the Republic of Serbia have exposed professionalism and technical competence to handle the said cases in accordance with internationally-accepted standards. The above attitude was confirmed by the fact that the Tribunal Prosecution Office referred three cases under investigation to the Prosecution Office for War Crimes (the Zvornik, Scorpions and Ovcara cases). In addition, pursuant to Rule 11bis of the Rules of Procedure, the Tribunal referred to the War Crimes Prosecution Office of the Republic of Serbia the first case within its jurisdiction after the indictment was confirmed by the Hague Tribunal and before the trial (accused Vladimir Kovacevic-Rambo, the case "Dubrovnik Shelling"). Direct cooperation between the Hague Tribunal, War Crimes Department of the Higher Court in Belgrade and the Prosecution Office for War Crimes was also established in other cases currently pending before the national judicial authorities, while the Prosecution Office of signed an agreement with the Prosecution Office for War Crimes on the direct use of archives of the Hague Tribunal Prosecution Office.

Cooperation between the War Crimes Prosecution Office and the Tribunal Prosecution Office has further been strengthened by the project "Visiting National Prosecutors" according to which, from June 2009 to June 2010 the representative of the Prosecution Office for War Crimes resided at the Tribunal Prosecution Office for War Crimes as a liaison officers, working directly with members of the Tribunal's Prosecution Office on transfer of evidence and material to the Prosecution Office for War Crimes. The said project has been renewed for a further period of one year.

The Law on Organization and Competences of Government Authorities in War Crimes Proceedings provides for the referral of cases pending before the International Criminal Tribunal for the Former Yugoslavia to the Republic of Serbia, and the possibility that in this case, War Crimes prosecutor initiate prosecution on the basis of facts and evidence upon which the prosecution before the International Criminal Tribunal for the Former Yugoslavia rested, as well as that the evidence, collected or derived by that court, after the referral, can be used as evidence in criminal proceedings before the national court, provided that they were collected or derived in the manner prescribed by the Statute and Rules of Procedure and Evidence of the International Criminal Tribunal for the Former Yugoslavia.

Evidence, coming from the International Criminal Tribunal for the Former Yugoslavia, is also acceptable in court proceedings conducted in the country. Witnesses' statements can be used in the proceedings, and the issue of the probative value the court shall assess in accordance with the Criminal Procedure Code (Article 18).

85. Is Serbia prepared to accept full and transparent international monitoring of war crimes trials?

Republic of Serbia is fully prepared to accept transparent international monitoring of war crimes trials.

86. Is Serbia ready to conclude extradition agreements covering war crimes with neighbouring countries?

(For more detailed questions please see chapter 23).

Yes. Republic of Serbia has already concluded agreements of such kind with the Republic of Montenegro. Namely, the extradition matter is regulated by the Agreement between Republic of Serbia and Republic of Montenegro on Extradition from 2009, as well as the Agreement on Amendments on the mentioned Agreement signed on 29th October 2010, when it entered into force.

Agreement amending the Agreement on Extradition stipulates that extradition of their own citizens on criminal charges for organised crime, crime against humanity and other assets protected by the international law, such as corruption, money laundering for which, according to the legislation of both states, the imprisonment punishment should be issued for duration of four years or more severe punishment, that is measure that implies imprisonment, as well as for other capital offences for which the jail punishment of at least five years or more severe punishment should be issued, that is measure that implies imprisonment.

Republic of Serbia is ready to conclude extradition agreements covering war crimes with other neighbouring countries as well.

Anti-corruption measures

87. Please provide any analysis or research made by your authorities or other bodies (e.g. international organisations and NGOs) on the problems of corruption faced by your country.

Global Corruption Barometer is one of the best studies of the phenomenon of corruption which aims to examine not only how people see corruption in institutions, but also to investigate the actual experience of citizens with corruption. The survey was created by Gallup International and Transparency International, and under the supervision of Transparency Serbia – an NGO researching and examining the corruption in the country, on regular basis (www.transparentnost.org.rs/english/PUBLICATIONS/index.html), conducted in Serbia by BBSS Gallup International on 1000 subjects, in July 2010. The results indicate that citizens perceive a decrease in corruption level in private and public sector compared to the previous two years. According to them, the most corrupt systems in Serbia are political parties, health care system, legislation and the policy where the performance of the Government in the fight against corruption has weakened in comparison with the previous year.

The study also indicates that the interviewed citizens gave bribes less frequently in their direct contacts with institutions in the area of education, justice, health care, police, services issuing licences and conducting registrations, tax services, and customs, in comparison with the year of 2009. The most frequent reasons for which the respondents gave bribes was to accelerate the process of obtaining services which they were entitled to in a certain institution and to avoid problems with public authorities.

Further examination of public opinion on corruption in Serbia has been carried out within GALLUP and UNDP (<http://www.undp.org.rs/index.cfm?event=public.newsDetails&revid=9C348534-D463-B01A-F8CA23D272949E21>) for the purpose of developing capacities of the Anti-corruption Agency to which reports are submitted every three months on the households' perception of corruption. The survey indicates an increase of the number of citizens who believe that the Anti-corruption Agency partially contributes to the decrease of the corruption level in the country. Besides this, the Agency's Group for Research, Relations with the Media and Civil Society also analyses the results of CPI which are published every November, reflecting the situation of corruption in the world for the previous year. Based on the survey for 2010, Serbia has been ranked, for three years in a row, 83rd out of 178 countries and territories included in the survey. Results of these surveys are important for suppression of corruption since they are used by the Agency as indicators for further actions.

88. Please give an overview of the efforts geared towards tackling corruption (i.e. adoption of legislation, international conventions, adoption of strategies and action plans to implement legislation, reinforcement of institutional and human resources capacities to deal with corruption). Which are the main priorities in this field? Which are the bodies responsible for the fight against corruption? How is coordination between different services ensured?

National Strategy and Action Plan

The National Assembly of the Republic of Serbia adopted the National Strategy for Combating Corruption on 8 December 2005 (*Official Gazette of RS*, No. 109/05) which proscribes measures and aims that are to contribute to suppression of corruption in the country. The Strategy encompasses three key elements: efficient application of anti-corruption regulations, prevention which includes elimination of possibilities for corruption and raising awareness and education of the public for the purpose of providing public support in the implementation of the Strategy. The Strategy contains 168 recommendations grouped within seven chapters, and it is applied by transferring the recommendations into the Action Plan (adopted by the Government in 2006) that describes activities necessary for the realisation of the recommendations, subjects that will carry the activities out, deadlines for thorough realisation, and description of the necessary resources.

Before the adoption of the Law on the Anti-corruption Agency (*Official Gazette of RS*, No. 97/08), which has been implemented since 1 January 2010, the Government had established a Commission for the application of the Strategy and GRECO recommendations, which had had a task to monitor the implementation of the Strategy and the Action Plan.

International Conventions

In accordance with the National Strategy, the Republic of Serbia, for the purpose of harmonisation with international standards, ratified the following:

- the United Nations Convention against Corruption,
 - the United Nations Convention against Transnational Organised Crime and its additional Protocols,
 - the Criminal Law Convention on Corruption, Council of Europe,
 - the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, Council of Europe
- and signed:
- the Civil Law convention on Corruption, Council of Europe,
 - the Additional Protocol to the Criminal Law Convention on Corruption, Council of Europe.

National Legislation

For the purpose of improving and harmonising legal and institutional framework for the combat against corruption, the following legislation has been adopted: (NB: please refer to question 47, *Domestic legal framework*, II ANTI-CORRUPTION, CHAPTER 23 Judiciary and fundamental rights):

- the Law on the Anti-corruption Agency,⁴ which envisages the establishment of the Agency as an individual and independent state institution responsible to the National Assembly of the Republic of Serbia for performing the work within its competences. The Agency has several regulatory functions, performs supervision over the implementation of the National Strategy for Combating Corruption, performs tasks related to the prevention of conflict of interests, procedure for the registration of property of persons discharging public offices, introduction of integrity plans, supervision over the financing of political parties, as well as the coordination of international cooperation related to combating corruption;
- the Law on Financing of Political Parties of 2003,⁵ was the first legal framework introducing democratic principles and values in the area of financing of political parties: submitting reports on financing election campaigns within 10 days after the elections, transparency of the report submitted and sanctions. By amendments to this Law (in 2008) control functions were delegated to the Agency, which adopted a new Rulebook on the Content of Records and Reports of Political Parties, which stipulates the Form on submitting reports, and introduced more efficient control in this area;
- the Law on Amendments and Additions to the Law on Organisation and Jurisdiction of Government Authorities in Suppression of Organised Crime, Corruption and Other Particularly Serious Criminal Offences (*Official Gazette of RS* No.72/09), which ensured more efficient revelation, criminal proceedings and court trials for some serious crimes without the elements of organised crime. Namely, the application of this Law has been extended to corruption and other,

⁴ The Law on the Anti-corruption Agency, *Official Gazette of RS*, No. 97/08 and 53/10

⁵ The Law on Financing of Political Parties, *Official Gazette of RS*, No. 72/03, 75/03 - corrigendum., 60/09 – Decision of the Constitutional Court and 97/08.

particularly serious criminal offences, which enabled the application of the provisions of Chapter XXIXa of the Criminal Procedure Code on the proceedings of the above mentioned criminal offences;

- the Law on Seizure and Confiscation of the Proceeds from Crime (*Official Gazette of RS*, No. 97/08) introduces multidisciplinary approach in all relevant investigations of crimes involving corruption, elaborates the manner for disposal and distribution of seized proceeds from crime, and stipulates the establishment of a special organisation responsible for managing the seized and frozen assets;
- the Law Amendments and Additions to the Criminal Code (*Official Gazette of RS*, No. 85/05, 88/05 – corrigendum, 107/05 – corrigendum and 72/09 and 111/09), was adopted, for the purpose of harmonising crimes of illegal inter-mediating, giving and receiving bribe, and it changed the terms of an official and foreign official;
- Criminal Procedure Code (*Official Gazette of RS*, No. 49/07), stipulates measures for an efficient system of implementation of special investigative techniques, aimed at revealing and prosecuting criminal offences involving corruption;
- A package of laws on judiciary (the Law on High Judicial Council (*Official Gazette of RS*, No. 116/08), the Law on Organisation of Courts (*Official Gazette of RS*, No. 116/08 and 104/09), the Law on Judges (*Official Gazette of RS*, No. [116/08](#), 58/09-Decision of the Constitutional Court and 104/09), the Law on State Prosecutorial Council (*Official Gazette of RS* 116/08), the Law on Public Prosecution (*Official Gazette of RS*, No. 116/08 and 104/09), the Law on the Seats and Territorial Jurisdiction of Courts and Public Prosecutor's Offices (*Official Gazette of RS*, No. 116/08), The Law on Amendments and Additions to the Law on Minor Offences (*Official Gazette of RS*, No. 101/05, 116/08 AND 111/09), the Law on Constitutional Court (*Official Gazette of RS*, No. 109/07)), which made the procedure of appointment and promotion of judges more transparent with an aim to retrieve the trust of the public in the independence of a prosecutor and judges from political influences, and the trust of the public in their impartiality when performing their duties. The mandate of a Special Prosecutor for Organised Crime and his deputies has been extended;
- the Law on Personal Data Protection (*Official Gazette of RS*, No. 97/08)[97/08](#), stipulates conditions for collection and procession of personal data, the rights of data subjects and the protection of rights of data subjects, limitations to data protection, procedure upon appeal before the authority competent for data protection, data security, data filing system, transfer of data outside the Republic of Serbia and supervision over the application of the Law. The objective of this Law is to ensure realisation and protection of the right to privacy and other rights and freedoms regarding personal data processing to every natural person.
- the Law on Liability of Legal Entities for Criminal Offences (*Official Gazette of RS* No. 97/08), regulates conditions of liabilities of legal entities for criminal acts, criminal sanctions which may be pronounced for legal entities and rules of the procedure by which the liability of legal entities is decided upon;
- the Law on Mutual Assistance in Criminal Matters (*Official Gazette of RS* No. 20/09);
- the Law on State Aid Control (*Official Gazette of RS* No. 51/09);
- Public Information Law (*Official Gazette of RS* No. 43/03, 61/05 and 71/09);
- the Law on the State Audit Institution (*Official Gazette of RS* No. 101/05

and 54/07), regulates the establishment and activities, legal position, competence, organisation and operation of the State Audit Institution and other issues of importance for the work of the Institution, as well as rights and duties of the audit subjects;

- the Law on Protection of Competition (*Official Gazette of RS* No. 51/09);
- the Law on Amendments to the Law on Free Access to Information of Public Importance (*Official Gazette of RS* No. 120/04, 54/07 and 104/09), creates conditions for protection of persons who report corruption, from threats and similar pressures, and for more complete realisation of the guaranteed rights of citizens to access information held by state institutions and organisations with public powers.

After the establishment of the Agency as a central preventive institution, coordination of corruption-prevention activities of all institutions has been facilitated. In the previous period, the Ministry of Interior and the Ministry of Justice have been the most successful in applying various anti-corruption measures and methods. Both of the Ministries developed their sector plans, established special expert groups responsible for monitoring and implementation of the plans. The Ministry of the Interior, with the assistance of the Commission for the Prevention of Corruption of the Republic of Slovenia, organised a series of practical trainings for its employees in the area of fighting against corruption, which were, *inter alia*, aimed at developing integrity plans.

Thus far, certain state institutions organised individual trainings in the area of combating corruption. For instance, the Human Resource Management Service organised, during 2009 and 2010, a series of trainings for the employees in the public administration on the topic of prevention of corruption. Moreover, the Anti-corruption Agency got actively involved in the development of this training programme in 2010 whereby its employees took on the role of trainers.

Priorities

Corruption is the fifth biggest problem in Serbian society, right after unemployment, poverty, low salaries, and lack of opportunities for young people.⁶ For this reason, the National Strategy included recommendations referring to all priority systems and areas: political system, judicial system and the police, public administration system, territorial autonomy, local self-government and public services, public finance system, economy system, the media and participation of citizens and civil society in the fight against corruption. All the subjects, within their competences and tasks, take measures stipulated in the Action Plan.

The Anti-corruption Agency, in line with its competences stipulated in the Law on the Anti-corruption Agency, provides the control of regulation compatibility and the consistency of the regulations as regards the fight against corruption. For the above mentioned purpose, the Agency performs the following tasks: supervision over the implementation of the National Strategy, the supporting Action Plan for the Implementation of the National Strategy and

⁶ Examination of the public opinion in Serbia on corruption, the report of the Medium Gallup, October 2010
<http://www.undp.org.rs/index.cfm?event=public.newsDetails&revid=9C348534-D463-B01A-F8CA23D272949E21>.

sector action plans, delivers opinions regarding their implementation and submits reports thereof to the National Assembly, delivers opinions and gives instructions for the implementation of the Law, launches initiatives for amendments and adoption of regulations on anti-corruption issues, monitors and performs tasks related to coordination of work of state institutions in the fight against corruption, provides expert assistance on anti-corruption issues, provides guidelines for the development of integrity plans in public and private sector, introduces and conducts trainings on corruption, organises researches, monitors and analysis statistics and other data on corruption, and monitors international cooperation related to the fight against corruption.

In the procedure of the administrative control of public officials' reports (the procedure is envisaged by the Law on the Anti-corruption Agency), the Agency requires data from competent state institutions that might be relevant for the control procedure. Competent institutions are obliged to provide the Agency with the required information within 15 days (Article 25 of the Law on the Anti-corruption Agency). If they do not comply, the Agency may institute misdemeanour proceedings against the responsible person in the institution who did not provide the required information. Pursuant to Article 74 of the Law, this person may be fined with RSD 50,000 to 150,000.

Institutions responsible for the fight against corruption

Anti-corruption Agency
Commissioner for the Information of Public Importance and Personal Data Protection
Public Procurement Directorate
State Commission for the Protection of Rights (of bidders and public interest)
Ministry of Interior
Ministry of Justice
Public Prosecutor's Office of the Republic of Serbia, special Anti-corruption
Department
Judiciary – (various courts)⁷
Anti-corruption Council
State Auditor

Coordination

Coordination is realised through various meetings and joint activities of different services which cooperate in this manner.

89. Was the anti-corruption strategy the subject of broad consultation at all levels (e.g. inter-departmental at national, regional and local levels, consultations with stakeholders in the private sector, civil society and the media etc?)

⁷ The Law on Organisation and Jurisdiction of Government Authorities in Suppression of Organised Crime, Corruption and Other Particularly Serious Criminal Offences, (*Official Gazette of RS*, No. 42/02, 27/03, 39/03, 67/03, 29/04, 58/04 – other law, 45/05, 61/05 and 72/09)

Representatives of all relevant institutions and organisations responsible for the implementation of recommendations from the Strategy participated in the drafting of the National Strategy for Combating Corruption.

The working group members were representatives of Ministries, the National Assembly, judicial bodies, the media, NGOs and private sector, and the Anti-corruption Council.

In the public debate procedure, several round tables were held where the draft of the Strategy was considered. Representatives of public and private sector, as well as the representatives of local self-government, and Standing Conference of Towns and Municipalities participated in the round tables. Their comments were included in the draft text of the Strategy.

The Strategy was developed with the support and expert assistance of the Council of Europe, through the regional project of the Council of Europe, PACO.

90. Please describe efforts to strengthen implementation of the above and provide concrete results related to the fight against corruption.

(For detailed questions please see Chapter 23)

As regards practical experience related to the prevention of corruption, one of the most important tasks was the development of a legal framework in this area. Namely, in compliance with the Law on the Anti-corruption Agency, a special regulatory body, the Anti-corruption Agency which should have the key role in the prevention of corruption in Serbia, was established. The majority of competences of the Agency relates to prevention. The Agency started operating on 1 January 2010, when the institutional development was initiated. The Agency was immediately provided with temporary offices and the necessary equipment, and thus far 49 professional staff members have been permanently employed. The state has adopted a set of laws related to the prevention of corruption and ratified international documents related to the fight against corruption.⁸

As one of the methods for the prevention of corruption, a special procedure for eliminating the conflict of interest in the discharge of public offices is used. The Law on the Agency contains special provisions on prevention of conflict of interest in the discharge of public offices. In case that conflict of interest is determined, the special procedure, and then measures aimed at eliminating the conflict of interest are conducted by the Agency.⁹ The Agency passed at least the following first-instance decisions regarding the prohibited culmination of offices until 30 November 2010:

- 120 decisions (which determine conflict of interest and envisage a time limit for the termination of incompatible offices),
- 20 decisions determining the violation of provisions of the Law on the Agency and establishing the termination of the other public office by force of law,
- 11 decisions in which a measure of caution has been issued as a kind of sanctions,
- in one case, the Agency issued 1 decision which ordered the publishing of recommendations for dismissal.

⁸ For details on the adopted laws, please refer to the reply to question No. 47 of the EC Questionnaire, Chapter *National Legislation*.

⁹ Chapter III *Conflict of Interest* and Chapter VI *Procedure and Decision-Making in case of Violation of the Law*, the Law on the Anti-corruption Agency, *Official Gazette of the RS*, No. 97/08 and 53/10.

Pursuant to Article 82 of the Law, the Agency adopted 516 decisions on rejecting requests for granting a consent to officials to continue discharging some offices, submitted by those officials who were found holding several public offices. In every decision, these officials were accordingly requested to to, within the envisaged time limit, decide on which public office they will continue to discharge.

In accordance with Article 43, the body in which the official holds an office is obliged to notify the Agency that the official has taken office, or that the office has terminated, within seven days from the date of taking or termination of office. As regards the fulfillment of other legal powers, the Agency has thus far, through the Register of Officials, received at least 5,500 notifications on taking or termination of offices. These are regular tasks by which the Register is updated on daily basis.

The Agency established the Property Register, due to the fact that the official is obliged to submit to the Agency within 30 days of election, appointment or nomination, a disclosure report concerning his property and income, or entitlement to use an apartment for official purposes, and on the property and income of spouse or common-law partner, as well as of under-age children if they live in the same household, on the day of election, appointment or nomination. The Agency has thus far received at least 16,500 reports.

The Agency accepts complaints from legal and natural entities, within its competence (Article 65) and pursuant to amendments to the Law from July 2010, the Agency provides protection for whistleblowers. To date, 236 complaints have been received upon which the Agency acted, with the Rulebook on the Protection of Whistleblowers being underway.

By implementing the Law on Financing of Political Parties, the Agency has until now collected data on the costs of election campaigns for 6 early local elections during 2010. Also, 23 financial statements and reports of political parties have been received.

Internal security

91. Please describe the status and the structure of the security forces, both civil and military, and their respective competences concerning internal security. Please provide – where available - organisation charts and indications about the number of employees.

Under the Law on the Bases for Arranging Security Services of the Republic of Serbia (“Official Gazette of RS”, No. 116/2007) security forces in Serbia are as follows: Security-Information Agency, being an independent agency, Military Security Agency and Military Intelligence Agency, being administration bodies within the Ministry of Defence.

Security-Information Agency (hereinafter: Agency) - civil, security-intelligence department of the Republic of Serbia, was established by the Law on Security-Information Agency (“*Official Gazette of RS*”, No. 42/02 and 111/09-amendment), which came into force on 27 July 2002. It is an independent, specialized organization in the system of government organizations, having the status of a legal entity.

In accordance with the above-stated Law, the Agency performs the following tasks: protection of security of the Republic of Serbia; the discovery and prevention of activities which threaten to undermine or disturb the constitutional order of the Republic of Serbia; investigation, acquisition, processing and analysis of security-intelligence information relevant to the security of the Republic of Serbia; informing the competent state authorities about security issues; and other responsibilities determined by the Law. Members of the Security-Information Agency, assigned to particular organizational units - engaged in uncovering, monitoring, documenting, preventing, combating and eliminating activities of organizations and individuals engaged in organized crime and criminal offences with elements of foreign, domestic and international terrorism and the severest forms of crimes against humanity and international law, and the constitutional order and security of the Republic- implement their authorizations determined by the Law and other regulations intended for officers and members of the Ministry of Interior with full and limited authorization in accordance with the regulations on internal affairs.

In accordance with the Law, the Agency may, if required by the special interests of the Republic of Serbia, take over the performance of the activities within the competence of the Ministry of Interior, in accordance with the agreement between the Minister of Interior and the Director of the Agency.

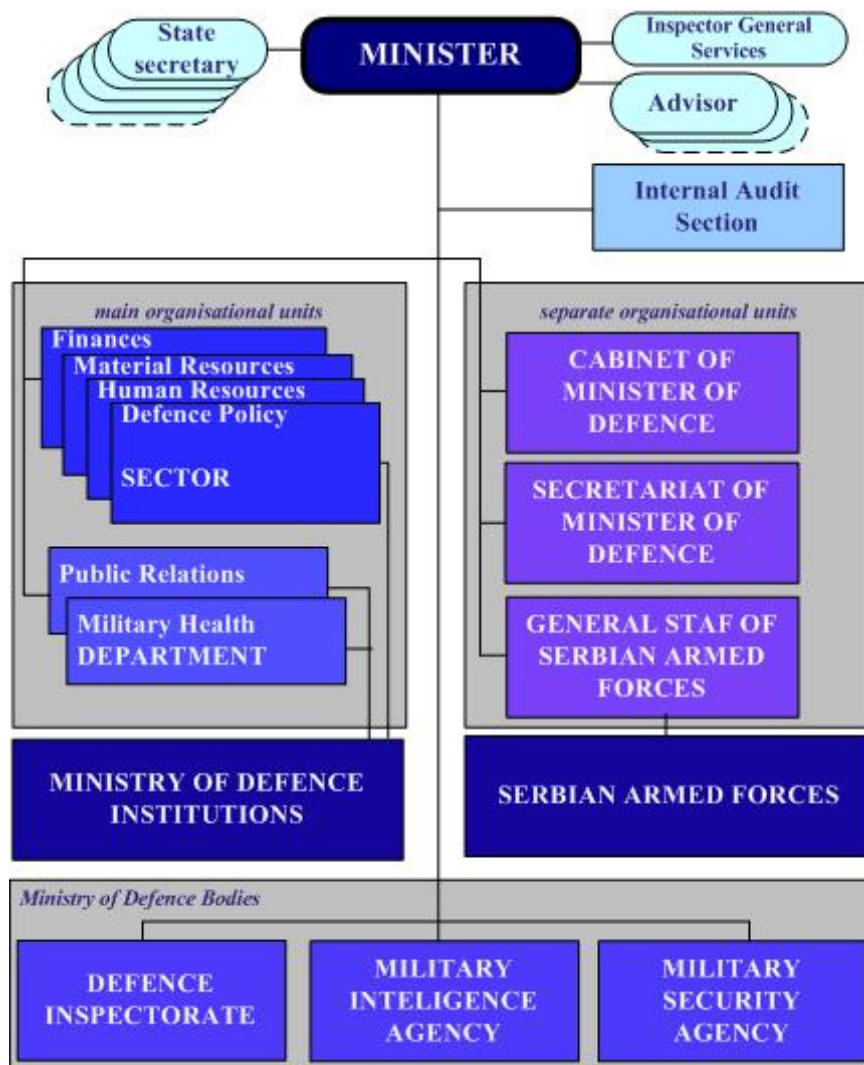
Annex: Organizational scheme of the Security Information Agency

Under Article 2 of the Law on Military Security Agency and Military Intelligence Agency ((*Official Gazette of RS*”, No. 88/2009) Military Security Agency and Military Intelligence Agency are administration bodies within the Ministry of Defence performing security-intelligence activities significant for defence and being a part of a unique security-intelligence system of the Republic of Serbia.

Under Article 3 of the stated Law, Military Security Agency (MSA) and Military Intelligence Agency (MIA) are independent, politically, ideologically and interestedly neutral whilst performing the activities within their competence.

Under Article 5 of the stated Law, Military Security Agency is competent for security and counter-intelligence protection of the Ministry of Defence and the Armed Forces of the Republic of Serbia.

ORGANIZATIONAL STRUCTURE OF THE MINISTRY OF DEFENCE OF THE REPUBLIC OF SERBIA



State Secretary, Minister, Inspector General, Advisor, Internal Audit Section

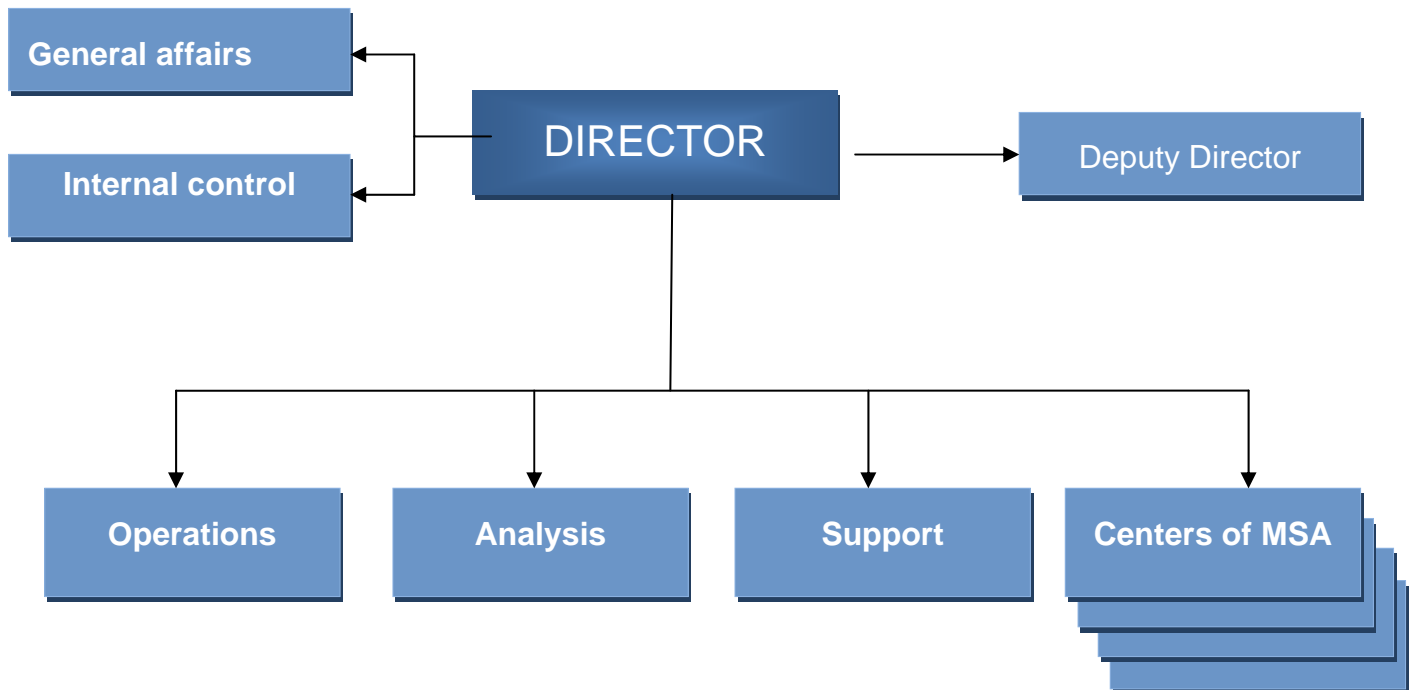
Basic Organizational Units, Finance, Material Resources, Human Resources, Policy Defence,
DEPARTMENT, Public Relations, Military Health, DIRECTORATE

Special Organizational Units, Office of the Minister, Secretariat of the Ministry, Serbian
Army Headquarters

Institutions of the Ministry of Defence, Serbian Armed Forces

Bodies within the MoD, DEFENCE INSPECTORATE, MILITARY INTELLIGENCE
AGENCY, MILITARY SECURITY AGENCY

ORGANIZATIONAL STRUCTURE OF THE MILITARY SECURITY AGENCY



General Affairs, Chief, Deputy Chief, Internal Control, Operations, Analytics, Operative Technical Support, MSA Centers

Chief governs the activities of the MSA. He is accountable to the Minister of Defence for his work.

Deputy Chief is accountable for his/her work to the Chief.

General affairs present the organizational unit of MSA performing the following tasks: planning, programming, budgeting and enforcement; planning and organizing of cooperation with international organizations, foreign security-intelligence agencies and security forces and other authorities in the countries, as well as performing protocol obligations and activities and office work.

Internal Control performs the activities related to the reviewing of the legality of activities and the implementation of the powers of the MSA members.

Operations are organizational unit of the MSA performing the activities related to the planning, organizing and coordination of operations, in accordance with the competencies defined by the Law on Military Security Agency and Military Intelligence Agency.

Analytics performs the activities related to the monitoring, processing and assessment of data and gathering of information, analyses and assessments required by the state and military officials.

Operative Technical Support performs personnel, logistics, financial, information, telecommunication and other forms of support related to planning, organizing and realization of activities and tasks of the MSA.

The Centers of the MSA perform the activities related to the security and counter-intelligence support of the organizational units of the Ministry of Offence and units, commands and institutions of the Serbian Armed Forces within their operative competence.

The data related to the number of employees of the MSA are classified with the degree of secrecy.

ORGANIZATIONAL STRUCTURE OF THE MILITARY INTELLIGENCE AGENCY



State authorities of the Republic of Serbia, Government, President of the Republic, Minister of Defence, National Security Council, Military Security Agency, Chief, Deputy Chief,

Operations, MIA Centers, Analytics, Situational Center, Support, Personnel, Finance, Logistics, Center for Specialization of Military Intelligence (CSMI), Technical Support Center (TSC), Assistant, Cooperation, Planning, Internal Control, Security, Defence Missions

Engagement of the Ministry of Defence and the Armed Forces of the RS in terms of internal security is regulated by the Defence Strategy of the Republic of Serbia adopted on 26 October 2009 (*“Official Gazette of RS”*, No. 88/09), Law on Defence adopted on 11 December 2007 (*“Official Gazette of RS”*, No. 116/07, 88/09, 88/09 – other law and 104/09 – other law), Law on the Armed Forces of Serbia adopted on 11 December 2007 (*“Official Gazette of RS”*, No. 116/07 and 88/09) and Law on Crisis Situations adopted on 29 December 2009 (*“Official Gazette of RS”*, No. 111/09).

According to the Serbian Defence Strategy, the mission of the Armed Forces of Serbia is the support to civil authorities in opposing security threats. It is realized as assistance to civil authorities in opposing internal threats to security, terrorism, separatism and organized crime, and through support in cases of natural disasters, technical, technological and other kinds of accidents.

Under Article 39 of the Law on Defence: The Government employs police and military forces for the execution of joint tasks following a joint proposal of the Minister of Interior and the Minister of Defence and having the approval of the President of the Republic in case border areas, border, life and health of people and animals and tangible property in the area are endangered. During the execution of stated tasks, police and military forces are subordinated to the senior officer of the Armed Forces of Serbia authorized by the President of the Republic, following the joint proposal of the Minister of Interior and the Minister of Defence.

Under Article 12 of the Law on Crisis Situations, the Ministry of Defence ensures the participation of organizational units of the Ministry of Defence, commands, units and institutions of the Armed Forces of Serbia for providing assistance in protection and rescue in conditions when other forces and means of protection and rescue are not sufficient for the protection and rescue of people, tangible assets, cultural goods and environment from catastrophes caused by natural forces and other accidents. In the situation when the units of the Armed Forces of Serbia participate in the protection and rescue, they are commanded by their senior officers, in accordance with the decisions of the Headquarters for Emergency Situations governing and coordinating protection and rescue.

The Ministry of the Interior performs the activities of public administration related to the protection of life, safety and property of citizens, prevention and detection of criminal offences, finding and apprehending perpetrators of criminal offences and bringing them to competent authorities; public order maintenance; providing assistance in case of general danger, securing public meetings and other gatherings of citizens; securing certain individuals and facilities, inclusive of foreign diplomatic and consular missions in the territory of the Republic of Serbia; road traffic safety; border security, border crossing checks, and control of movement and stay in the border area; stay of foreigners; trade in and transport of weapons, ammunition, explosive and other dangerous substances; examining of firearms, devices and ammunition; fire protection; citizenship; personal identification number, permanent and temporary place of residence of citizens, identity cards; travel documents; international assistance and other forms of international cooperation in the field of interior affairs, inclusive

of the readmission, illegal migrations; asylum; personnel training; administrative decisions in the second instance proceedings based on the regulations on refugees, as well as other tasks defined by the Law (Article 5 of the Law on Ministries (*“Official Gazette of RS”*, No. 65/08 and 36/09).

The Law on the Police (*“Official Gazette of RS”* No. 101/05 and 63/09) lays down the organization and functioning of the Ministry of the Interior. The police form a self-contained unit of the Ministry of the Interior for which a Directorate is established. The police perform law-enforcement and other duties as provided by the Law, uphold the rule of law in democratic society, safeguard the rights and freedoms of all. The police may only curtail certain rights and freedoms under the conditions and in the manner provided by the Constitution and the Law (Article 1 of the Law). Law enforcement functions are performed according to the principles of professionalism, cooperation, legality and proportionality in the use of police powers, as well as on the principle of subsidiarity, working to achieve the least harm (Article 11 of the Law). The said law also defines the types of police powers, as well as the conditions and manner of their implementation.

Internal organization and job classification in the Ministry of the Interior are defined by the Regulation on the Principles of Internal Organisation of the Ministry of Interior (*Official Gazette of RS*, No. 8/06 and 14/09) and Rulebook on Internal Organisation and Job Classification in the Ministry of the Interior.

Annex: Organizational scheme of the Ministry of the Interior

92. Is there civilian control over the security forces, including intelligence services, and how is it exercised? Please describe the relevant arrangements in place for parliamentary control of security forces.

1) The Serbian Armed Forces are subject to democratic and civilian control, which is stipulated under Article 141 of the Constitution and Article 29 of the Law on the Serbian Armed Forces.

In accordance with the Constitution (Article 112(2)), Article 11(1) of the Law on Defence (*Official Gazette of RS*, No. 116/07, 88/09 and 104/09) and Article 17, point(1) of the Law on the Serbian Armed Forces (*Official Gazette of RS*, No. 116/07 and 88/09), **the President of the Republic of Serbia shall decide on the employment of the Serbian Armed Forces, command the Serbian Armed Forces in peace and war and appoint, promote and dismiss officers of the Serbian Armed Forces.**

Article 12(1) of the Law on the Serbian Armed Forces stipulates that the Government shall establish and lead the defence policy, propose and execute the laws and general acts of the National Assembly pertaining to defence.

Under Article 18 of the Law on the Serbian Armed Forces, the Minister of Defence shall coordinate and implement the established defence policy and lead the Serbian Armed Forces. In accordance with Article 3(1) and (2) of the Law on the Serbian Armed Forces, the functional organisation of the Serbian Armed Forces is comprised of the General Staff of the Serbian Armed Forces and peacetime and war commands, units and institutions. The General

Staff of the Serbian Armed Forces is the highest expert and staff organisational unit for the preparation and employment of the Serbian Armed Forces in peace and war. Under Article 15(1) of the Law on Defence, the General Staff of the Serbian Armed Forces constitutes part of the Ministry of Defence and performs tasks which fall within its competence, in accordance with the Law and powers delegated to it by the President of the Republic and the Minister of Defence.

The budget allocated to the Serbian Armed Forces constitutes part of the budget of the Republic of Serbia allocated to the Ministry of Defence.

Article 36(2) of the Law on Defence stipulates that the General Staff of the Serbian Armed Forces shall inform and report to the President of the Republic and the Minister of Defence on work and situation in the Serbian Armed Forces.

Under Article 4, point(21) of the Law on Defence and Article 29(2) of the Law on the Serbian Armed Forces, democratic and civilian control of the Serbian Armed Forces shall pertain in particular to control of the employment and development of the Serbian Armed Forces, internal and external control of expenses for military purposes, monitoring of the situation and informing of the public on the situation pertaining to the preparation of the Serbian Armed Forces, provision of free access to information of public importance and establishment of responsibility for performing military duties, in accordance with the Law.

Article 29(3) of the Law on the Serbian Armed Forces provides that democratic and civilian control of the Serbian Armed Forces shall be exercised by the National Assembly, the Ombudsperson and other state authorities in accordance with their competences, citizens and the public.

Article 140 of the Constitution provides that the Serbian Armed Forces may be employed outside the borders of the Republic of Serbia only upon the decision of the National Assembly of the Republic of Serbia.

Article 9 of the Law on Defence stipulates that the National Assembly shall pass laws and other general acts pertaining to the field of defence and exercise democratic and civilian control of the Serbian Armed Forces.

The same Article provides that the National Assembly, pertaining to the field of defence:

- 1) decides on peace and war and declares the state of war and emergency;
- 2) adopts the National Security Strategy of the Republic of Serbia;
- 3) adopts the Defence Strategy of the Republic of Serbia;
- 4) adopts the Long-Term Development Plan of the Defence System of the Republic of Serbia;
- 5) adopts laws ratifying international treaties pertaining to the field of defence and military cooperation;
- 6) prescribes measures of derogation from human and minority rights in state of war and emergency;
- 7) adopts the annual report of the Government on the status of defence preparations;
- 8) decides on the employment of the Serbian Armed Forces outside the borders of the Republic of Serbia;
- 9) decides on the amount of funds for financing defence purposes;

- 10) considers the realization of the Defence Plan of the Republic of Serbia;
- 11) supervises the work of security services;
- 12) performs other tasks prescribed by the Law.

2) Article 170 of the Law on Police (*Official Gazette of RS*, No. 101/05 and 63/09) provides that external control of the work of the police shall be exercised by the National Assembly, in accordance with Article 9 of this Law, other laws and regulations. Article 9 of the aforementioned Law provides that the Minister (of Interior) shall submit a report on the work of the Ministry and the security situation in the Republic of Serbia to the National Assembly, once a year or more frequently upon the request of the National Assembly or should the need arise, and reports to the working body of the National Assembly competent for security, upon its request and on issues which fall within its competence.

Article 170(2) of the Law on Police stipulates that external control of the work of police shall be exercised also by the Government, the competent judicial authorities, state authorities competent for certain tasks of supervision and other institutions and bodies authorised by Law. Competences of institutions and bodies are the competences stipulated under specific laws pertaining to access to relevant information, contact with competent police officers, right to receive answers to questions and other rights prescribed by Law.

Legislation is the most important but not the only mechanism of parliamentary control. The obligation of Ministers to inform the competent committee of the National Assembly on the work of Ministries, once in every three months, stipulated under the new Rules of Procedure (*Official Gazette of RS*, No. 52/10; Article 229) is important for the realization of parliamentary control of security forces, in particular, the Ministry of Defence - Serbian Armed Forces and the Ministry of Interior – Police. During Committee debates, the public is provided with a possibility to get acquainted with processes taking place in the department of defence, opinions are exchanged and certain issues pertaining to the field of defence are considered in an open and democratic manner.

3) Article 99 of the Constitution provides that the National Assembly shall supervise the work of security services. Supervision of the work of security services is regulated under the Law on the Foundations of the Regulation of Security Services of the Republic of Serbia (*Official Gazette of RS*, No. 116/07), which was passed on 11 December 2007 and entered into force on 19 December 2007. Article 4 of this Law establishes that security services include the Security-Information Agency, as an individual organisation, and the Military Security Agency and the Military Intelligence Agency, as administration bodies within the Ministry of Defence.

Article 3(4) of the Law on the Foundations of the Regulation of Security Services of the Republic of Serbia stipulates that the work of security services is subject to democratic and civilian control of the National Assembly, the President of the Republic, the Government, the National Security Council, other state authorities and the public, in accordance with the Law. The National Security Council (hereinafter: the Council) was established under the Law on the Foundations of Organisation of Security Services of the Republic of Serbia (Article 3(2) of the Law) and constitutes a body of the Republic of Serbia which performs certain work and tasks pertaining to the field of national security.

The Council is responsible for national security and performs the following tasks:

- considers issues pertaining to the field of defence, internal affairs and the work of security services;
- considers the mutual cooperation between bodies competent for defence, bodies competent for internal affairs and security services, their cooperation with other competent state authorities, as well as cooperation with bodies and security services of foreign countries and international organisations;
- proposes measures for the promotion of national security to competent state authorities;
- considers proposals for the promotion of national security submitted by bodies competent for defence, bodies competent for internal affairs, security services and other competent state authorities;
- considers issues which fall within the competence of public administration bodies, autonomous provinces, municipalities, towns and the City of Belgrade, significant for national security;
- considers other issues significant for national security.

The Council directs and harmonises the work of security services in the following manner:

- considers intelligence and security evaluations and passes conclusions which establish priorities and manners of defence, and directs the realization of national interests implemented through intelligence and security activities;
- passes conclusions relating to the work of security services and the Coordination Bureau;
- passes conclusions directing and harmonising the work of security services;
- passes conclusions directing the cooperation between security services and security services of foreign countries and international organisations;
- passes conclusions harmonising the cooperation between state authorities committed to international cooperation in the field of national security and defence;
- monitors the realization of conclusions passed;
- provides opinions on proposals of annual and medium-term plans of security services;
- provides the Government with opinions on budget proposals of security services, and monitors the realization of the granted budget funds;
- provides opinions on proposals for appointment and dismissal of Security Service Directors;

The Council is responsible for harmonised implementation of personal data protection regulations and standards, as well as other regulations protecting human rights which could be violated by information exchange or other operational activities.

Members of the Council are:

- the President of the Republic;
- the Prime Minister;
- the Minister of Defence;
- the Minister of Interior;
- the Minister of Justice;
- the Chief of Staff of the Serbian Armed Forces;
- Security Service Directors.

Article 15 of the Law on the Foundations of the Regulations of Security Services of the Republic of Serbia provides that supervision of the work of security services shall be based on the following principles:

- subordination and accountability of security services to the elected Government of the Republic of Serbia;

- political, ideological and interest neutrality of security services;
- obligation of security services to inform the public on the execution of their tasks, in accordance with the Law;
- obligation of entities exercising supervision over the work of security services to inform the public of the results of the supervision;
- professional responsibility and operational independence of security service members in performing the assigned tasks and accountability of heads of security services for the work of the services;

The National Assembly exercises **parliamentary** control of the work of security services directly and through the competent committee of the National Assembly. It is currently the Defence and Security Committee. **Assessing that the competence of this parliamentary working body is too extensive, which decreases the efficiency of its work, the National Assembly has provided for the establishment of two working bodies - Defence and Internal Affairs Committee and a special Security Service Control Committee (as of the constitution of the new legislature of the National Assembly) under the new Rules of Procedure (*Official Gazette of RS*, No. 52/10; Articles 49 and 66 of the Rules of Procedure).**

In addition, Section 15 of the new Rules of Procedure, in accordance with Article 53 of the Law on National Assembly, regulates and elaborates the procedure of control of the work of security services (Articles 230, 231, 232 and 233 of the Rules of Procedure).

The Defence and Security Committee in particular:

- supervises the constitutionality and legality of the work of security services;
- supervises the harmonisation of the work of security services with the National Security Strategy, Defence Strategy and the security and intelligence policy of the Republic of Serbia;
- supervises the respect of political, ideological and interest neutrality in the work of security services;
- supervises the legality of the implementation of special procedures and measures for secret data collection;
- supervises the legality of spending budget and other funds for work;
- considers and adopts reports on the work of security services;
- considers Bills, proposals of other regulations and general acts which fall within the competence of security services;
- initiates and submits Bills which fall within the competence of these services;
- considers proposals, petitions and complaints of citizens addressing the National Assembly, pertaining to the work of security services, proposes measures for their solution and informs the submitter upon it;
- establishes facts on unlawfulness or irregularities observed in the work of security services and their members and passes conclusions upon it;
- informs the National Assembly on its conclusions and proposals.

The Security Service Director is obliged to respond to the invitation for Committee sittings. If he/she is unable to attend the Committee sitting, he/she is obliged to send his/her deputy, i.e. his/her authorised representative to the sitting.

Committee sittings may be closed to the public. In that case, the Chairperson of the Committee informs the public on the work of the Committee, in accordance with the decisions adopted at the Committee sitting.

The Security Service Director submits a report on the work of the service (ordinary report) to the Committee, at least once during the regular session of the National Assembly. The Security Service Director submits reports to the Committee also when the need arises and upon request of the Committee (extraordinary reports).

The Law on the Foundations of the Regulation of Security Services of the Republic of Serbia regulates also the direct parliamentary control of the work of security services. Namely, the Security Service Director is obliged to provide access to the service facilities for Committee members, upon request of the Committee, allow them inspection of documentation, provide data and information on the work of the service and answer their questions relating to the work of the service.

Committee members may not require the following information from the security services:

- identity of current and former service associates;
- service members with hidden identities;
- third persons who can suffer losses due to the revelation of these information;
- methods of obtaining intelligence and security information;
- actions in progress;
- methods of applying special procedures and measures;
- data and information obtained through exchange with foreign services and international organisations;
- secret data and information of other state authorities held by the service.

Committee members and persons participating in its work are obliged to protect and safeguard confidential information obtained in the work of the Committee even after the cessation of their membership, i.e. work in the Committee. Committee members sign a confidentiality statement after being elected in the Committee, whereas persons participating in the work of the Committee - before the beginning of their engagement in the Committee.

The Law on the Foundations of the Regulation of Security Services, in terms of exercise of direct supervision over the work of services by the Committee, has not been fully implemented yet.

Each of the three security services submits reports on work to the Committee, regularly and in the legal deadline. Article 18 of the Law on the Foundations of the Regulation of Security Services of the Republic of Serbia (*Official Gazette of RS*, No. 116/07) provides that the Security Service Director shall submit a report on the work of the service to the Committee, at least once during the regular session of the National Assembly. Article 17 of the Law on the Security-Information Agency (*Official Gazette of RS*, No. 42/02 and 111/09) provides that the Director of the Agency is obliged to submit a report on the work of the Agency and the security situation of the Republic of Serbia to the National Assembly and the Government of the Republic of Serbia, twice a year. The Committee considers these reports and thus checks the harmonisation of the work of security services with the National Security Strategy and the Defence Strategy (Article 16(2), indent(2) of the Law on the Foundations of the Regulation of Security Services of the Republic of Serbia stipulates that when exercising supervision over

the work of security services, the Committee shall in particular supervise the harmonisation of the work of security services with the National Security Strategy and the Defence Strategy).

The Committee is currently in the phase of establishing right and efficient methods of exercising direct control over the work of security services. For this purpose, visits to security services and talks with their management have been conducted, and a consensus has been reached, according to which efficient parliamentary control is in the interest of the services as well, to enable them to acquit themselves of the negative heritage from previous times and demystify their work. The services have expressed their willingness to provide expert assistance to Committee members for the drafting of the Protocol on the manner of exercising direct control over their work. For this purpose, the OSCE Mission to Serbia has also expressed its willingness to assist the Committee in capacity building for exercising quality supervision over the work of security services. Within the cooperation between the Committee and the OSCE Mission, numerous seminars were organised for Committee members, in which representatives of all three security services took active participation. The establishment of direct contact between Committee members and high representatives of security services provided an opportunity for Committee members to get acquainted with the aspects of the work of services in more detail, and not only through the prism of laws which directly regulate their work (e.g. the Criminal Procedure Code), but also through the prism of other laws, in particular those protecting the fundamental rights of man and citizen (e.g. the Law on Ombudsman, Law on Free Access to Information of Public Importance, Law on Personal Data Protection). The presentation of the proposal of by-law regulations for the implementation of the Law on the Military Security Agency and Military Intelligence Agency to Committee members by the Military Service Directors (in accordance with Article 16(2), indent(7) of the Law on the Foundations of the Regulation of Security Services of the Republic of Serbia, under which the Committee considers Bills, proposals of other regulations and general acts which fall within the competence of security services) constitutes a particularly positive experience in the work of the Committee. This is especially important, since some of the by-law regulations are not to be published due to confidentiality of content, but they are important for the realization of parliamentary control of the work of both the Military Security and the Military Intelligence Agency.

Article 21 of the Law on the Foundations of the Regulation of Security Services of the Republic of Serbia provides for public supervision of the work of security services. Security services inform the public about their work via bodies they submit reports to, in a manner which does not threaten the rights of citizens, national security and other interests of the Republic of Serbia. Security Services may also inform the public directly about certain security phenomena and events.

The Law on the Security-Information Agency (*Official Gazette of RS*, No. 42/02 and 111/09) was passed on 18 July 2002 and it entered into force on 27 July 2002 (the drafting of a new Law on the Security-Information Agency is in progress). This Law provides that control of the work of the Security-Information Agency (BIA) shall be exercised by competent authorities, in accordance with the Law and other regulations (Article 4(1)).

Control of BIA is provided for under Articles 17, 18 and 19 of the Law on the Security-Information Agency. It is established that the Director of BIA is obliged to submit a report on the work of this Agency and the security situation of the Republic of Serbia to the National Assembly and the Government of the Republic of Serbia, twice a year. BIA is obliged to

comply with the principles and guidelines of the Government pertaining to the security and intelligence policy of the Republic of Serbia.

Persons participating in the exercise of control of the work of BIA are obliged to protect and safeguard the confidentiality of data and information obtained in performing the tasks of control, even after the cessation of their functions.

The Law on the Military Security Agency and Military Intelligence Agency (*Official Gazette of RS*, No. 88/09) was passed on 26 October 2009 and it entered into force on 5 November 2009. This Law stipulates that the National Assembly shall exercise supervision over the work of the Military Security Agency (VBA) and the Military Intelligence Agency (VOA), in accordance with the provisions of the Law regulating the foundations of the regulation of security services of the Republic of Serbia and this Law (Article 52 of the Law).

Article 53 of the aforementioned Law provides that the Government shall exercise control, provide resources for the work of VBA and VOA and exercise its other competences via the Ministry of Defence and in accordance with the Law.

Article 54 of the same Law establishes the institution of Inspector General, who:

- 1) supervises the implementation of the principles of political, ideological and interest neutrality in the work of VBA and VOA and their members;
- 2) supervises the lawfulness of the implementation of special procedures and measures for secret data collection;
- 3) supervises the lawfulness of spending budget and other funds for work;
- 4) provides opinions on draft laws, other regulations and general acts which fall within the competence of VBA and VOA;
- 5) establishes facts on unlawfulness or irregularities observed in the work of VBA and VOA and their members;
- 6) submits reports to the Minister of Defence on the results of supervision, along with proposals of measures.

The Inspector General is appointed by the Government for a period of five years, upon the proposal of the Minister of Defence and the opinion of the National Security Council.

The Inspector General is accountable for his/her work to the Minister of Defence, and submits reports on the implemented control to the competent committee of the National Assembly, at least once a year.

Implementation of special procedures and measures for secret data collection which derogate from the principle of inviolability of the confidentiality of correspondence and other means of communication shall be approved by the Supreme Court of Cassation, upon the proposal of the Director of the Agency (Articles 14 and 15 of the Law on the Security-Information Agency and Articles 14 and 15 of the Law on the Military Security Agency and Military Intelligence Agency).

Besides the aforementioned legal provisions pertaining to supervision over the security department, instruments prescribed by the Constitution, the Law on National Assembly and the Rules of Procedure of the National Assembly (motion of no confidence in the Government or member of the Government, interpellation relating to the work of the Government or an

individual member of the Government, parliamentary question) are also at the disposal of the National Assembly, i.e. Members of Parliament for the purpose of conducting parliamentary control.

The public exercises control of the work of the security department particularly through the enforcement of the Law on Ombudsman, Law on Free Access to Information of Public Importance and Law on Personal Data Protection.

The Ombudsperson controls also the work of security forces, such as the Armed Forces, the Police and security agencies, aiming to ensure the respect of the freedoms and rights of citizens. This body investigates also complaints submitted by members of these forces. The Ombudsperson visits police stations, military facilities, security agencies, and the Law guarantees this independent body free access to these facilities, including detention facilities at police stations. The ombudsperson may interview both employees of these institutions and persons deprived of their liberty.

93. What percentage of police officers/members of the security forces are from ethnic minorities? If available, please provide a breakdown of such figures by rank and seniority.

Under Article 47, the Constitution of the Republic of Serbia (*Official Gazette of the RS*, No. 98/06) prescribes that national affiliation may be expressed freely and no person is obliged to declare his/her national affiliation.

Under Article 18, the Law on Labour (*Official Gazette of the RS*, No. 24/2005, 61/2005, 54/2009) prohibits direct or indirect discrimination of persons who seek employment, as well as employees, on grounds of gender, birth, language, race, colour, age, pregnancy, health, i.e. disability, national affiliation, religion, marital status, family obligations, sexual orientation, political or other opinions, social origin, property status, membership in a political organization, trade union or some other personal feature.

In view of the abovementioned, the employees in the Ministry of Interior are not obliged to express their national affiliation upon establishing an employment relationship, so the Ministry of Interior does not have concrete data on the number of employees belonging to national minorities.

However, based on the voluntarily given statements upon establishing an employment relationship, it has been found that 19 national/ethnic minorities are present in the Ministry of Interior, with 9.22%.

Members of twenty ethnic minorities are present within the Ministry of Defence.

Annex: Table of the Ministry of Interior on the presence of ethnic minorities by managerial functions and titles and Table of the Ministry of Defence on the presence of ethnic minorities by ranks.

94. What are or were the main elements of the reform of the security forces?

Reform of the security sector is carried out in accordance with strategic orientation and international political priority of the Republic of Serbia regarding integration into the European Union. In this context, reform of the security forces is of special importance for the society, as an undeniable instrument of stabilization in the Republic of Serbia.

The Serbian Army, forces of the Ministry of Interior (MoI) – police, gendarmerie, border units, firefighting units and units of civil protection, Military Security Agency (VBA), Military Intelligence Agency (VOA) and Security Information Agency (BIA) are the key protagonists in achieving objectives of national security policy for the purpose of protecting national interests of the Republic of Serbia.

Strategic-doctrinal and normative framework, as a necessary prerequisite for the implementation of reforms in this area, has been defined by the adoption of the National Security Strategy of the Republic of Serbia (26 October 2009, “Official Gazette of the Republic of Serbia”, No. 88/2009) and Defence Strategy of the Republic of Serbia (26 October 2009, *Official Gazette of the Republic of Serbia*, No. 88/09), and by a set of system laws as well. Orientations expressed in these documents fully confirm European political, economic and security perspective of the Republic of Serbia, and define main directions of security forces reform at the same time.

The Army of Serbia

Based on the defined strategic orientations, objectives and tasks of the defence policy, the main objective of the Serbian Army reform is the creation of modern, professional and efficient Serbian Army, appropriately organized, armed and equipped, interoperable, economically maintainable and trained for the completion of given missions and tasks, which shall be subject to democratic and civilian control. According to the new social role of military force, the Army of Serbia shall accomplish missions regarding the defence of the Republic of Serbia from external armed threat, participation in establishing peace in the region and worldwide, and support to the civil government when confronting threats to security.

The Doctrine of the Army of Serbia was adopted (25 February 2010), as a basic doctrinal document regarding organization, preparations, use and securing of the Army of Serbia, and as a basis for the formulation of doctrinal documents at lower hierarchical levels.

As regards legal normative framework, the place and role of the Serbian Army have been defined by the Constitution of the Republic of Serbia. The following laws have been adopted: Law on Defence (11 December 2007, *Official Gazette of the Republic of Serbia*, No. 116/07, 88/09, 104/09), Law on the Serbian Military (11 December 2007, *Official Gazette of the Republic of Serbia*, No. 116/07, 88/09), Law Amending the Law on Defence (26 October 2009, *Official Gazette of the Republic of Serbia* 88/09), Law Amending the Law on the Serbian Military (26 October 2009, *Official Gazette of the Republic of Serbia* 88/09), Law on the Participation of the Serbian Army and Other Defence Forces in Multinational Operations outside the Borders of the Republic of Serbia (26 October 2009, *Official Gazette of the Republic of Serbia* 88/09), Law on Civilian Service (26 October 2009, *Official Gazette of the Republic of Serbia* 88/09), Law on Military, Labour and Material Obligations (26 October

2009, *Official Gazette of the Republic of Serbia* 88/09) and others. The adoption of these laws has enabled continuation of the reform and created an appropriate institutional framework for the implementation of principles of responsibility in this field.

Organizational and mobilizational changes have been introduced for the purpose of coordinating the organization of the Serbian Army with standards and arrangements implemented in other modern states, and the existing structure shall be further developed.

The Programme for Human Resources Management has been developed, which defines long term directions of development within the field of human resources and specifies the framework for "predictable career" with the aim of good quality human resources management. The education of the Serbian Army members in country and abroad has been intensified.

In accordance with the commitments aiming at full professionalization of the Serbian Army, as one of the key points of the reform process, on 30 September 2010 the Government enacted the Decision on Abolition of Mandatory Military Service, which was adopted by the National Assembly on 15 December 2010 (*Official Gazette of the Republic of Serbia*, No. 95/10). It has been provided that military service in the Army of Serbia shall be served voluntarily as of 1 January 2011. The proposed arrangement ensures rationalization of defence costs which shall be directed to development in accordance with realistic possibilities and needs of the Republic of Serbia.

Important changes have been introduced into the system of training in units, commands and headquarters of the Serbian Army, which has contributed to the improvement of its efficiency, functionality and adaptation to missions and tasks of the Army.

A part of the task regarding development, modernization and equipment has been fulfilled, and modernization of the existing and acquisition of modern armaments and military equipment is ongoing, where the priority is given to the acquisition of armaments and military equipment for units which will participate in multinational operations.

Through the process of European integration, the Republic of Serbia expresses willingness to build capacities and capabilities of the system of national security and defence in accordance with standards and obligations arising from the European Security and Defence Policy. Within NATO Partnership for Peace programme, the Republic of Serbia fulfils the assumed obligations and develops cooperation with other Member States of this programme. The Republic of Serbia actively participates in PARP mechanism of this programme, within which it has declared the forces for participation in multinational operations.

The activities of the Serbian Army within Individual Partnership Programme (IPP) of the Republic of Serbia and NATO have been intensified, as well as participation in multinational military exercises on the territory of the Republic of Serbia and territories of Partnership for Peace and NATO Member States. The Centre for Peacekeeping Operations has been established, the activities of which are directed towards organization and implementation of special preparations for engagement in multinational operations. At present, members of the Ministry of Defence and Serbian Army are involved in multinational operations of the United Nations in the Republic of Cote d'Ivoire (UNOCI), the Republic of Liberia (UNMIL), the

Democratic Republic of Congo (MONUSCO), Lebanon (UNIFIL) and the Republic of Cyprus (UNFICYP).

Within the Serbian Army reform, bilateral and multilateral military cooperation has been intensified with the countries in the region, the most important countries of the international community and international security organizations.

Democratic and civilian control of the Army, which is exercised by the National Assembly, Government, courts and public in the Republic of Serbia, represents a significant feature of a democratic society and a condition for integration into modern security structures. By accepting democratic and civilian control as one of the postulates of modern democratic society, the Republic of Serbia has raised the democratic and civilian control of the Army to the level of constitutional principle. Over the past period, normative and other prerequisites for the implementation of procedures of democratic and civilian control of the Serbian Army have been created, which is exercised through control over the use and development of the Army, internal and external control of the costs of military needs, monitoring the situation and informing the public on the situation regarding preparations of the Army, ensuring free access to information of public importance and defining responsibilities for the performance of military duties. By strengthening the mechanisms of democratic and civilian control, the Army and defence system as a whole become support to the overall democratic development of the Republic of Serbia.

The Police

Comprehensive reform of the police, directed towards strengthening of democratic principles in the police work and orientation towards the citizens, consistent respect for human rights, as well as improvement of the organizational structure, has been implemented since 2001. Cooperation with international community bodies has been established: OSCE, the Council of Europe, Danish Institute for Human Rights and organizations within the UN.

In cooperation with Danish Institute for Human Rights, the Vision Document of the Reform of the Ministry of Interior of the Republic of Serbia was drawn up (in April 2003), which expresses the vision, values and mission of the Ministry. In addition, for the purpose of establishing the work of police and the Ministry as a whole on strategic grounds, the Development Strategy of the Ministry of Interior 2011-2014 is under preparation, and it shall be the basis for the development of department strategies and reform of vital fields of work of the Ministry.

Police reform, implemented through openness of the police towards the international community, strengthening of criminal police capacities, identity redefining and establishment of normative framework, has been carried out in three basic directions: legislation reform, education reform and work on practice reform.

For the purpose of harmonizing domestic with European legislation, the Law on Police was adopted (14 November 2005, *Official Gazette of the Republic of Serbia*, No. 101/05), as well as a number of bylaws and the Code of Police Ethics. This Law redefines and reforms police duties and competences, enables implementation of the European Code of Police Ethics, creates prerequisites for the establishment of internal and external control over the work of

police and ensures normative prerequisites for depoliticization and professionalization of the police organization.

In accordance with obligations regarding compliance with EU regulations, a large number of laws have been adopted: Law on Identity Card (14 July 2006, *Official Gazette of the Republic of Serbia*, No. 62/06), Law on Travel Documents (24 September 2007, *Official Gazette of the Republic of Serbia*, No. 90/07, 116/08, 104/09, 76/10), Law on Asylum (24 November 2007, *Official Gazette of the Republic of Serbia*, No. 109/07), Law on Protection of State Border (23 October 2008, *Official Gazette of the Republic of Serbia*, No. 97/08), Law on Foreigners (23 October 2008, *Official Gazette of the Republic of Serbia*, No. 97/08), Law on Emergency Situations (29 December 2009, *Official Gazette of the Republic of Serbia*, No. 111/09), Law on Protection Against Fire (29 December 2009, *Official Gazette of the Republic of Serbia*, No. 111/09) and other, and a number of important laws are under preparation, such as: Law on Physical and Technical Security, Law on Weapons and Ammunition etc.

Regional and international police cooperation has been intensified, as one of the key prerequisites for the realization of all reform processes and development of the Serbian police. Accordingly, a large number of multilateral agreements has been signed, out of which the most important are the following: Police Cooperation Convention for Southeast Europe, Agreement between the Republic of Serbia and the European Community on the Readmission of Persons Residing without Authorization, Agreement on long-term Partnership between the MoI of the RS and DCAF, Memorandum of Understanding within the ILECU's project, Working Arrangement on Establishment of Operational Cooperation with the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the EU (FRONTEX), and numerous other agreements. In addition, over 50 bilateral agreements have been signed with European countries and other continents on police cooperation as a whole, and within the field of fight against organized crime, cross-border cooperation and emergency situations.

As regards the involvement in UN peacekeeping operations, members of the Ministry of Interior are presently involved in peacekeeping missions in Liberia (UNMIL) and Haiti (MINUSTAH).

Within police education reform, all units-institutions which deal with education and training for the needs of police have been integrated. The Police College and Police Academy integrated and became the Academy of Criminalistics and Police Studies, and Police High School was transformed into the Basic Police Training Centre.

The emphasis of the police practice reform is placed on securing the state border by implementing the system of integrated management of the state border, creation of necessary prerequisites for effective fight against organized crime and corruption, illegal migrations, application of model of problem-oriented community policing and the concept of protection of citizens in emergency situations.

In 2009, the Emergency Situations Sector was established, which integrated the existing resources within protection, rescuing and reacting in emergency situations (including the Directorate for Emergency Situations of the Ministry of Defence), with the aim of strengthening the institutional structure and capacity for preventive actions in the cases of

natural disasters and emergency situations. This Sector became a full member of the Partial European and Mediterranean Major Hazards Agreement of the Council of Europe (EUROPA).

Transparency and publicity in work are ensured through continual information of the public on the current activities and achieved results, through the work of the Media Cooperation Bureau and Bureau for Information of Public Importance, publication of bulletins, and through implementation of the Communication Strategy adopted in 2009.

Democratic and civilian control are exercised through external control, by the National Assembly, Government, competent judicial authorities, state authorities and other duly authorized authorities and bodies, and the internal control is exercised through the Internal Affairs Sector, within the organizational unit of the Ministry of Interior.

The Security Information Agency (BIA)

An important step in the process of reform of the Security Information Agency (BIA) was taken upon its separation from the Ministry of Interior in 2002 and regulation of its work by a special Law (Law on the Security Information Agency, 18 July 2002, *Official Gazette of the Republic of Serbia*, No. 42/02, 111/09), which enabled its establishment as a separate, specialized organization within the system of governmental organizations. In this manner, civilian security intelligence department was separated from the MoI for the first time, and political and other impartiality and neutrality in work has been ensured.

Further reform process of the Agency was directed towards ensuring institutional and functional framework for reaching security and intelligence objectives of the Republic of Serbia and achieving professional and democratic standards embraced in modern societies, with emphasis on strengthening mechanisms of democratic and civilian work control.

Within legal normative field, the following has been adopted: Law on the Bases for Arranging Security Services of the Republic of Serbia (11 December 2007, *Official Gazette of the Republic of Serbia*, No. 116/07), Law on Personal Data Protection (23 October 2008, *Official Gazette of the Republic of Serbia*, No. 97/08, 104/09), Law on Data Confidentiality (11 December 2009, *Official Gazette of the Republic of Serbia*, No. 104/09). The adoption of the National Counter-Terrorism Strategy is expected, as well as the new Law on Security Information Agency.

With the aim of creating conditions for more effective work, the internal organization of the Agency has been changed and simplified. The number of organizational units has been reduced, which are now established according to the principle of problem-orientation and the number of executives has been increased, mainly in the operational line of work. Jobs have been functionally connected and material and technical resources have been integrated in a new manner. An important renewal of human resources has been carried out from the day of establishment of the Agency, i.e. from 2002 to this date.

A significant step has been taken towards openness to the public, through institutional (over the person in the Agency authorized for media contact), organizational and non-selective cooperation with the media. Provisions of the Law on Free Access to Information of Public

Importance are consistently adhered to (*Official Gazette of the Republic of Serbia*, No. 120/04, 54/07, 104/09, 36/10).

The issue of exercise of efficient democratic and civilian control over the work, which is one of the key preconditions in the process of reform into a modern and professional security service, has been tackled by improving cooperation with Defence and Security Committee of the National Assembly, through the Government, courts, introduction of internal control, budget internal control, inspection and drafting of a new proposal of the Law on Security Information Agency.

Military Security Agency(VBA) and Military Intelligence Agency(VOA)

The reform of Military Security Agency (VBA) and Military Intelligence Agency (VOA) is completed, and it was carried out within the overall reform of the defence system of the Republic of Serbia. General aim of the reform was the creation of modern, professional and efficient military security services by the highest European and world standards.

Within legal normative field, the adoption of the Law on Security Services of the Federal Republic of Yugoslavia (20 June 2002, *Official Gazette of FRY*, No. 37/02 and *Official Journal of SCG*, No. 17/04) created the conditions for the beginning of essential reforms of the military security services. A particularly significant undertaking was the separation of military security services from the General Staff and their transfer to the Ministry of Defence and the formation of these services as independent organizational units of the Ministry of Defence, accountable to the Defence Minister.

Apart from the Law on Defence and Law on the Serbian Military, of special importance for VBA and VOA reform was the adoption of the Law on the Basis for Regulation of Security Services of the Republic of Serbia and Law on Military Security Agency and Military Intelligence Agency (26 October 2009, *Official Gazette of the Republic of Serbia* 88/09), which has rendered invalid the Law on Security Services of the Federal Republic of Yugoslavia.

In the course of 2010, all bylaws for the implementation of the Law on Military Security Agency and Military Intelligence Agency were adopted.

A new organizational structure was established within organizational-functional field and new formations of VBA and VOA were adopted. Competences, powers and responsibilities have been appropriately regulated and functionality in the performance of delegated duties and tasks has been achieved. Operational and analytical capacities have been improved, as well as strategic planning, the manner of work evaluation, implementation of modern information technologies and security and counterintelligence protection of the Ministry of Defence and the Serbian Army. Likewise, cooperation with security services from other countries and international organizations has been improved, and a high level of interoperability with security services from other countries involved in European integrations has been reached.

Significant results have been achieved within improvement of human resources capacity. Modern systems of human resources management have been introduced, the number of formation positions has been reduced and a better balance between the number of professional

soldiers and civilians has been achieved. The improvement of human resources capacity is carried out through their permanent professional development in the country and abroad, where special emphasis is placed on specialized courses in the field of fight against terrorism, organized crime, corruption and the field of intelligence activities and military diplomacy.

A high level of transparency and openness towards the public is present in the work of VBA and VOA, and mechanisms of democratic and civilian control by the legislation, executive and judiciary power have been developed. New legal arrangements provide for a higher degree of surveillance and control of VBA and VOA by the executive power, through the introduction of Inspector General at the level of the Ministry of Defence, and through appropriate organization of internal control work at the level of VBA and VOA.

The results of security forces reform achieved to date present a good base for its further implementation, thus creating modern forces, capable of professional and effective completion of the given missions and tasks when confronting challenges, risks and threats to the security of the Republic of Serbia.

95. How is police primacy ensured in dealing with internal security? What is the legal framework and how is it implemented? What arrangements exist for calling upon military resources under police command in specific crisis situations? How is the police primacy over military ensured in managing the Administrative Boundary Line with Kosovo?

The police primacy in dealing with internal security is ensured by law. The legal framework is the Law on Ministries (*Official Gazette of the RS* No. 65/08 and 63/09) and the Law on Police (*Official Gazette of the RS* No. 101/05 and 63/09). The Law on Ministries, Articles 4 and 5, sets the scope of activities of the Ministry of Defence and Ministry of Interior. Pursuant to this, and according to Article 10 of the Law on Police, the matters of internal security have been placed within the competence of the Ministry of Interior – the police.

Engagement of military resources under police command in specific crisis situations is also governed by law, the Law on Emergency Situations (*Official Gazette of the RS* No. 111/09). In fact, in situations when other forces and means of the system for protection and rescue are not sufficient for the protection and rescue of people, material and cultural assets and environment from the catastrophe caused by natural disasters and other calamities, upon the request of organizational unit of the Ministry of Interior in charge of emergency situations, the Ministry of Defence provides the participation of organizational groups of Ministry of Defence, commands, units and institutions of the Serbian Armed Forces providing assistance in protection and rescue operations, pursuant to law (Article 12(1) of the Law). In such cases, the units of the Serbian Armed Forces are under the command of their respective commanding officers, following the decisions of Headquarters for Emergency Situations, which manages and coordinates protection and rescue operations (Article 12(2) of the Law), and all forces for protection and rescue engaged in the actions and operations in which forces of Ministry of Interior also take part, on the territory where emergency situation has been declared, are directly led by the competent authority of the Ministry (Article 44 of the Law).

Serbian Armed Forces and the Ministry of Interior are engaged in the Ground Security Zone pursuant to the Military Technical Agreement of 10 June 1999, adopted pursuant to UN Security Council Resolution 1244. Cooperation of the Police and the Serbian Armed Forces

deployed along the Administrative Boundary Line and the Ground Security Zone is regulated by the Plan of Cooperation and according to the powers of the Ministry of Defence and Ministry of Interior. The Ministry of Interior – police, pursuant to the Military Technical Agreement and the Law on Police, carries out tasks under its jurisdiction, the control of crossing of the Administrative Boundary Line at administrative crossings, surveillance of populated areas and the Administrative Boundary Line in the populated areas, as well as other tasks in order to ensure the security of people and property. The Serbian Armed Forces are authorised to control the situation at the Administrative Boundary Line and Ground Security Zone and take measures against individuals illegally crossing the Administrative Boundary Line handing them over to the Ministry of Interior.

96. Is there or was there a Strategy and an Action Plan for the reform of the Police, including proper budgetary allocations? What is its stage of implementation?

Building upon studies (the important analyses are those of R. Monk, *Study on Policing in the Federal Republic of Yugoslavia* [R. Monk, 2001] and J. Slater, *An Assessment of the Human Rights, Ethics and Policing Standards in the Federal Republic of Yugoslavia, Serbia and Montenegro* [J. Slater, 2001]), experiences of other countries in the organization of the Ministry of Interior and improvement of police service, international conventions and codes, primarily the Code of Police Ethics of the UN and the Council of Europe, in April 2003 a Strategic Development Plan of the MoI RS, *Vision Document of the Reform of the Ministry of Interior of the RS*, was drawn up in cooperation with Danish Institute for Human Rights and Expert League. The Document defines five-year reform plan for 14 key areas of work: Minister's Cabinet, operational centre, control and supervision, police, fight against organized crime, special units, state border and foreigners, emergency situations, administrative jobs, human resources issues and education, information and telecommunications systems and technology, financial-administrative jobs and technical support, analytics and helicopter unit.

The reform of the MoI RS is continuing through development and implementation of strategic documents in the following areas:

National Strategy for Fight Against Organized Crime (*Official Gazette of the RS*, No. 23/09) – The Strategy defines policy in the field of establishing effective system for fight against organized crime and creates additional conditions for more effective involvement of the RS in regional, European and world concept of the fight against organized crime. The Strategy is in line with the National EU Integration Programme and current reform processes in the country, primarily those mentioned in the European Partnership document. The Action Plan for the implementation of the National Strategy for Fight against Organized Crime was adopted by the State Government on 24 September 2009. Following the event, on 13 October 2010, MoI RS adopted Sectoral Action Plan of the Ministry of Interior for implementation of the National Strategy for Fight against Organized Crime.

Strategy for Combating Trafficking in Human Beings in the RS (*Official Gazette of the RS*, No. 111/06) and **National Action Plan to Combat Trafficking in Human Beings for the period 2009-2011** (adopted on 30 April 2009) – established a mechanism for coordination of activities and policy making process in the area of fight against human trafficking comprising two levels: central-strategic, which involves the Council for Combating Trafficking in Human Beings and the Republic Team for Combating Trafficking in Human

Beings and operational, which involves judicial authorities, police and the Service for Coordination of Protection of Victims of Trafficking in Human Beings, with the support of specialized nongovernmental and international organizations.

Strategy for Integrated Border Management in the RS (*Official Gazette of the RS*, No. 11/06 and Action Plan for the Implementation of Strategy for Integrated Border Management (June 2006)) – defines a comprehensive system which would enable establishment and long-term maintaining of the border, open for movement of persons and trade, but secure and closed with regard to all forms of cross-border criminal activities and all other activities which present a threat to security and stability in the region. Functional strategies have been developed, defining areas of common interest to all border services.

Strategy for the Reintegration of Returnees based on the Agreement on Readmission (*Official Gazette of the RS*, No. 25/09) and Action Plan for the Implementation of Strategy for the Reintegration of Returnees based on the Agreement on Readmission (2009-2010) – involve the following areas: creation of the institutional framework for reintegration of returnees, creation of conditions for their primary acceptance and building capacities of local communities for their reintegration in the society.

National Strategy on the Control of Small Arms and Light Weapons, Strategy on the Control of Small Arms and Light Weapons in the Republic of Serbia for the period 2010-2015 (13 May 2010) – developed on the basis of internationally adopted documents, primarily the UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Arms (UN PoA), the UN Protocol on Firearms and OSCE Document on Small Arms and Light Weapons. In addition to this, this Strategy is in accordance with the EU Strategy to Prevent and Eradicate the Illicit Trade in Arms. Implementation of the Strategy will create opportunities for a higher degree of engagement of the international community in concrete projects of control over small arms and light weapons in the Republic of Serbia. Among other things, it envisages the harmonization of domestic regulations with European, development of international and regional cooperation, development of capacities for responsible management of arms reserves and raising awareness of the citizens regarding the issue of light weapons. The Strategy also envisages the establishment of a national coordinating mechanism (the Council for Small Arms and Light Weapons) and the appointment of a national coordinator for the matters regarding small arms and light weapons.

National Strategy Against Money Laundering and Terrorist Financing (*Official Gazette of the RS*, No. 55/08) – The Strategy defines preventive and repressive measures for reducing criminal activities related to money laundering and terrorism financing.

National Youth Strategy (*Official Gazette of the RS*, No. 55/08) and Action Plan for the Implementation of National Youth Strategy (22 January 2009) – MoI RS developed a draft of the Sectoral Action Plan to implement the National Youth Strategy.

National Strategy for the Prevention and Protection of Children against Violence (*Official Gazette of the RS*, No. 122/08) and Action Plan for the Implementation of National Strategy for the Prevention and Protection of Children against Violence for the period 2010-2012 (adopted by the RS Government on 11 March 2010) – the MoI RS prepared a draft of the Sectoral Action Plan for the implementation of the National Strategy for the Prevention and Protection of Children against Violence. The Task Force for the

promotion and monitoring of the abovementioned Action Plan adopted a preliminary report January-June 2010, with the aim of informing the Council for Child Rights of the Government of Serbia.

Strategy for Migration Management (*Official Gazette of the RS*, No. 55/05, 71/05-corrigendum, 101/07, 61/08).

Strategy for Improvement of the Status of Roma in the Republic of Serbia (*Official Gazette of the RS*, No. 27/09) and the **Action Plan for the Implementation of the Strategy for Improvement of the Status of Roma in the Republic of Serbia (02 July 2009)**.

Strategy of Confronting Illegal Migration in the Republic of Serbia for the period 2009-2014 (*Official Gazette of the RS*, No. 25/09) and **Action Plan for the Implementation of the Strategy of Confronting Illegal Migration in the Republic of Serbia for the period 2009-2014 (adopted on 09 December 2010)** – The Strategy envisages the development of capacities and capabilities of entities in charge of creating and developing the Strategy, cooperation with partners and other stakeholders, methodology of confronting illegal migration, system of measures taken with regard to different categories of illegal migrants and the establishment of national concept of confronting illegal migrations.

National Strategy Against Corruption (*Official Gazette of the RS*, No. 23/05) and **Action Plan for the Implementation of National Strategy against Corruption** (December 2006) – MoI RS adopted the Sectoral Action Plan Against Corruption on 12 October 2009. . The report on the activities conducted in 2010 was submitted to the Anti-Corruption Agency on 13 September 2010.

National Security Strategy of the RS (*Official Gazette of the RS*, No. 88/09) defines the fundamentals of the security policy regarding the protection of national interests of the RS.

The Defence Strategy of the RS (*Official Gazette of the RS*, No. 88/09) – The Strategy created prerequisites for full coordination of elementary structures of the defence system within national framework and for active cooperation at the international level, which affects strengthening of the capacities for the defence and protection of national interests of the RS.

Strategy for Fight Against Drugs in the Republic of Serbia for the period 2009-2013 (26 February 2009) and the **Action Plan for the Implementation of the Strategy for Fight Against Drugs in the Republic of Serbia for the period 2009-2013** (02 April 2009). Budgetary allocations for the development and implementation of the existing Strategies and Action Plans for police reform in the Ministry of Interior have been planned within regular activities, and it is impossible to view them as a separate entity.

Draft Development Strategy of the Ministry of Interior 2011-2014 presents a step further in the reform process. In terms of concept and functionality, this document is strongly related to the already adopted strategies in the RS and it involves general directions of development of priority fields, based on which sectoral strategies of individual vital fields of the Ministry are to be developed. Draft Strategy defines objectives through four strategic areas: organization and management; security of an individual, community and the state, partnership at national, regional and international level, system and internal and external control and transparency in work.

The Action Plan for the implementation of the Strategy will define funds and sources of funds necessary for the realization of the Strategy tasks and activities. The financing sources necessary for the implementation of the Strategy are partially allocated from the Budget of the Republic of Serbia intended for regular activities of the MoI, and partially from international funds.

The Financial Plan of the Ministry of Interior for 2010, with projections for 2011 and 2012, envisages the funds necessary for the implementation of new activities within the competence of the Ministry of Interior arising from legal obligations, strategies, documents of strategic importance which have not been financed yet and are to be launched in the next two years, and they are predominantly related to the following: the Law on Road Traffic Safety, Strategy for Integrated Border Management in the Republic of Serbia, the Law on Emergency Situations and the Law on Seizure and Confiscation of the Proceeds from Crime.

The implementation of the Strategy defined by the Action Plan involves the development of new projects which are to be financed from the donations of international organizations, foreign countries' donations, donations from other levels of the government and from the donations for the projects accepted over the past period. A certain number of tasks and activities are to be financed through recognized IPA projects: Police Reform-Internal Control (IPA 2007), project value 1000 000 EUR, Development of Border Control Information System (IPA 2008), project value 4000 000 EUR, Improvement of the Capacities for Collection, Analysis, Statistical and Analytical Data Processing (IPA 2010), project value 1200 000 EUR, Establishment of Efficient System for Prevention and Suppression of Illegal Migrations on the Territory of the RS (IPA 2010), project value 5000 000 EUR, Development of Strategic Planning and Horizontal Communication Improvement of the MoI, project value 1500 000 EUR. In addition to the donations received from foreign countries for the projects that are currently implemented and closely related to the realization of Strategy objectives, in cooperation with the Swedish Board of Police Directors and the Swedish Agency for International Development a joint project has been planned aimed at providing support to the Ministry in the implementation of the Strategy key objectives.

On 22 December 2010, a public debate was held in Belgrade due to the adoption of the mentioned Strategy. Comments on the Draft were submitted to the Ministry of Interior and the Strategy is to be adopted on 20 January 2011.

97. What measures have been taken to ensure an increased awareness within the security forces of issues such as human rights, non-discrimination and community policing methods?

The topics relating to human rights, non-discrimination and other universal values, as well as community policing are presented in all segments of education and training for the needs of the police in the Ministry of the Interior of the Republic of Serbia.

In the **Basic Police Training Centre**, lectures are delivered following the curriculum in whose development the experts of the OSCE Mission in Serbia participated. Basic police training is aimed at enabling participants for competent performance of basic police duties in

accordance with the laws and regulations of the Republic of Serbia, international treaties and conventions adopted by the Republic of Serbia as well as policing standards.

In the period of 12 months, trainees study, *inter alia*, the following subjects and professional modules:

1. "Police officers: rights, responsibilities and duties" (25 lessons in total). In the scope of this subject the following thematic fields are covered: "Police officers, their rights and responsibilities" (3 lessons) and "Disciplinary responsibility of police officers" (3 lessons);
2. "Human rights and law enforcement code of ethics "(35 lessons). Within this subject the following thematic fields are covered: "Human rights and fundamental freedoms " (11 lessons) and "Law enforcement code of ethics " (7 lessons). Participants get familiar with the law enforcement code of ethics through case studies, situational training and role play. Special attention is paid to the understanding of the relations between the law enforcement code of ethics, police powers and human rights;
3. "Community Policing" (30 lessons in total). The module unit "Observing equality" is covered within this module.
4. "Exercise of police powers and the application of means of coercion" (256 lessons in total). The module units "Exercise of police powers" (50 lessons) and "Application of means of coercion" (50 lessons) are covered in this module.
5. "Crime suppression" (114 lessons in total). Within the modular units "Deprivation of freedom of the suspect" (19 lessons) and "Requesting information" (37 lessons) participants should learn about the rights of an individual deprived of freedom and adopt attitudes relating to the necessity to observe the rights of the arrested person, observe the "presumption of innocence", human dignity, honour and reputation of an arrested person, the principle of proportionality when using the means of coercion during the arrest, express concern for health needs and safety of the arrested person, confront all forms of torture, inhuman and degrading treatment. Within this module, the module unit "Providing support, protection and assistance to victims (vulnerable groups and law enforcement)" is covered (30 lessons).

Within **the professional training**, performed following the Professional Training Programme for Police Officers of the Ministry of the Interior of the Republic of Serbia, some of the training units covered every academic year in the period 2005-2010, are as follows: constitutional protection of human and minority rights, human rights, law enforcement ethics, communication for police activities, legal basis for the exercise of police powers, police and marginalized and socially vulnerable groups etc.

The Ministry of the Interior of the Republic of Serbia pays special attention to the fields of human and minority rights, respect of diversity and development of communication with citizens through regular annual professional training and other forms of education of police officers. The professional training programme of police officers for 2010 envisages the delivery of lectures related to the following topics: communication skills and conflict management; protection of human and minority rights; police work with minority, marginalized and socially vulnerable groups; conduct towards children and minors etc.

Bearing in mind international and domestic documents related to the improvement of the status of Roma, continuous cooperation with the representatives of Roma is achieved. They have the opportunity to present to police officers during the training their customs related to

culture, the specificities and security needs of local Roma communities that are relevant for the activities of the police and security protection.

When posting a vacancy related to the enrolment in the Basic Police Training Center or employment with the police, there is an equal opportunity approach to all nationalities; representatives and members of minority groups are contacted and informed on the terms of the vacancy in all languages and they are encouraged to apply for the posts within the police.

In order to establish better communication, police officers in certain multilingual regions study languages of national minorities used in local communities. The training related to the sign language is organized for police officers in order to develop sign communication with hearing-impaired persons.

The area of human rights is presented in training units and curricula of certain subjects in the Academy of Criminalistic and Police Studies (ACPS), primarily with regard to the subjects dealing with misdemeanour and criminal law procedures. The subjects deal with the protection of human rights according to universal international standards.

Non-discrimination issues are also covered thoroughly through the participation of the representatives in trainings, through the recruitment policy of the MoI of the RS and enrolment policy, both in the Basic Police Training Center (see answer to question 147) and in the ACPS.

With regard to the working methodology, a critical review of the traditional model of policing in the MoI of the RS was done. Consequently, in accordance with the criteria and recommendations of the CE and the OSCE a completely new concept of policing was introduced - organization and method of work called "Community Policing". A special subject of the same title was introduced as a part of basic applied and academic courses in the ACPS.

The representatives of the MoI and the ACPS participate regularly in numerous expert meetings (organized by the OSCE Mission in Serbia, Council of Europe, UNDP, Institute of Human Rights and Law Enforcement from New York, British Council, International Committee of the Red Cross and other organizations and institutions), in which these issues are thoroughly covered, inclusive of the topics such as: human rights in curricula, police and minority and socially vulnerable groups, universal standards of human rights, community policing, human rights and humanitarian law with regard to the police and security forces, the protection of human rights, criminal proceedings and prohibition of torture in the European Convention on Human Rights etc.

As for the activities of the Security Information Agency (hereinafter SIA) – following its formation as a civil security-information agency of the Republic of Serbia, development of the system of values, with human rights and freedoms having a significant role within it, has become an integral part of the reform process and its transformation into a modern and professional subsystem within a unique system of national security.

Activities related to the increase of awareness on the universal values such as human rights and non-discrimination have developed in two directions: building of *institutional and*

functional framework and attaining *professional and democratic standards* guaranteeing the respect of human rights and the absence of discrimination.

Development of legal framework

Based on the authorities defined by the Law on Security Information Agency (18 July 2002- “*Official Gazette of RS*”, 42/02 of 18 July 2002 and No. 111/09 of 29 December 2009), Director of the SIA adopted a large number of internal acts (rulebooks, directives and instructions) regulating the manner of performing of duties within the competence of the Agency. Internal acts define the strict implementation of the protection of the rights and freedoms guaranteed by the Constitution. It is explicitly defined that a member of the Agency is obliged to protect human dignity and observe human rights and freedoms during his/her professional activities, primarily during the implementation of special procedures and measures.

Improvement of capabilities of human resources

In accordance with the Law on State Administration (14 September 2005 - “*Official Gazette of RS*”, No. 79/05 and 101/07), programme and the way of training of the members for working in the SIA, passing a professional exam is obligatory for all the members of the Agency. The contents of the professional exam for SIA members is defined depending on the qualifications. Particular attention is paid to the examining familiarity with constitutional and legal provisions related to the protection of human rights and freedoms.

As for the activities of the MSA and the MIA- all powers the Military Security Agency and Military Intelligence Agency dispose of are defined by the Law on Military Security Agency and Military Intelligence Agency. An optimum balance and accord between the interests of operativeness and efficacy, on the one hand, and protection of human rights and freedoms, on the other hand, is achieved.

There are protection mechanisms related to the prevention of misuse of the MSA and the MIA and their members in the political purposes defined by the Law. In order to protect human rights from the arbitrary implementation of special procedures and measures and other special powers of the MSA and the MIA, their activities are subject to adequate controls and supervisions defined by the Law.

Raising awareness of the members of the MSA and the MIA on human rights and freedoms is ensured through the education and implementation of legal solutions related to the implementation of the principle of suitability and subsidiarity with regard to the implementation of special procedures and measures.

Under Article 51 of the above-stated Law, a member of the MSA, i.e. MIA revealing that there has been a violation of constitutionality and legality, human rights and freedoms, professionalism, proportionality with regard to the implementation of powers and political and ideological neutrality, may directly address the Inspector General, Minister of Defence, Government and the competent Committee of the National Assembly, with no consequences relating to his/her status. A member of the MSA, i.e. of the MIA may address the Inspector General and the competent Committee of the National Assembly in case when he/she

considers that his/her rights have been violated in the performance of professional activities and tasks within the competence of the MSA and the MIA.

Under Article 61 of the stated Law, every citizen considering that his/her rights have been violated or deprived by an individual act or the action of the MSA or the MIA, may address the Inspector General, i.e. bodies and institutions of the Republic of Serbia in order to protect his/her rights.

Apart from the stated legal solutions, the MSA and the MIA implement good practice in this field based on the recommendations of the international community.

98. Are there any arrangements in place for coordination between local government structures and local/national police forces in the respective municipalities? Please describe how coordination between municipalities and the local heads of police is carried out. Are there any problems of coordination in practice?

The Law on Police (*Official Gazette of the RS* No. 101/2005, 63/2009) stipulates that the police cooperates with territorial autonomy and local self-government bodies on taking measures in order to ensure the safety of people and property. The above mentioned law enables the cooperation of police and other bodies and institutions, non-governmental and other organisations, minority and other organised groups and self-organised individuals in order to develop partnership to prevent or disclose offences and their perpetrators and achieve other security objectives.

Pursuant to provisions of the said Law, the Assembly, or the executive authority of territorial autonomy and local self-government may review the security-related state of affairs in the province, town or municipality and take position on priorities to safeguard people and property in the province, town or municipality and, relating to this, make proposals to the head of the competent organisational unit of the Police.

The Law stipulates that the head of competent organisational unit of the Police, in cooperation with the above mentioned authorities, provides information on the security-related state of affairs and ensures proportionate representation in cooperation of national minorities and different ethnic, cultural, religious and other groups on the territory of the organisational unit of the Police. Also, the head is obliged, when making decisions, to take into account the positions on priorities for the safety of people and property taken by the Assembly, or the executive authority of territorial autonomy and local self-government.

The Ministry of Interior of the Republic of Serbia has undertaken activities on the development of community policing since 2002, at first only in pilot municipalities, and since 2004 on the entire territory of the Republic of Serbia.

The police organises consultative meetings in local communities at different levels (community centre, residential area, street, building, different associations, etc.) in order to improve the communication with the citizens.

In many local communities, the advisory security bodies have been formed in order to include the relevant stakeholders of local and minority communities in resolving security problems.

These bodies, in accordance with the specific features of local communities, have the appropriate composition that enables a comprehensive and efficient identifying, setting of priorities and resolving local security problems (as a rule, the members are heads of regional police directorates and representatives of local self-government).

Activities of advisory security bodies are most often focused on defining security problems in the community, determining action strategy, proposing, considering and adopting concrete projects for resolving security problems (especially of preventive kind) and specifying the roles and responsibilities in implementing these activities.

Councils and committees for security have been formed, councils for the safety of traffic; committees and councils for the prevention of addiction; committees for the prevention of juvenile delinquency; councils for safety of schoolchildren, anti-corruption teams etc.

These bodies, in addition to identifying key security problems, have established and implemented a number of projects, programmes and actions in order to improve safety, especially in the field of prevention of: juvenile delinquency; addiction; domestic violence; traffic safety; and in the field of cooperation between the police and citizens, media and other community stakeholders.

99. What percentage of the police force has received further training over the last 5 years and on what subjects? Is such training obligatory? What is the average amount of training and where and by whom is it offered and on what subjects?

Further training is organised as a part of Programme of professional training of police officers of the Ministry of Interior in organisational units of the Ministry, according to the job position of police officers. The Programme is adopted each year by the Minister of Interior, and is set to be implemented during the entire year and for all police officers who apply police powers in their work.

As per training courses which are part of the Programme (and are considered as further training), the percentage of police officers included in training and testing the knowledge and skills in 2009 was as follows:

1. Operational police skills (70.70% of the overall number of police officers in police stations who apply powers is included)
2. Training in firearms handling and shooting (83.14% of the overall number of police officers in police stations who apply powers is included).

The approximate number (percentage) of police officers were part of the training during the previous five-year period, as well as during 2010, for which the report should be completed by the middle of January 2011.

Training is carried out by police trainers and instructors, i.e. police officers trained in special courses for the role of trainers or instructors who are competent to transfer the needed knowledge and skills in accordance with modern adult education principles.

100. Please detail the inspection and internal control systems to ensure fairness, transparency and accountability in the security forces, at all levels, including at the central level and among senior officers.

Within the Security Information Agency (hereinafter: SIA), being the civil security-information agency of the Republic of Serbia, **internal control of the legality of work** and **the control of the spending of funds** are performed in accordance with the Law. The manner of executing of the internal control is regulated by an act adopted by the Director, which is classified as confidential. The Director of the SIA, also issues guidelines and defines the priorities related to the activities of the internal control and the system of financial management, control and internal audit through annual work plans.

Internal control of the legality of work supervises and controls the observance of the principle of legality related to the performance of professional activities within the competence of the SIA, especially in terms of the observance and the protection of human rights when performing tasks and the implementation of special procedures and measures, primarily:

- examines the legality of undertaken actions, measures and methods of the SIA;
- examines complaints, petitions, applications and proposals of the legal entities and individuals or the employees of the SIA, sent to the Director or the Government and other authorities related to the activities of the SIA and actions of its members submitting the report on it to the said authority.

The members of the SIA are obliged to enable the performing of work within its competence to internal auditors and provide needed expert assistance.

Whilst performing internal control, internal auditors undertake necessary measures and actions in order to define factual situation and collect proof. They are entitled to:

- have insight into the documentation, records and collection of data gathered, compiled and managed by the SIA within its competence;
- request from the members of the SIA a written declaration and the submission of other data and information within their competence required for the execution of the internal control;
- demand necessary information from citizens;
- request security check for the members of the SIA;
- perform polygraph examination of the members of the SIA having their previous consent, in accordance with the Law and based on the decision of the Director;
- demand from the members of the SIA to undergo medical and psycho-physical check-ups.

The head of Internal Control Department of the SIA is directly accountable to the Director. He/she regularly and periodically submits reports on the activities of the internal control, provides results of the control relating to every case, also submitting proposals for eliminating observed flaws and suggesting the instituting of proceedings aimed at determining accountability.

A member of the SIA cannot be called to account for referring to the internal control.

The competence and the authorities of the **internal financial control** system in the Security Information Agency are defined by the provisions of the acts on internal order and the systematization of jobs in internal regular acts defining internal control procedure and internal audit in the SIA.

Provisions relating to the internal control procedure in the SIA define the subject, manner, procedure and the criteria of the performance of internal control relating to the financial operations of the Agency.

In accordance with the Budget System Law (21 February 2002- "*Official Gazette of RS*" No. 9/02 and 85/06), internal audit is performed in the SIA, consisted of providing expert opinion and advice related to the adopted plans and work plans. It is performed primarily related to the material and financial operations within the SIA through the system audit, compliance and financial audit.

A detailed manner of conducting internal audit within the SIA, with regard to the form, purpose, goal, roles, authorities and duties of internal auditors, is defined by an act adopted by the Director and classified as confidential. The said act anticipates the submission of monthly and annual report on the results of internal audit, with recommendations being its integral part.

The reports submitted by the Director of the Security Information Agency to the Government of Serbia and the relevant Committee of the National Assembly, in charge of democratic and civil control of the SIA, contain working results related to all the aspects of the Agency, inclusive of the results of internal control and internal audit.

Internal control of the Police is performed by the Internal Affairs Sector. (Article 171 of the Law on Police).

Internal Affairs Sector of the MoI monitors the legality of police work, especially with regards to respect and protection of human rights while performing police tasks and applying police powers. Forms and methods of internal oversight of the police are detailed by the Minister. (Article 172 of the Law on Police).

In addition to the Internal Affairs Sector of the MoI, there are organizational units within the General Police Directorate that have departments, sections and workplaces dealing with the control of legality in work, abuses of official duties, preparation of documents for instituting disciplinary proceedings and other activities defined by the by-law.

The Minister of the Interior may assign other police officers of the Ministry to perform specific individual monitoring tasks. (Article 175 of the Law on Police).

The Minister controls the work of the Head of Sector, police officers of the Sector and other police officers of the Ministry in charge of the internal affairs, in the manner defined by the Law (Article 177 of the Law on Police).

The Head of the Sector is accountable to the Minister of the Interior submitting to him regular and periodical reports related to the activities of the Sector (Article 171 of the Law on Police).

The Minister submits the report on the activities of the Internal Affairs Sector at the request of the Government and working body of the National Assembly in charge of security and policing (Article 179 of the Law on Police).

The monitoring and control mechanisms of the MSA and the MIA by executive authorities are reinforced by introducing the institution of Inspector General of the Ministry of Defence, adequate regulation of the activities of the internal control with regard to the Military Security Agency (MSA), i.e. Military Information Agency (MIA) as well as by new legal solutions.

Inspector General: monitors the observance of the principles of political, ideological and interest neutrality in the work of the MSA and the MIA and their members; monitors the legality of the implementation of special procedures and measures for secret data collection; monitors the legality related to the spending of budgetary and other funds; provides opinion related to draft laws, other regulations and general acts within the competence of the MSA and the MIA; defines facts with regard to observed irregularities and illegalities in the MSA and the MIA activities and the activities of their members; submits the report to the Minister of Defence relating to the results of monitoring containing action proposals.

Inspector General is appointed by the Government for a five year period, at the proposal of the Minister of Defence and having the opinion of the National Security Council. Inspector General is accountable to the Minister of Defence for his/her work submitting the report on the performed control at least once a year to the relevant Committee of the National Assembly. Inspector General cannot be the member of a political party, or perform other public functions. A person having at least nine years of relevant professional experience may be appointed Inspector General. Dismissal proceedings of Inspector General may be initiated by the Government or the Minister of Defence.

Internal Control of the MSA, i.e. the MIA performs the control of the legality of activities and the implementation of the powers of their members. The Head of Internal Control Department is directly subordinated to the Director of the MSA, i.e. MIA submitting to him regularly the reports on the activities and potential misuses and irregularities in the activities of the MSA or the MIA. The Head of the Internal Control Department is obliged to inform the Inspector General, and if needed, the relevant Committee of the National Assembly, if he/she has information that the Chief of the MSA, i.e. the Chief of the MIA have not eliminated illegalities or irregularities in work determined by the internal control. At the request of the internal control, and following the decision of the Chief of the MSA, i.e. the Chief of the MIA, a member of the MSA, i.e. MIA is obliged to undergo security check, medical and psycho-physical check-up, polygraph examination and other tests.

101. What actions have been taken by the Internal Affairs unit in the Police dealing with Professional Standards and with police misconduct? What results have been achieved (including statistics on number of cases, sanctions applied etc.) over the past 5 years?

Internal Affairs Sector of the MoI (hereinafter: Sector) is an independent organizational unit of the Ministry of Interior of the Republic of Serbia performing the control of the legality in the police work. (Article 171-179 of the Law on Police).

The Sector acts following the proposals, complaints and petitions of individuals and legal entities, written statements of the police officers and on its own initiative, i.e. based on collected information and other findings.

The priorities of activities of the Sector have been activities related to revealing and resolving criminal offences in the execution of which police officers participated and checking the statements of citizens relating to the unprofessional conduct of police officers and exceeding of police powers.

In the period starting with 2006 until 3 December 2010, the Sector submitted 625 criminal charges and 41 additions to the criminal charges to relevant Public Prosecutor's Offices (2006-30; 2007- 122; 2008-174; 2009-195; 2010-104).

Criminal charges submitted by the Department included 1.052 persons, out of which 680 were police officers, whereas 372 persons were not employed with the MoI. (2006-62; 2007-239; 2008-282; 2009-290; 2010-179).

Charges encompassed 1.157 criminal offences (2006-53; 2007-282; 2008-293; 2009-328; 2010-201).

As for the criminal offences, the most represented are: the abuse of an office-274, document forgery-198, accepting a bribe-107, official document forgery-80, frauds in service-69, frauds-58, illegal production and sale of narcotics-60 and enabling the use of narcotics-28 offences.

Important activities of the Sector were aimed at the checking the grounds of statements contained in the petitions and other documents relating to the illegalities and unprofessional conduct of police officers. In the period starting with 2006 until 2010, the Sector received 14.304 petitions and other documents (2006-2.607; 2007- -2.384; 2008-2.708; 2009-3.277; 2010- 3.328).

In the same period, the Department completed the activities related to the checking of the statements contained in 13.780 petitions and other documents (2006-2.234; 2007- -2.347; 2008-2.611; 2009-3.259; -2010- 3.329). The most of the petitions were unfounded- 6.086 (or 44.1% of the total number) whereas the percentage of grounded petitions amounts to up to 14.7% (2.036 petitions). The remaining petitions were distributed to other organizational units being within their competence (1.708) or for further proceedings under Article 180 of the Law on Police (1.177), whereas 2.773 petitions were resolved differently- by their shelving in the archives, as they had already been checked, with an official note stating they were not within the competence of the Sector etc.

The Sector proposed the following measures to be taken against the police officers having irregularities and flaws in their activities:

- the instituting of the disciplinary proceedings against 882 police officers for serious breach of official duty;
- the instituting of the disciplinary proceedings against 79 police officers minor breach of official duty;
- the heads of police directorates should take measures against 565 police officers at their own discretion;
- considering the possibility to take measures under Article 168, in conjunction with Article 111 of the Law on Police against 129 police officers;
- taking other measures against 59 police officers (relocation to another work post, transfer etc).

Apart from repressive measures, the Sector performed activities related to preventive measures. Police officers of the Sector have occasionally performed unannounced checks in the police directorates. In addition to the measures taken against irresponsible police officers, the Sector regularly makes proposals to the Cabinet of the Minister regarding measures aimed at the elimination of observed flaws and irregularities in work, improving the quality of work and ensuring more efficient organization of work.

II Human rights

102. Observance of international human rights law Please provide succinct information on your constitutional order, your legislation or other rules governing the area of fundamental rights, and their compatibility with the relevant international conventions.

Human rights in the Constitution of the Republic of Serbia

Part II of the *Constitution of the Republic of Serbia* is devoted to human and minority rights. The Constitution guarantees dignity and free development of personality; right to life, inviolability of physical and mental integrity, prohibition of slavery, servitude and forced labour; right to freedom and security; humane treatment of persons deprived of liberty; special rights in case of deprivation of liberty without decision of the court; detention only upon the decision of the court; limited duration of the detention; right to a fair trial; special rights of the person charged; legal certainty in criminal law; right to rehabilitation and compensation; right to equal protection and legal remedy; right to legal personality; right to citizenship; freedom of movement; inviolability of home; confidentiality of letters and other means of communication; protection of personal data; freedom of thought, conscience and religion; rights of a church and religious communities; conscientious objection; freedom of thought and expression; freedom of expressing national affiliation; promotion of respect for diversity; prohibition of inciting racial, ethnic and religious hatred; right to information; electoral right; right to participate in the management of public affairs; freedom of assembly; freedom of association; right to petition; right to asylum; right to property; right to inheritance; right to work; right to strike; right to enter into marriage and equality of spouses; freedom to procreate; rights of the child; rights and duties of parents; special protection of the family, mother, single parent and child; right to legal assistance; health care; social protection; pension insurance; right to education; autonomy of university; freedom of scientific and artistic creativity; healthy environment (Articles 23-74). Members of national minorities are guaranteed special individual rights and a set of collective rights by the Constitution of the Republic of Serbia. Individual rights are exercised individually, whereas collective rights are exercised in community with others, in accordance with the Constitution, Law and

international treaties. Members of national minorities take part in decision-making or decide independently on certain issues related to their culture, education, information and official use of languages and script through their collective rights, in accordance with the Law. Members of national minorities may elect their national councils in order to exercise the right to self-governance in the field of culture, education, information and official use of their language and script, in accordance with the Law (Article 75). Members of national minorities are guaranteed prohibition of discrimination, equality in administering public affairs, prohibition of forced assimilation, right to preservation of specificity, right to association and cooperation with compatriots and right to developing the spirit of tolerance (Articles 76-81). 76-81).

National regulations with relevance to protection of human rights

The Republic of Serbia has passed a large number of laws and other regulations which regulate human rights in certain segments, such as: Law on Refugees (Official Gazette of RS, No. 18/92), Law on Broadcasting (Official Gazette of RS, No. 42/2002, 97/2004, 76/2005, 62/2006, 85/2006 and 41/2009), Law on the Protection of Rights and Freedoms of National Minorities (Official Gazette of FRY, No. 11/2002), Law on Public Information (Official Gazette of RS, No. 43/2003, 61/2005 и 71/2009), Law on Prevention of Violence and Misconduct at Sports Events (Official Gazette of RS, No. 67/2003, 90/2007 и 111/2009), Law on Accountability for Human Rights Violations (Official Gazette of RS, No. 58/2003 and 61/2003), Law on Free Access to Information of Public Importance (Official Gazette of RS, No. 120/2004, 54/2007 и 104/2009), Law on Environmental Protection (Official Gazette of RS, No. 135/2004 and 36/2009), Law on Organisation and Jurisdiction of Government Authorities in Suppression of Organised Crime, Corruption and Other Particularly Serious Criminal Offences (Official Gazette of RS, No. 42/2002, 27/2003, 39/2003, 67/2003, 29/2004, 45/2005, 61/2005 и 72/2009), Law on Employment and Insurance in case of Unemployment (Official Gazette of RS, No. 36/2009), Law on Social-Economic Council (Official Gazette of RS, No. 125/2004), Criminal Code (Official Gazette of RS, No. 85/2005, 88/2005, 107/2005, 72/2009 и 111/2009), Law on Juvenile Criminal Offenders and Criminal Protection of Juveniles (Official Gazette of RS, No. 85/2005), Law on Enforcement of Criminal Sanctions (Official Gazette of RS, No. 85/2005 and 72/2009), Law on Minor Offences (Official Gazette of RS, No. 101/2005, 116/2008 и 111/2009), Law on Organisation and Jurisdiction of Government Authorities in Suppression of High Technological Crime (Official Gazette of RS, No. 61/2005 and 104/2009), Law on the Protector of Citizens (Official Gazette of RS, No. 79/2005 and 54/2007), Family Law (Official Gazette of RS, No. 18/2005), Law on Labour (Official Gazette of RS, No. 24/2005, 61/2005 и 54/2009), Law on Litigation Procedure (Official Gazette of RS, No. 125/2004 and 111/2009), Law on Higher Education (Official Gazette of RS, No. 76/2005, 97/2008), Law on Health Care (Official Gazette of RS, No. 107/2005), Law on Health Insurance (Official Gazette of RS, No. 107/2005), Law on the Police (Official Gazette of RS, No. 101/2005), Law on Citizenship (Official Gazette of RS, No. 135/2004 and 90/2007), Law on Prevention of Discrimination against Persons with Disabilities (Official Gazette of RS, No. 33/2006), Law on Asylum (Official Gazette of RS, No. 109/2007), Law on Constitutional Court (Official Gazette of RS, No. 109/2007), Law on Travel Documents (Official Gazette of RS, No. 90/2007, 116/2008 и 104/2009), Law on Personal Data Protection (Official Gazette of RS, No. 97/2008), Law on Organisation of Courts (Official Gazette of RS2, No. 116/2008 and 104/2009), Law on Judges (Official Gazette of RS, No. 116/2008), Law on Foreigners (Official Gazette of RS, No. 97/2008), Law on Anti-Corruption Agency (Official Gazette of RS, No. 97/2008), Law on the Fundamentals of the Education System (Official Gazette of RS, No. 72/2009), Law on

National Councils of National Minorities (Official Gazette of RS, No. 72/2009), Law on the Prohibition of Discrimination (Official Gazette of RS, No. 22/2009), Law on Employment and Insurance in case of Unemployment (Official Gazette of RS, No. 36/2009), Law on Professional Rehabilitation and Employment of Persons with Disabilities (Official Gazette of RS, No. 36/2009), Law on Gender Equality (Official Gazette of RS, No. 104/2009). Through the adoption of the above mentioned laws, the legislation of the Republic of Serbia becomes harmonized with international and European standards in the field of human rights.

The Government of the Republic of Serbia has adopted numerous strategies with relevance to protection and promotion of human rights, and these are the following: Poverty Reduction Strategy, Strategy for Combating Human Trafficking on the Territory of the Republic of Serbia, National Strategy for Resolving the Problem of Refugees and Internally Displaced Persons, Strategy for Youth Health Development, National Strategy on Ageing, National Strategy for Judicial Reform, Social Protection Development Strategy, National Employment Strategy for the Period 2005-2010, National Strategy for Combating HIV/AIDS, National Plan of Action for Children, Strategy for Improving the Position of Persons with Disabilities in the Republic of Serbia, Strategy for the Development of Vocational Education in the Republic of Serbia, Strategy for Encouragement of Child Birth, National Youth Strategy, National Sustainable Development Strategy, National Strategy for Prevention and Protection of Children from Violence, Strategy for Continuous Improvement of the Quality of Health Care and Patient Safety, National Strategy for Improving the Position of Women and Advancing Gender Equality, Public Health Strategy in the Republic of Serbia, Strategy for Improvement of the Status of Roma in the Republic of Serbia, Strategy of Safety and Health at Work in the Republic of Serbia for the period 2009-2012, Migration Management Strategy.

103. Provide a list of human rights instruments and related protocols ratified by Serbia along with the date of signature and ratification. Include details of any reservations which have been made to those treaties and any declarations recognising the right of individuals to petition committees established by the conventions. In addition, please specify what national legislation and provisions have been adopted to ensure compliance with the obligations flowing from these conventions. How are these implemented and monitored?

a) UN Conventions on Human rights ratified by the Republic of Serbia:

No.	Title	Signed	Ratification/Accession (a), Succession (d)
1.	Convention on the Prevention and Punishment of the Crime of Genocide	SFRY signed and ratified the Convention on 11 th December 1948, that is 29 th August 1950	12. March 2001. a
2.	International Convention on Elimination of all Forms of Racial Discrimination	SFRY signed and ratified the Convention on 15 th April 1966, that is 2nd	12. March 2001. d

		October 1967	
2.a.	Amendments to Article 8 of International Convention on Elimination of all Forms of Racial Discrimination, New York, 15 th January 1992	/	/
3.	International Covenant on Economic, Social and Cultural rights (of 19 th December 1966)	SFRY signed and ratified the Covenant on 8 th August 1967, that is 2nd June 1971	12. March 2001. d
3.a.	Optional Protocol to the International Covenant on Economic, Social and Cultural rights, New York, of 10 th December 2008	/	/
4.	International Covenant on Civil and Political Rights	SFRY signed and ratified the Covenant on 8 th August 1967, that is 2nd June 1971	12. March 2001. d
5.	Faculty Protocol to International Covenant on Civil and Political Rights	12. March 2001	6. September, 2001 d
6.	Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, New York (26 th November 1968)	SFRY signed and ratified the Convention on 16 th December 1968, that is 9 th June 1970	12. March 2001. d
7.	International Convention on the Suppression and Punishment of the Crime of Apartheid, 30 th November 1973	SFRY signed and ratified the Convention on 17 th December 1974, that is 1st July 1975	12. March 2001. d
8.	Convention on the Elimination of All Forms of Discrimination against Women (adopted by UN General Assembly on 18th Dec. 1979)	SFRY signed and ratified the Convention on 17 th July 1980, that is 26 th February 1982	12. March 2001. d
8.a.	Amendments to Article 20 paragraph 1 of International Convention on Elimination of all Forms of Racial Discrimination, New York, 22 nd December 1995	/	/
8.b.	Optional Protocol to the		31. July 2003. a

	Convention on the Elimination of All Forms of Discrimination against Women		
9.	Convention against Torture and other Other Cruel, Inhuman or Degrading Treatment or Punishment	SFRY signed and ratified the Convention on 18 th April 1989, that is 10 th September 1991	12. March 2001. D
9.a.	Amendments to Article 17(7) and Article 18(5) of the Convention against Torture and other Other Cruel, Inhuman or Degrading Treatment or Punishment, New York, 8 th September 1992	/	/
9.b.	Optional protocol to the Convention against Torture and other Other Cruel, Inhuman or Degrading Treatment or Punishment	25. September, 2003	26. September, 2006
10.	International Convention against Apartheid in Sports	SFRY signed and ratified the Convention on 16 th May 1986, that is 22 nd December 1989	12. March 2001. d
11.	Convention on the Rights of the Child	SFRY signed and ratified the Convention on 26 th January 1990, that is 3 rd January 1991	12. March 2001. D
11.a.	Amendments of Article 43(2) of the Convention on the Rights of the Child, New York 12 th December 1995		Adopted 4 th October 2001
11.b.	Optional Protocol to the Convention on the Rights of the Child in Armed Conflict	8. October 2001	31. January 2003
11.c.	Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography to the the Convention on the Rights of the Child	8. October 2001	10. October 2002.
12.	Second Optional Protocol to International Covenant on Civil and Political Rights aiming at the Abolition of Death Penalty		6. September, 2001 a
13.	International Convention on the Protection of the Rights of All	11. November 2004	/

	Migrant Workers and the Members of their Families		
14.	Agreement Establishing the Fund for Development of the Indigenous Peoples of Latin America and the Caribbean, Madrid, 24 th July 1992	/	/
15.	Convention on the Rights of Persons with Disabilities	17. December 2007	31. July 2009.
15.a.	Optional Protocol to the Convention on the Rights of Persons with Disabilities	17. December 2007	31. July 2009.
16.	International Convention for the Protection of All Persons from Enforced Disappearance	6. February 2007	Ratification in progress

The Republic Of Serbia (FRY/SCG) has submitted reservations and statements to the following conventions/ covenants and protocols of UN (serial number is taken from table a) of this answer):

1 . Convention on the Prevention and Punishment of the Crime of Genocide

Notification submitted on the behalf of FR of Yugoslavia to UN Secretary- General on 15th June 1993, and which was submitted before admittance of Yugoslavia as the member of UN by Resolution A/55/12 of 1st November 2000 and before its acceptance of the Convention deposited with Secretary- General on 12th March 2001, states as follows:

“Bearing in mind that the exchange of sovereignty on the part of territory of the Socialist Federative Republic of Yugoslavia, whose part previously was the Republic of Bosnia and Herzegovina before dissolution, was made against the international law, the Government of Federal Republic of Yugoslavia hereby states that it does not consider the so- called Republic of Bosnia and Herzegovina as the party to the Convention on the Prevention and Punishment of the Crime of Genocide, and that it does consider the Republic of Bosnia and Herzegovina to be obliged to respect the norms on prevention and punishment of the crime of genocide pursuant to general international law, regardless of the the Convention on the Prevention and Punishment of the Crime of Genocide.”

2. International Convention on Elimination of all Forms of Racial Discrimination

FR Yugoslavia submitted statement on 26th June 2001 in which it recognises, pursuant to Article 14, paragraph 1 of the Convention, the jurisdiction of the Committee against Racial Discrimination.

4 . International Covenant on Civil and Political Rights

SFRY deposited the following notifications pursuant to Article 4(3) of the Covenant (Derogations), on the dates stated in the following text:

17th April 1989 (dated 14th April 1989)

Derogation from Articles 12 and 21 of the Covenant in the Autonomous Province of Kosovo, starting from 28th March 1989. The measure was necessary because of the violence, which have led to loosing human lives and which present the threat to the constitutional order in the state. This situation, which also presents general danger, endangers the rights, freedoms and security of all citizens in the Province, regardless of their nationality.

30th May 1989 (Dated 29th May 1989) Termination of derogation from Article 12 of the Covenant in the Autonomous Province of Kosovo from 21st May 1989

The right to public gathering (Article 21) is still temporarily suspended, but only in relation to demonstration. This measure aims at the protection of public policy, peace and citizens' rights, regardless of their nationality.

20th March 1990 (Dated 19th March 1990)

From 21st February, caused by escalation in violence, which have led to lost of human lives, the movement of people in Kosovo from 21:00 to 04:00 was forbidden, which was derogation from Article 12; also public gathering with the aim of demonstrating was prohibited, which was the derogation from Article 21. The Government of Yugoslavia also informed that the measure, which was derogation from Article 12, was abolished 10th March 1990.

26th April 1990 (Dated 24th April 1990)

Abolishing of state of emergency entered into force on 18th April 1990

9 . Convention against Torture and other Other Cruel, Inhuman or Degrading Treatment or Punishment

SFRY has signed and ratified the Convention with the submission of the following statement: “Yugoslavia recognizes, pursuant to Article 21, paragraph 1 of the Convention, the jurisdiction of Committee for Prevention of Torture to receive and consider notifications in which it is stated by one of the contracting states of the Convention that the other contracting state does not fulfil the obligations pursuant to the Convention.”

“Yugoslavia recognizes, pursuant to Article 22, paragraph 1 of the Convention, the jurisdiction of the Committee for the Prevention of torture to accept and consider statements from and on the behalf of individuals, who are under its legislative jurisdiction, and who claim that they have been victims of torture by the member state on the behalf of the provisions of the Convention.”

11. Convention on the Rights of the Child

SFRY signed and ratified the Convention with the following reserve:

“Competent authorities (authorities of guardianship) of the Socialist Federative Republic of Yugoslavia are eligible to, pursuant to Article 9, paragraph 1 of the Convention, adopt decisions on depriving parents the right of guardianship over children and on trusting their upbringing without previous legislative decision pursuant to inner legislation of SFRY”.

11. b Optional Protocol to the Convention on the Rights of the Child in Armed Conflict

FR of Yugoslavia upon signing and ratification of the First Protocol submitted the following statement:

“Pursuant to Article 3(2) of the Protocol, I have the honour to inform you that provisions of the Article 291 and 301 of the Law on Yugoslav Army anticipate that conscripts upon becoming 18 could be recruited in the Army of the Federal Republic of Yugoslavia, during that calendar year. Conscript could be recruited exceptionally in the calendar year in which he was seventeen only upon personal request or during state of war upon the command of the President of Federal Republic of Yugoslavia.

Taking account of that, pursuant to law, only persons, who have served military time or have passed obligatory military training could be mobilized, the minimum age for voluntary recruitment in the Federal Republic of Yugoslavia is eighteen years. It is guaranteed that minors will not be forced or coercion to serve military time, pursuant to Penal Law of Federal Republic of Yugoslavia and the laws of their constitutional republics, in relation to criminal offence against civil rights and freedoms and avoiding duties."

b) Council of Europe Conventions on Human Rights, ratified by the Republic of Serbia:

Бр.	Title of Convention	Датим Date of Signing	Датим Date of Ratification	Date of Enter into Force
1.	Convention on the Protection of Human Rights and Fundamental Freedoms	3/4/2003	3/4/2003	3/3/2004
2.	Protocol to the Convention for Protection of Human Rights and Fundamental Freedoms	3/4/2003	3/4/2003	3/3/2004
3.	Second Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms	3/4/2003	3/4/2003	3/3/2004
4.	Third Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms	3/4/2003	3/4/2003	3/3/2004
5.	Fourth Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms	3/4/2003	3/4/2003	3/3/2004
6.	Fifth Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms	3/4/2003	3/4/2003	3/3/2004
7.	Sixth Protocol to the Convention on the Protection of Human Rights and Fundamental Freedoms	3/4/2003	3/3/2004	1/4/2004
8.	Seventh Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms	3/4/2003	3/3/2004	1/6/2004
9.	Eighth Protocol to the Convention for the Protection of Human Rights	3/4/2003	3/3/2004	3/3/2004

	and Fundamental Freedoms			
10.	European Convention on Prevention of Torture and other Other Cruel, Inhuman or Degrading Treatment or Punishment, amended by Protocol I and Protocol II to the Convention	3/4/2003	3/3/2004	1/7/2004
11.	European Charter for Regional or Minority Languages (ETC no 148)	22/3/2005	15/2/2006	1/6/2006
12.	The First Protocol to the European Convention on Prevention of Torture and other Other Cruel, Inhuman or Degrading Treatment or Punishment	3/4/2003	3/3/2004	1/7/2004
13.	The Second Protocol to the European Convention on Prevention of Torture and other Other Cruel, Inhuman or Degrading Treatment or Punishment	3/4/2003	3/3/2004	1/7/2004
14.	The Eleventh Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms restructuring the way of control established by it	3/4/2003	3/3/2004	3/3/2004
15.	Framework Convention for the Protection of Minorities		11/5/2001	1/9/2001
16.	The Sixth Protocol to the General Agreement on Privileges and Immunities (ETC no 162)	26/4/2005	26/4/2005	27/5/2005
17.	Revised European Social Charter	22/3/2005	14/9/2009	1/11/2009
18.	Twelveth Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms	3/4/2003	3/3/2004	1/4/2005
19.	Thirteenth Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms Concerning the Abolition of Death Penalty in all Circumstances	3/4/2003	3/3/2004	1/7/2005
20.	Additional Protocol to the Convention for Cyber Crime Concerning the Criminalisation of Acts of Racist and Xenophobic Nature Committed through Computer Systems	7/4/2005	6/9/2005	1/8/2009
21.	Fourteenth Protocol to the Convention for the Protection of Human rights and Fundamental Freedoms regarding the Amendments on the system for the Control of the Convention	10/11/2004	6/9/2005	1/6/2010

22.	Convention of Council Of Europe on Action against Trafficking in Human Beings (CETS no197)	16/5/2005	14/4/2009	1/8/2009
23.	Convention on the Protection of Children from Sexual Exploitation and Sexual Abuse	25/10/2007	29/7/2010	1/11/2010

The Republic Of Serbia (FRY/SCG) has submitted **reservations and statements** to the following conventions of Council of Europe (serial number is taken from table b) of this answer):

1. Convention for the Protection of Human Rights and Fundamental Freedoms

Ministry of Foreign Affairs of Serbia and Montenegro has submitted the following statement pursuant to Article 57, paragraph 2 of the Convention, with the aim of supplementing information contained in the ratified instrument, which Serbia and Montenegro deposited 3rd march 2004:

“Affirming its readiness to fully guarantee rights pursuant to Article 5 and 6 of the Convention, Serbia and Montenegro declares that provisions of Article 5 paragraph 1 c) and Article 6 paragraph 1 and 3, do not act against the implementation of Article 75 to 321 of the Law on Minor Offences of the Republic of Serbia (*Official Gazette of the Socialist Republic of Serbia*, no 44/89; *Official Gazette of the Republic of Serbia*, no 21/90, 11/92, 6/93, 20/93, 53/93, 67/93, 28/94, 16/97, 37/97, 36/98, 44/98, 65/2001), which regulate the proceedings in front of Misdemeanour Courts.“

Regulative provisions of the law, which are stated in this reservation regulate the following matters:

- proceedings in front of Misdemeanour Courts, including the rights of the charged, rules in relation to proofs and legal remedies (Article 75 to 89 and 118 to 321 of the Law on Misdemeanour of the Republic of Serbia)
- establishing and organization of Misdemeanour Offence Courts (Article 89a to 115 of the Law on Minor Offence of the Republic of Serbia); and
- measures for providing the presence of the accused (Article 183 to 192 of the Law on Misdemeanour of the Republic of Serbia)

Ministry of the Foreign Affairs of Serbia and Montenegro" wishes to inform Secretary-General of the Council of Europe that Serbia and Montenegro will withdraw reserves from their ratification instrument as soon as the mentioned legislation is approximated with the European Convention for the protection of Human Rights and Fundamental Freedoms."

Serbia and Montenegro have put the following **reservation** in its ratified instrument deposited on 3rd March 2004:

“The right to public hearing established by Article 6, paragraph 1 of the Convention does not damage the implementation of principle that courts in Serbia by rule do not perform public trials in administrative disputes. The rule is part of Article 32 of the Law on Administrative Disputes. (*Official Gazette of Federal Republic of Yugoslavia* no 46/96) of the Republic of Serbia.”

11. European Charter for Regional or Minority Languages

Pursuant to Article 2, paragraph 2 of the Charter, Serbia and Montenegro have accepted the implementation of the following provisions:

- in the Republic of Serbia, for the Albanian, Bosniac, Bulgarian, Hungarian, Roma, Romanian, Rusyn, Slovak, Ukrainian and Croatian language:

Article 8, paragraph 1 a (III), a (IV), b (IV), c (IV), d (IV), e (II), f (III), g;

Article 9, paragraph 1 a (II), a (III), b (II), c (II), d, paragraph 2 a, b, c, paragraph 3;

Article 10, paragraph 1 a (IV), a (V), c, paragraph 2 b, c, d, g, paragraph 3 c, paragraph 4 c, paragraph 5;

Article 11, paragraph 1 a (III), b (II), c (II), d, e (I), f (II), paragraph 2, paragraph 3;

Article 12, paragraph 1 a, b, c, f, paragraph 2;

Article 13, paragraph 1c;

Article 14, a, b.

In addition, pursuant to Article 16 of the Charter, Serbia and Montenegro declares that the term "territory on which the regional or minority language is used" means the region in which regional and minority languages are official pursuant to domestic legislation."

17. Revised European Social Charter

Pursuant to Part III, Article A of the Charter, the Republic of Serbia declares that it considers following Articles of Part II of the Charter binding:

Article 1; Article 2; paragraphs 1, 2, 3, 5, 6, 7;

Article 3;

Article 4; Article 5; Article 6; with the exception of professional soldiers of Serbian Army relating to paragraph 4; Article 7; Article 8; Article 9; Article 10; paragraphs 1, 2, 3, 4;

Article 11; Article 12; Article 13; Article 14; Article 15; Article 16; Article 17, paragraphs 1b, 1c and 2; Article 18; Article 19; paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10; Article 20; Article 21; Article 22; Article 23; Article 24; Article 25; Article 26; Article 27; Article 28; Article 29; Article 30.

Answers to questions 102 and 104 from Political Criteria contain information on national legislation and provisions adopted in order to ensure approximation with obligations from ratified international conventions.

Preparing and coordinating the periodic reports of the Republic of Serbia on implementation of fundamental international agreements for the protection of human rights is in the jurisdiction of the Ministry of Human and Minority Rights. The prepared report is submitted by the Ministry to the Government of the Republic of Serbia for adoption. After that the report is submitted to relevant reporting body of the United Nations and is made public. The final remarks and recommendations of the competent UN Committees on the presented reports are submitted to the filed ministries. More details on reporting and reports submitted or presented before the competent UN Committee can be found in Answer to Question 105 of the Political Criteria.

Implementation of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter: Convention)- executing verdicts of European Court for Human Rights

Republic of Serbia is presented before the European court for Human rights by the representative of the Republic of Serbia before the European Court for Human Rights, whose position is regulated by The Regulation on Representative of the Republic of Serbia before European Court for Human Rights (*Official Gazette of the Republic of Serbia* no 61/2006-cleaned text).

This Regulation establishes that the verdicts of European Court for Human Rights in the proceedings in which the Republic of Serbia is one of the parties should be translated and published in *Official Gazette of the Republic of Serbia*. In addition, it is established that if by the verdict of European Court for Human Rights, the Republic of Serbia has breached the Convention, the representative should be responsible on executing sentence.

The European Court for Human Rights has reached a verdict in 49 cases until now in relation to Republic of Serbia. In the largest number of cases the breaching of Article 6 paragraph 1 was ruled for unreasonable long proceedings before courts including the implementation of the verdicts going into effect. In three verdicts there were no breaching of the Convention, which was called upon by complaint submissionaries.

Monitoring the implementation of the decisions of this Court is done by the Committee of Ministers of the Council of Europe pursuant to Article 46 of the Convention. Contracting parties have agreed on obligation to comply to the effective verdict of the Court in any case in which they participate as the contracting parties. Effective verdicts of the Court are submitted to the Committee of Ministers of the Council.

Retroactive implementation of the European Convention for the Protection of Human Rights and Fundamental Freedoms exist in cases when there is continuing breaching of some of the rights provided by the Convention. In relation of Republic of Serbia the largest number of cases the retroactive implementation of the European Convention is present in verdicts in which breaching of the right for fair trial is established from Article 6 of the Convention, such as in paragraph 1, which inter alia, establishes the right for the trial in reasonable time frame. The problem is in long lasting trials before courts, and inter alia, the executive procedures.

104. What is the rank of these conventions in your domestic legal system including your constitution? Have you introduced the direct applicability of international conventions in domestic law in all cases?

In accordance with the Constitution of the Republic of Serbia, generally accepted rules of International Law and ratified international treaties are part of the legal system of the Republic of Serbia and have direct applicability. Ratified international treaties shall comply with the Constitution (Article 16, paragraph 2). Ratified international treaties and generally accepted rules of International Law are part of the legal system of the Republic of Serbia. Ratified international treaties shall not be in conflict with the Constitution. Laws and other general acts passed in the Republic of Serbia shall not be in conflict with the ratified international treaties and generally accepted rules of International Law (Article 194, paragraphs 4 and 5). Article 18, paragraph 2 of the *Constitution* stipulates that the Constitution shall guarantee, and as such, directly implement human and minority rights guaranteed, inter alia, by ratified international treaties and laws.

105. What steps have been taken to cooperate with UN bodies dealing with human rights issues, including visits by UN special mechanisms (such as special rapporteurs), reporting to Treaty bodies and responding to Treaty body recommendations?

Priorities in the area of cooperation with UN bodies are: Affirmation of the politics of the Republic of Serbia on international level in the area of human rights and monitoring of current events in the area of human rights; reporting on the achieved results on the plan of improving human rights in the Republic of Serbia and pointing out problems in relation to the respect of human rights in Kosovo; participation in the segment for high officials of General Annual Meeting of UN Human Rights Council (minister's level), and monitoring regular sessions of the above mentioned Council (expert level); approximation to European standards in the area of human rights; affirmation of politics of the Republic of Serbia in combating all forms of discrimination; participating in The Review Conference on the implementation of the Durban Declaration and Programme of Action (DDPA) and continuing cooperation with countries, which have signed the Declaration; participation on the session of the Third Committee of UNGA; providing further assistance of international institutions in solving problems of refugees and IDPs in Republic of Serbia; participation in regular annual session of High Commissioner for Refugees and continuing the activity of UNHCR in the Republic of Serbia; inclusion of Republic of Serbia in global trends in the area of migration and providing support for practicable projects for migrants in the Republic of Serbia.

Ministry of Human and Minority Rights

Pursuant its jurisdiction, the Ministry of Human and Minority Rights prepares and coordinates the periodical reports on main international agreements for the protection of human rights. The Ministry submits the prepared report to the Government of the Republic of Serbia for adoption. After that the report is submitted to relevant reporting body of the United Nations and is made public.

The Republic of Serbia has submitted to competent reporting bodies of the United Nations following reports until now: The Initial Report on Implementation of International Covenant on Civil and Political Rights (July 2004), the Initial Report on Implementation of International Covenant on Economic, Social and Cultural Rights (May 2005), the Initial Report on Implementation of Convention on Elimination of All Forms of Discrimination against Women (May 2007), The Initial Report on Implementation of Convention on the Rights of the Child (May 2008), the Initial report on Implementation of Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (November 2008). The Initial Report on Implementation of Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict and the Initial Report on Implementation of Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography have been submitted for consideration to the Committee on the Rights of the Child in April 2008 and presented to the Committee in May 2010. In addition, the Second Periodical Report on Implementation of International Covenant on Civil and Political Rights was submitted to the Human Rights Committee for consideration in December 2008. The Initial Report on Implementation of International Convention on the Elimination of all Forms of Racial Discrimination was submitted to the Committee on the Elimination of Racial Discrimination in June 2009.

In December 2008, the Republic of Serbia underwent the process of the universal periodic review before the United Nations Human Rights Council. On 10th December 2008, the Working Group on UPR has adopted the conclusions and recommendations for RS (official title- "The Report on the Review of Serbia Report"). RS has, pursuant to mechanisms of UPR process, submitted its Answers to the Conclusions and Recommendations of the Working Group, most of which were accepted by RS, while the explanations for non-acceptance or partial acceptance of some were presented. The Report of RS on the condition of human rights is available at: <http://www.mfa.rs/Srpski/Foreinframe.htm>. The adopted report for RS, as the part of Human Rights Committee General Report on UPR Process for 2009, was submitted to the UN General Assembly for adoption.

In December 2009, the Republic of Serbia has submitted the Answers to the Questions of the Committee against Torture.

During 2008, the Ministry of Human and Minority Rights started the process of the reform of the present system of reporting. The basis of the reform is to establish interdepartmental mechanism for reporting and to include non-governmental organisations into the process. The Ministry of Human and Minority Rights has signed the Memorandum on Cooperation with the Non-Governmental Sector on 9th February 2009, with the obligation for the parties to provide regular exchange of information in the future on activities related to preparation, adoption and implementation of the laws and strategies in the area of respect of human rights and principal freedoms, in relation to reporting on implementation of accepted international obligations, as well as other activities in the jurisdiction of the Ministry.

In May 2009, The Conference on Reporting to Treaty Bodies of the United Nations was organised and its main aim was adjusting guidelines for reporting on international treaties on human rights, with the special emphasis on widening the joint basic document. The intention of the Ministry of Human and Minority rights has been to establish such way of periodic reporting on implementation of international treaties for the protection of human rights as the model of good practice to be applied in the new reporting system.

The joint basic document on the Republic of Serbia was adopted by the Government in August 2010.

The Second and Third Periodic Report on the Implementation of Convention on the Elimination of all Forms of Discrimination against Women and the Second Periodic Report on Implementation of International Covenant on Economic, Social and Cultural Rights are in the process of gaining opinion at the moment and the submission to competent Committees is expected by the end of 2010, together with the Joint Basic Document. The work on the preparation of the Initial Report on Implementation of Convention on the Rights of Persons with Disabilities has also started.

Cooperation with Special Rapporteurs

The Republic of Serbia fully cooperates with the UN bodies dealing with human rights issues in relation to information submission on cases of violation of human rights or inhuman and degrading treatment, as well as in relation to providing free access of UN special mechanisms when visiting persons deprived of liberty. The recommendations of UN bodies are integrated

into amendments of legislative regulations, which includes penal and legal matters and the matter of implementation as well as the position and rights of persons deprived of liberty.

In June 2008, the UN Assistant High Commissioner for Refugees **Erika Feller** was in official visit to Belgrade with the objective to meet with high state officials and consider possibilities for solving problems of implementation of the Sarajevo Declaration, that is to discuss open issues between Serbia and Croatia in relation to solving refugee matters.

António Guterres, High Commissioner for Refugees (HCR) has visited Belgrade as part of his visit to the region, beside the Republic of Croatia and Bosnia and Herzegovina on August 27th-28th 2009 on the invitation of Deputy Prime Minister of the Republic of Serbia and has had talks with the highest state officials. The aim of the HCR visit to the region was to provide the continuing of the initiative for solving the problem of long-term refugees in direct contact with representatives of the states involved. The problem of long-term refugees in RS, HCR sees as the test of competence for international community and UNHCR in order to find solutions for the only situation of such kind in Europe. The Office of HCR with its initiatives has, until now, managed to focus the attention on this "neglected" problem, while it assumes that the final objective would be the closing of all refugee camps in RS and solving the problem of the dwelling rights and accomodation in Croatia.

On 25th March 2010, the **International Conference "Permanent Solutions for Refugees and Internally Displaced Persons – Cooperation of Countries of the Region"** was held in Belgrade, where Ministers of Foreign Affairs of the Republic of Serbia, Bosnia and Herzegovina, Croatia and Montenegro participated, as well as the representatives of international organisations such as: the European Union, UN High Commission for Refugees, Organisation for Security and Co-operation in Europe and the Council of Europe. With the aim of discussing achieved results it has been agreed that the regional review conference should take place in the beginning of 2011.

Special Procedures

The Republic of Serbia (State Union Serbia and Montenegro) has submitted, in October 2005, standing invitation for special procedure visits, which proves that it is prepared and ready for cooperation with the UN Human Rights Council in order to improve human rights on the national level. The visits of special UN rapporteurs for human rights to RS are of significance for perceiving the state of human rights in Kosovo and Metohija and drawing attention of international community to the problem of violation of human rights of non-ethnic Albanian communities in the Province. In 2009, two special rapporteurs have visited RS:

- **Asma Jahangir**, UN Special Rapporteur of the Commission on Human Rights on Freedom of Religion or Belief has visited Serbia in the period April 30th to May 8th 2009. In talks with high officials of state administration, who are competent for matters of freedom of religion, she was introduced to the state of affairs in RS.

- **Walter Kelin**, Special Representative of the UN Secretary General for Internally Displaced Persons, visited RS from June 28th to July 4th 2009. The visit was initiated with the objective of perceiving the actual state of human rights of IDPs in RS and implementing recommendations already provided in his report after the visit in 2005. In addition to meeting high officials from relevant fields and state institutions, W. Kelin has visited one of the refugee centres in which IDPs live, he also met representatives of organisation of IDPs and families of those who returned to Kosovo.

The reports on visits to RS were discussed and adopted on the 13th Session of UN Human Rights Council in Geneva in March 2010.

The Ministry of Human and Minority rights prepares, almost on daily basis, additions to numerous reports of special representatives on implementation of UN resolutions as well as information regarding the state of human rights for other relevant UN bodies in the system for human rights.

UN Treaty Bodies Recommendations

The Republic of Serbia has submitted initial reports on implementation of ratified conventions from the area of human rights and only upcoming periodic reports to the competent committees of UN will include the review of practical application and implementation of recommendations and concluding commentaries of competent committees of UN submitted to the initial reports. Recent practice proves that competent ministries and other competent state authorities, in the area of their jurisdiction, are taking care of the implementation of recommendations of adopted relevant laws, other regulations and adequate measures. The concrete example is adoption of the Law on Prohibition of Discrimination and the Law on Gender Equality. The Ministry of Justice has started a number of activities in order to fulfil recommendations of UN treaty bodies, mainly in relation to harmonizing the legislation with international agreements, monitoring of court proceedings and vocational training of the employees in legal bodies, depending on the area of the international agreement itself.

106.What are the competences of the Ombudsman in the field of human rights, the rights of women, rights of children and protection of minorities?

The Ombudsman protects (all) guaranteed rights of citizens, controls the regularity and legality in the work of state and other organs of public administration, and ensures that human and minority freedoms and rights are protected and promoted. According to the Law on Ombudsman, the Ombudsman acts in accordance with international and domestic acts in the performance of his/her duties. The Ombudsman has four deputies that help him/her in performing the duties prescribed by the Law, and within the powers delegated to them by the Ombudsman. In accordance with the Law, when delegating powers to deputies, the Ombudsman has to ensure special expertise, primarily in respect to the protection of rights of persons deprived of their liberty, gender equality, children's rights, rights of national minorities and rights of persons with disability. Special expertise of Ombudsman's deputies enables devoting expert attention to specified, specially vulnerable groups ensuring at the same time a high level of integrity and authority of protection. The Ombudsman's office has a separate organizational unit for each of the special fields of protection.

The Ombudsman has formed special advisory-expert bodies (the Ombudsman's Councils) through his decisions, whose members are the most eminent experts in certain areas who are not employees in the Ombudsman's Office. The Councils and their members contribute to the overall picture of complex and specific issues in certain areas of the Ombudsman's work with their opinions, suggestions, analyses and special reports. The Ombudsman has formed the Councils in the following areas: protection of rights of persons deprived of their liberty,

gender equality, children's rights, rights of national minorities and rights of persons with disabilities.

In addition to the right to initiate and conduct proceedings, the Ombudsman has the right to act preventively by offering good services, negotiating between citizens and administrative authorities and giving advice and opinions related to the issues from his/her competence, with the view of improving the work of administrative authorities and protecting human rights and freedoms.

107. Provide statistics on cases received in those fields by the Ombudsman in the five last years, the number of recommendations he has made, and the number of his recommendations which have been implemented by the relevant authorities.

Number of complaints received per year according to the rights violations

Year	General human rights	Rights of persons deprived of liberty	Gender equality	Child rights	Rights of persons with disability	National minority rights	Good governance	Total
2007	337	12	1	7	3	3	43	406
2008	639	67	6	31	14	15	258	1.030
2009	727	81	40	160	52	54	662	1.766
2010	696	189	59	227	94	93	1.292	2.650
Total	2.399	349	106	425	163	165	2.255	5.852

Annex: Recommendations according to the authority action 2008-2010

108. What other independent bodies, supported by the State budget, exist in Serbia for the protection and promotion of fundamental rights? What are the tasks and powers of these bodies?

(For more detailed questions please see chapter 23).

Commissioner for the Protection of Equality

The Law on the Prohibition of Discrimination (“Official Gazette of Republic of Serbia”, No 22/209) establishes the Commissioner for the Protection of Equality as an independent state authority elected by the Assembly of the Republic of Serbia. Commissioner is independent in performing tasks under its jurisdiction, and the financial resources necessary for it to fulfill its duties are provided by the budget of the Republic of Serbia.

Commissioner receives and considers complaints for breaching provisions of this law; provides opinions and recommendations in particular cases and decides on the measures; provides information to the complaint applicant on the rights and possibilities of legal proceedings or other forms of protection; recommends implementing the procedure of reconciliation, with the compliance of the parties; files complaints and criminal allegations

for breaching the rights of this law; submits annual and special reports to the National Assembly on breaching the provisions of this law and informs the public about it; states warnings to the public about the most common, typical and the hardest cases of discrimination with the help of public media or in other ways, supervises the implementation of the law and other regulations, initiates the adoption or amendment of regulations for better implementation and improvement of protection against discrimination and provides opinion on provisions of drafted laws and other regulations relating to prohibition of discrimination; establishes and maintains cooperation with independent competent authorities for equality implementation and protection of human rights on the level of local self- government and territorial autonomy; provides recommendations to the public administration authorities and other individuals on measures for implementing equality.

Answer to question 124 of Political Criteria contains more information on duty and authority of Commissioner for the Protection of Equality.

Ombudsman

The Constitution of Republic of Serbia (Article 138) establishes that Ombudsman is independent state authority, who protects the rights of citizens and monitors the work of state authority bodies, competent authority for legal protection of property rights and interests of the Republic of Serbia, as well as other authorities and organisations, enterprises and companies with public authority. Ombudsman controls the legitimacy, as well as the regularity of public authority bodies, taking into account the righteousness and appropriateness of their work and the respect of dignity of citizens. Ombudsman is not authorised to monitor the work of the National Assembly, President of the Republic, Government, Constitutional Court, other courts and public prosecutors. Ombudsman is elected and released from duty by the National Assembly. Ombudsman is responsible for its work to the National Assembly and enjoys the same immunity as the Members of Parliament. National Assembly decides on immunity of the Ombudsman.

Ombudsman was introduced into the legislation of Republic of Serbia with the Law on Ombudsman (*Official Gazette of Republic of Serbia*, no 79/2005 and 54/2007). The law anticipates that Ombudsman has three deputies, who help in performing certain tasks and who are specialized in the areas of the protection of persons deprived of liberty, gender equality, children's rights, minority rights and the rights of people with disabilities. Ombudsman has been elected on the Session of National Assembly of Republic of Serbia on 29th June 2007 and began his duties on 23rd July 2007. Competent service of the Ombudsman has begun its duties on 24th December 2007.

Ombudsman of Republic of Serbia has received overall 5 241 official citizen complaints in the period of past three years. In order to get introduced to various violations of human rights, Ombudsman maintains contact with the citizens. 19 221 such contacts have been made during that period. According to specific legislative areas the most common are the complaints for violation of economic and social rights, and the most of citizen' complaints has been on "The silence of administration". According to complaints the most violated are the rights of those employed on permanent basis and the right to work (10,82%), as well as the right on pension and invalid insurance (8,99%). The highest number of complaints is directed against the work of public authorities (2343), and the work of different ministries comes after that (1279).

If Ombudsman decides that citizens' rights have been violated because of the shortcomings in provisions, Ombudsman is authorised to submit the initiative for amending of legal provisions to Government, that is Assembly pursuant to Article 18 of the law, that is to initiate the adoption of new legal provisions when he considers it to be of importance for implementing and protection of citizens' rights. If he considers it necessary, Ombudsman is authorised to propose directly to National Assembly, as the authorised proposer, adoption of the new law, and according to this, has the right to submit amendments to legal proposals that are in Assembly procedure.

Ombudsman has submitted several tens of initiatives and more than 10 amendments to law proposals, most of which has been accepted.

Budget for complete legal activities of Ombudsman for 2008 was overall 92 247 657,00 Serbian dinar (877 000 Euro according to Official middle exchange rate on 24th October 2010), 107 257 000 Serbian dinar (1 020 000 Euro) for 2009, and 121.645.000 Serbian dinar (1 157 000 Euro) for 2010, which is in accordance with financial requests stated in the plans for the mentioned years submitted for adoption to Ministry of Finance by Ombudsman. In the overall financial resources gained from the Budget of Republic of Serbia for the work of Ombudsman there is no special identifying of means for areas practiced by deputies of Ombudsman, but they are accessible according to the proposed and practiced activities of deputies.

Answer to question 50 of Political Criteria more information on the role of Ombudsman related to his control of legality and regularity of public authority bodies can be found.

Provincial Ombudsman/ Autonomous Province Ombudsman

Provincial ombudsman was established in 2002 with the Assembly Decision of Autonomous Province of Vojvodina on Provincial Ombudsman (*Official Journal APV*, no. 23/02, 5/04, 16/2005 and 18/2009). The Head Office of Provincial Ombudsman is in Novi Sad, and also two regional offices have been established, in Pancevo and Subotica. Ombudsman has five deputies (for protection of national minorities, for protection of child's rights, for gender equality and for general questions) elected by the Assembly of Autonomous Province of Vojvodina for the period of six years.

During 2008 Provincial ombudsman acted on 597 complaints, which is almost the same number as in 2007 when there have been proceedings according to 605 complaints. Apart from the complaints, which were followed by legal proceedings, about another 2000 requests from citizens were registered, which were not followed by legal proceedings for different reasons (complaint not submitted in due time, ombudsman not authorised for the matter, not using the available legal remedies, etc.), and in these cases the citizens were also pointed out the possibilities at their disposal in order to protect their rights.

Financial resources for the work of Provincial Ombudsman are supplies through the Budget of AP of Vojvodina. Pursuant to Decision on Budget of AP of Vojvodina for 2008 (*Official Journal APV*, no 21/08), planned budget income was 35.914.331,60 Serbian dinars (342 000 Euro), while overall 33.506.357,42 Serbian dinars (319 000 Euro) was spent, that is the budget resources were spent by 93,30% according to plan.

During 2009 Provincial ombudsman acted in 730 cases, which makes increase of 133 complaints or 22,28 percent higher than previous year, while in 2010 Provincial Ombudsman acted in 747 cases (until 20th December 2010). In addition to complaints, which were followed by proceedings, about 3000 of citizen's requests were registered annually, and there were no proceedings for different reasons, such as no authorisation, complaint not submitted in due time and not using the regular legal remedies. There has been an increase in the number of cases in which during the investigation the breach of right of citizens for which they complained to Provincial Ombudsman was removed, and also the increase in number of cases in which Provincial Ombudsman made recommendations to certain institutions to remove the breaching of certain right were adopted, which confirms the increase of reputation of this institution. During 2009 and 2010 Provincial Ombudsman has received a large number of complaints in the area of employment and social politics, town planning, spatial planning, protection of the environment and communal services. The main problem for which the largest number of citizens were addressing Ombudsman was inefficient and slow problem solving of their complaints by local institutions and local self- government, breach of stated deadlines and not fulfilling decisions, which have entered into force.

Unfortunately in 2009 in Autonomous Province of Vojvodina different attacks on ethnic minority members and their property occurred, as well as attacks on religious objects, writing of graffiti with messages of hatred and intolerance and breaking into cemeteries, where most commonly monuments are desecrated in different ways. Provincial Ombudsman ex- officio has started several proceedings of investigation of incidents and invited competent authorities to act according to law in timely manner and support humanity, tolerance and acceptance of difference, which is the foundation of all human rights.

Financial resources for the work of Provincial Ombudsman are supplied through the Budget of AP of Vojvodina. Pursuant to Decision on Budget of AP Vojvodina for 2009, planned budget for Provincial ombudsman was 37,623,027.00 Serbian dinars (358 000 Euro), while overall 35,089,421.77 Serbian dinars (334 000 Euro) was spent, that is the budget resources were spent by 93.26% according to plan. Disposable financial resources for 2010 were 41.673.000 Serbian dinars (396 000 Euro).

Ombudsman on Local Level

Ombudsman on local level is anticipated in the Law on Local Self- Government ("Official Gazette of the Republic of Serbia", no 9/02, 33/04, 135/04, 62/06, 129/07). Unit of local self- government can appoint Ombudsman, who is authorised to control the respect of human rights of citizens, register the breach of legality by certain documents, acts or not doing by public authority bodies and public services, if the matter of breach of provisions or general acts of the unit of local self- government is in question (Article 97 paragraph 1). They have been appointed on local levels in 15 towns until now.

Commissioner for Information of Public Importance and Personal Data Protection

Status, Authority and Obligations

Commissioner for Information of Public Importance is established by the Law on Free Access to Information of Public Importance from 2004. (hereinafter: LFAIPI) as an independent and autonomous state authority. With the adoption of the Law on Personal Data Protection in

October 2008 (hereinafter: LPDP) and with gaining new authorities, it was renamed the Commissioner for Information of Public Importance and Personal Data Protection (hereinafter: Commissioner) starting from 1st January 2009.

Commissioner is elected by National Assembly of Republic of Serbia for the period of seven years, with the possibility that the same persons is elected twice at the most. Condition is that the person elected for the position is with established reputation and competency in the area of human rights, with the degree in Law and at least 10 years of professional experience. He is not allowed to take another position or to be employed on other position in state authority or political party. In performing his duties, Commissioner is independent and autonomous, does not ask or receive orders or guidelines from state authority or other individuals and cannot be called on account for stated opinions or issued proposals while performing his duty.

Pursuant to Law, Commissioner has two deputies, elected by National Assembly, upon his proposals, and whose mandate lasts for seven years, with the possibility of another mandate for the same person. Commissioner is financed from the Budget of Republic of Serbia.

Commissioner's authority in the area of free access to information of public importance:

- acts on appeals on decisions of state authorities, which violated the right to free access to information of public importance, aside from decisions of National Assembly, President of the Republic, Government, Constitutional Court, Supreme Cassation Court and Public Prosecutor of the Republic.
- monitors the fulfillment of obligations by the public authorities regulated by this Law and report to the public and National Assembly thereof;
- initiates the preparation or change of regulations for implementation and promotion of the right to access information of public importance;
- proposes to public authorities measures to be taken to improve their work regulated by this Law;
- undertakes necessary measures to train employees of state authority bodies and to inform the employees of their obligations regarding the rights to access information of public importance with the aim of effective implementation of this Law;
- informs the public of the content of this Law and the rights regulated by this Law and performs other duties set by this Law;
- initiates the procedure for the evaluation of the constitutionality and legality of the Law and other general documents;
- publishes and updates guideline booklet with practical instructions for an efficient exercising of the rights regulated by LFAIPI in Serbian language, and also in other languages, determined according to law as official languages;
- informs the public through press, electronic media, Internet, public workshops and in other ways about the contents of the booklet on application of LFAIPI;
- publish guidelines according to which the Information Booklet on work of the government authority bodies is published.

Authority of Commissioner in the area of personal data protection is:

- supervises the implementation and enforcement of LPDP, that is supervises the implementation of data protection;
- decides on appeals in cases set out by this Law;
- Maintains the Central Register of data collection and publishes it on the Internet;

- supervises and allows transborder transfer of data from the Republic of Serbia;
- points out the identified cases of abuse in data collection;
- produces a list of countries and international organisations with adequate provisions on data protection;
- gives opinion on the formation of new data file, that is in cases of introduction of new information technologies in data processing;
- gives opinion in case of doubt whether a data set constitutes a data file within the scope of this Law;
- gives opinion to the Government in the procedure of adoption of provision on ways of registering data and the measures of data protection for particularly sensitive data;
- monitors the implementation of measures for data protection and proposes improvements of measures;
- gives proposals and recommendations for improving data protection;
- gives prior opinion on whether a certain processing method constitutes specific risk for a citizen's rights and freedoms;
- keeps up to date with the data protection provisions in other countries;
 - cooperates with competent authorities responsible for data protection supervision in other countries;
- determines the way in which data are to be handled if a data controller ceased to exist, unless provided otherwise.

The Commissioner submits the annual report to the National Assembly on measures taken by state authorities in implementing LFAIPI and LPDP, as well as on his own work and expenditures, within three months from the end of fiscal year. Commissioner submits other reports to National Assembly, when he finds it necessary. He submits the report to President of the Republic, Government and Ombudsman and makes it available to the public through appropriate means.

Commissioner for information in Republic of Serbia is elected by Decision of National Assembly of Republic of Serbia, RS, number 91 from 22nd December 2004 and elected once again, before the end of his mandate, after the adoption of new Constitution, by decision of National Assembly RS, number 19 from 29th June 2007, with the mandate running from the first election. Commissioner's Office started with its duties on 1st July 2005.

Decision of National Assembly RS number 9 from 3rd April 2006 appointed Deputy Commissioner responsible for free access to information. Decision of National Assembly number 1 from 23rd March 2010 appointed Deputy Commissioner responsible for personal data protection.

Commissioner's action in the area of free access to information of public importance

Commissioner presents statistical data in the area of free access to information of public interest from 2005, when Commissioner's Office was set and started to act upon the citizen's complaints.

As protector of the right for free access to information of public interest, Commissioner since the beginning of its work resolved 6 355 complaints of citizens, journalists and other individuals, of which 5 686 complaints were founded (89,5%), 292 complaints (4,6 %) were rejected for formal shortcomings, and 377 complaints (5,9%) were unfounded.

According to grounded appeals Commissioner has brought 2 240 decisions and ordered state authorities to act upon request, in 3 373 cases the procedure was stopped, since after the stated complaint and intervention by Commissioner the authority acted upon request, and in 73 cases the decision of state authority was annulled and the case returned for another procedure and decision. In relation to Commissioner's proposals state authorities did not act in 398 cases (17,7 %), which makes 6,9% in relation to overall number of founded complaints.

According to LFAIPI, the decisions of Commissioner are final, executive and binding (Art. 28). Until the final amendments of LFAIPI from May 2010. were made (*Official Gazette of RS* 36/10), if needed, Government provided the implementation of the Commissioner's decisions. According to up- to- date practice the mechanism of providing implamantation of Commissioner's decisions was inadequate and Government did not implement them.

With amendments to LFAIPI adopted in May 2010, Commissioner gained executive authority to implement the procedure of enforced implementation of his decisions, upon the proposal of information seekers, and if this has no effect, Government will provide the implemantation of his decisions with direct enforcement.

By the end of November 2010, 106 proposals for implementation were submitted to Commissioner, of which 80 are resolved. 29 financial fines were decided as forceful measure for the implementation of decision. In 40 cases procedure was stopped because it was acted after the conclusion on the permit for implamentation, and other cases are in progress.

Commissioner does not have sufficient number of civil servants in relation to tasks under the law and the amount of work, because of the problems with financial resources from the beginning of work.

Commissioner's action in the area of personal data protection

Although LPDP has been applied since January 2009, because of untimely financial resources and office space for Commissioner, in Commissioner's Service individuals were employed on the position of inspector in the end of 2009 and during 2010, so that all monitoring was during 2010. Commissioner has monitored 37 handlers until 5th December 2010, of which 21 on his own initiative and 16 according to received requests.

Upon request of state authorities, legal entities and individuals, as well as on his own initiative, Commissioner issued 91 opinions, that is explanations in relation to personal data digestion until 5th December 2010.

In relation to two regulations Commissioner prepared and submitted more detailed reports, upon request of relevant state authorities, until 5th December 2010.

Commissioner issued 26 warnings to data handlers, in whose work irregularities were found in the processing of personal data, until 5th December 2010. In 22 of these cases it was acted on the warning of Commissioner, in two cases there was no action, and in two cases the action was partial.

Until 5th December 2010, Commissioner issued three decisions on ordering deleting (termination) of acquired data without legal basis and all decisions were implemented.

Until 5th December 2010, Commissioner has lodged one appeal against data handler for rejection of deleting data. Deciding upon appeal is in progress.

Commissioner has submitted 19 requests for **launching of misdemeanour proceedings** before **Misdemeanour Courts** until 5th December 2010. Misdemeanour proceedings are not finalised.

Until 5th December 2010, Commissioner has lodged 18 criminal allegations against unknown perpetrators to competent public prosecutors, for unauthorised collecting of personal data from Article 146 of the Criminal Code. Out of overall number there are 16 criminal allegations for the misuse of signing in the individual election lists of national minorities (allegations for criminal offence of unauthorised collection of personal data under Article 143 of CC and criminal offence of forgery of identification card under Article 355 CC) damaging several hundred citizens of RS. According to Commissioner's findings until 5th December 2010, not only that is has not been discovered who perpetrators of stated criminal offences were, but no criminal procedures have been launched against the responsible individuals, the fact about which Commissioner warned several times and asked the competent prosecution authorities to put in procedure these criminal allegations as soon as possible.

Until 5th December 2010 no data handler, to whom the Decision brought by Commissioner for inadequate personal data handling applies, was not prosecuted in Administrative Court.

Civil and political rights

109. Please provide an overview of legislation or case law relevant to the right to life (Art. 2 of the Charter of Fundamental Rights of the EU and Art. 2 of the European Convention on Human Rights).

Right to life

Under Article 24 of the Constitution of the Republic of Serbia, titled: Right to Life, the inviolability of human life is guaranteed, there is no death penalty in the Republic of Serbia and cloning of human beings is prohibited. The inviolability of human life is absolute, as is its criminal law protection. Criminal law protection is abandoned solely in certain cases, when the deprivation of other person's life is the only way to protect life, i.e. in the cases relating to the exclusion of unlawfulness (right of self-defence and necessity). Human life is protected from its beginning until the end, regardless of its quality and form.

Death penalty is abolished in the criminal legislation of the Republic of Serbia in 2002. Regulations in force of the Republic of Serbia, as well as the Criminal Code (*Official Gazette of the RS* No. 85/2005, 88/2005 – corr., 107/2005 – corr., 72/2009 and 111/2009), do not contain provisions relating to the death penalty.

Under the Criminal Code the right to life is protected through defined offences in Chapter XIII – “Offences Against Life and Limb”, inclusive of: murder (Article 113), aggravated

murder (Article 114), manslaughter in a heat of passion (Article 115), infanticide (Article 116), mercy killing (Article 117), negligent homicide (Article 118), incitement to suicide and aiding in suicide (Article 119).

Under the Criminal Code, Chapter XXVIII – “Criminal Offences against the Constitutional Order and Security of the Republic of Serbia” defines the offence relating to the assassination of the highest officials (Article 310). Under the Criminal Code, Chapter XXXIV – “Criminal Offences against Humanity and other Right Guaranteed by International Law”, the following offences are defined: genocide (Article 370), crimes against humanity (Article 371), war crime against civilian population (Article 372), war crimes against the wounded and sick (Article 373), war crimes against prisoners of war (Article 374), organizing and incitement to genocide and war crimes (Article 375), unlawful killing and wounding of enemy (Article 378), aggressive war (Article 386), international terrorism (Article 391), taking hostages (Article 392).

In addition to this, there are groups of offences jeopardizing human life, such as:

- the acts against human health (offences relating to the abuse of drugs, formerly defined by the Basic Criminal Code; as well as novel offences pertaining to this group: transmitting HIV infection, illegal conducting of medical experiments and testing of drugs, malpractice in preparing and issuing medicaments),
- offences against general safety,
- offences against road traffic safety,
- offences against the environment

The right to life is protected by several international and regional treaties for the protection of human rights. The Universal Declaration of Human Rights presents the first comprehensive instrument on human rights the UN General Assembly has accepted as a resolution, i.e. an instrument that is not legally binding. However, it set the “common standard” for the observance of the stated rights and liberties, performing a great influence on the future international conventions having legislative character as well as on internal legal state systems, inclusive of the Republic of Serbia.

The most important acts the Republic of Serbia has ratified are as follows: International Covenant on Civil and Political Rights of the United Nations (*Official Journal of the SFRY* No. 7/71) – signed on 16 December 1996 in New York, ratified by the relevant body of the SFRY (successor in title is the Republic of Serbia) on 30 January 1971 and came into force on 23 March 1976, Second Optional Protocol on Civil and Political Rights of the United Nations (*Official Journal of the FRY – International treaties* No. 4/2001) – ratified in June 2001, European Convention for the Protection of Human Rights and Fundamental Freedoms of the Council of Europe (*Official Journal of SCG – International Treaties* No. 9/2003, 5/2005 and 7/2005 - corr.) with the accompanying protocols: Protocol 6 and Protocol 13, as well as the European Convention on Extradition (*Official Journal of the FRY – International Treaties* No. 10/2001) – confirmed by the relevant body of the FRY (successor in title is the Republic of Serbia) on 5 November 2001.

The International Covenant on Civil and Political Rights of the United Nations and The European Convention for the Protection of Human Rights and Fundamental Freedoms of the Council of Europe explicitly demand that every signatory state should guarantee the right to life and therefore abolish the death penalty in accordance with the law.

As for the death penalty, the Federal Republic of Yugoslavia (successor in title is the Republic of Serbia) ratified in June 2001 the Second Optional Protocol to the International Covenant on Civil and Political Rights (*Official Journal of the FRY – International Treaties* No. 4/2001), committing to the abolishment of the death penalty. Apart from this, the State Union Serbia and Montenegro (successor in title is the Republic of Serbia) on the day of its accession to the Council of Europe on 3 April 2003, signed Protocol No. 6 to the European Convention for the Protection of Human Rights and Fundamental Freedoms of the Council of Europe (*Official Journal of SCG – International Treaties* No. 9/2003), binding the state to abolish the death penalty, except for offences committed during war or immediate danger of war, as well as Protocol No.13, abolishing the death penalty without any exceptions.

In accordance with the ratified European Convention on Extradition (*Official Journal of the FRY – International Treaties* No. 10/2001), during the conclusion of bilateral treaties the Republic of Serbia has to take into account that an individual cannot be extradited to another state if threatened by the risk of the execution of the death penalty in the said state.

The International Covenant on Civil and Political Rights of the United Nations (*Official Journal of the SFRY* No. 7/71) and The European Convention for the protection of Human Rights and Fundamental Freedoms of the Council of Europe (*Official Journal of SCG – International Treaties* No. 9/2003, 5/2005 and 7/2005) require from the states to protect human lives from inflicted deprivation of life. This primarily refers to the actions performed by state security forces. However, every use of force by the police having death as a consequence is not regarded as the violation of the right to life. Necessary use of force aimed at self-defence, necessity, lawful arrest or preventing the escape of a person lawfully detained, actions lawfully taken for the purpose of quelling a riot or insurrection stated in Article 2(2) of the European Convention for the Protection of Human Rights and Fundamental Freedoms of the Council of Europe are not regarded as inflicted deprivation of life provided they meet the criteria provided for by domestic legislation. Therefore, every state has to control strictly and limit the situations in the course of which a citizen could be deprived of life during the actions undertaken by state authorities.

Health care

- Legal framework

Health care of the citizens of the Republic of Serbia is guaranteed under Article 68(1) of the Constitution of the Republic of Serbia according to which everyone has the right to protection of their physical and mental health.

In the scope of legislative activities, the Law on Medicines and Medical Devices was adopted in 2004 (*Official Gazette of the RS* No. 84/04) as well as the Law on the Protection of Citizens from Contagious Diseases (*Official Gazette of the RS* No. 125/04). The Law on the Substances Used in the Illegal Production of Narcotics and Psychotropic Substances (*Official Gazette of the RS* No. 107/05) was adopted in 2005 as well as the systemic laws: The Law on Health Care (*Official Gazette of the RS* No. 107/05), The Law on Health Insurance (*Official Gazette of the RS* No. 107/05), Law on Health Professionals' Chambers (*Official Gazette of*

the RS No. 107/05). Corresponding by-laws were adopted in accordance with the adopted laws.

Health care system in the Republic of Serbia formally and substantially pertains to the Bismarck model of mandatory health insurance system. This system is based on generally accepted rules: solidarity and reciprocity, public having the right to information, protection of the right of insured persons and protection of public interest, continuous improvement of quality, cost-effectiveness and efficiency of mandatory health insurance.

Environmental protection

Healthy environment is guaranteed under Article 74 of the Constitution of the Republic of Serbia. Under the said Article everyone has the right to healthy environment and timely and thorough information about its state. Everyone is held responsible for the environmental protection, primarily the Republic of Serbia and its Autonomous Province. Everyone is obligated to preserve and improve the environment.

Legal norms regulating the field of environment and the improvement of environment in the Republic of Serbia are contained in a large number of ratified international treaties, laws and other regulations. It primarily refers to regulations relating to planning and construction, mining, geological research, waters, land, woods, plants and animals, national parks, fishery, hunting, waste management, protection from ionising radiation and nuclear safety.

New legal framework relating to the environmental protection was introduced in the Republic of Serbia in 2004 by the Law on Environmental Protection (*Official Gazette of the RS* No. 135/04), the old Law on Environmental Protection (*Official Gazette of the RS* No. 66/91 – provisions relating to the protection of nature, protection of air and noise remained in force), the Law on Strategic Environmental Impact Assessments (*Official Gazette of the RS* No. 135/04), the Law on Environmental Impact Assessment (*Official Gazette of the RS* No. 135/04) and the Law on Integrated Environmental Pollution Prevention and Control (*Official Gazette of the RS* No. 135/04) in line with the relevant EU regulations. The laws define the competencies of the Republic, Autonomous Province and local-self government, rights and obligations of companies and other entities in the field of environmental protection. The main issues regulated by the Law on Environmental Protection comprise: basic rules relating to the environmental protection, management and protection of natural resources, measures and conditions for the environmental protection, monitoring the state of the environment, information and participation of the public, economic instruments, responsibility for the environmental pollution, supervision and fines.

Under the Law on Environmental Protection several economic instruments have been introduced including the compensations for the use of natural resources, compensations for pollution and economic incentives. Operationalization of these instruments provides the implementation of the rule "polluter pays" and "beneficiary pays" in accordance with the requirements of the EU. Polluters have been obliged to pay the pollution compensation as of 1 January 2006. They include pollution compensations according to the type of pollution depending on sources (e.g. air pollution, waste management and production, substances doing harm to the ozone layer and motor vehicles). The Environmental Protection Fund was established in order to provide funds for stimulating protection and improving the environment in the Republic. The fund has legal personality and its headquarters are in

Belgrade. In addition to the sources prescribed by the law, the Fund avails of the compensations which polluters, that is the beneficiaries of natural resources pay. The Fund performs the activities related to the financing of the preparation for the implementation and development of the programmes, projects and other activities in the field of preservation, sustainable usage, environmental protection and improvement, as well as in the field of energy efficacy and the usage of renewable energy sources.

Environmental protection is provided through criminal law protection. Environmental crime is explicitly laid down by the Law. The Criminal Code contains a special chapter “Criminal Offences Against the Environment” containing 18 offences against the environment. environmental pollution (Article 260); failure to undertake environmental protection measures (Article 261); illegal construction and operation of facilities and installations polluting the environment (Article 262); damaging environmental protection facilities and installations (Article 263); damaging the environment (Article 264); destroying, damaging and taking abroad a protected natural asset (Article 265); bringing dangerous substances into Serbia and unlawful processing, depositing and stockpiling of dangerous substances (Article 266); illegal construction of nuclear plants (Article 267); violation of the right to be informed on the state of the environment (Article 268); killing and wanton cruelty to animals (Article 269); transmitting of contagious animal and plant diseases (Article 270); malpractice in veterinary services (Article 271); producing harmful products for treating animals (Article 272); pollution of livestock fodder and water (Article 273); devastation of forests (Article 274); forest theft (Article 275); poaching game (Article 276); poaching fish (Article 277). The fines amounting from RSD 10,000 to 1,000,000 or imprisonment of up to 10 years are defined for the said offences, and for the offences with especially harmful consequences of up to 12 years. Other specific laws containing criminal provisions are not codified by the Criminal Code (e.g. the Law on Genetically Modified Organisms, the Law on the Production and Trade of Toxic Substances and the Law on Waters).

Usage of firearms

- Police

The usage of firearms by an authorized official whilst performing professional duties is primarily regulated by the Law on Police (*Official Gazette of the RS* No. 101/05). The most important provisions are Article 100 and Article 107(2).

The Law on Police regulates the usage of firearms in pursuit of vessels (Article 108) and using firearms against animals (Article 109).

The Rulebook on the Conditions and the Way of Usage of Means of Enforcement (*Official Gazette of the RS* No. 133/04) defines the rules and the way according to which an authorized official of the Ministry of Interior has the right to use means of enforcement prescribed by the law. When using means of enforcement an official is obliged, whenever possible, to protect the life of an individual and perform an official duty with the least harmful consequences with regard to an individual or individuals against which the means of enforcement is used in the period of its justifiability.

Under Article 35 of the Rulebook, an authorized official promptly informs his/her immediate superior on every usage of means of enforcement through the duty service. At the latest 24 hours following the usage of means of enforcement, he/she submits a written report to his immediate superior. Following the usage of means of enforcement resulting in the death of an individual, injury, material damage or owing to which the citizens were disturbed, a competent public prosecutor or investigative judge are informed promptly organizing and conducting investigation, collecting and providing material proof. Immediate superiors perform an internal control of justifiability and regularity relating to the usage of means of enforcement.

- Armed Forces

The usage of arms by the members of the Serbian Armed Forces is regulated by the Law on the Serbian Armed Forces.

Under Article 47 of the Law on the Serbian Armed Forces, military officials are obliged to carry and use firearms in accordance with the regulations. Military officials use firearms and other arms in accordance with the rules on combat effects when performing combat tasks.

According to the rules of service, when performing guard and patrol duties, duty services and other similar services, during military exercises and other professional duties, military officials carry formation firearms, i.e. arms anticipated for certain services or performing a concrete task. A senior officer being a brigade commander (regiment commander) can order the carrying of arms to the officials with the equivalent or higher position on other occasions as well. Individuals employed with the Serbian Armed Forces procure, look after and carry firearms out of service in accordance with the regulations which are binding for other citizens as well. When performing professional duties, military officials use arms if they cannot protect the lives of people they look after by other means; reject the attack or remove the immediate danger from the attack relating to the facility they look after; reject the attack which directly jeopardizes their life. A military official performing his duties under a direct leadership of his senior officer can use arms solely following his senior officer's order. The warning is provided in line with special obligations when performing specific tasks, in accordance with this rule and other acts of a competent superior. Military official is obligated to inform promptly his/her superior on the usage of firearms.

The usage of firearms by the members of the Serbian Armed Forces is regulated by the Law on Security Services of the FRY (*Official Journal of the FRY* No. 37/2002 and *Official Journal of SCG*, No. 17/2004).

Under Article 36 of the Law on Security Services of the FRY, a member of the Military Security Agency (MSA) has the right to carry firearms and other means of enforcement, which is stated in his official identity papers. A member of the MSA can use firearms in self-defence or necessity, as well as during the deprivation of freedom of a person caught committing an offence in the scope of the MSA competence and offering armed resistance.

As for the implementation of the stated powers, the Law on Security Services of the FRY and other regulations have not been breached in the period starting with the consideration of initial report to date. Nobody has died due to the implementation of the lawful powers of the MSA members. The procedures relating to the implementation of the powers of the MSA members

have not been breached as well. Therefore, there were no investigations aimed at defining responsibility and punishing responsible persons.

Cooperation with International Criminal Tribunal for the former Yugoslavia (ICTY)

The cooperation with the International Criminal Tribunal for the former Yugoslavia is realized through the National Council for Cooperation with the International Criminal Tribunal for the former Yugoslavia.

Out of 46 indictees the Tribunal has requested from the Republic of Serbia, two of them are still at large. Relevant authorities conduct constant searches aimed at finding them and extraditing them to the Tribunal.

Two persons surrendered voluntarily to the International Criminal Tribunal for the former Yugoslavia in 2004 (Ljubisa Beara and Dragomir Milosevic). 12 persons surrendered in 2005 (Vujadin Popovic, Ljubomir Borovcanin, Milan Gvero, Radivoj Miletic, Drago Nikolic, Sreten Lukic, Nebojsa Pavkovic, Vladimir Lazarevic, Vinko Pandurevic, Momcilo Perisic, Mico Stanisic, Gojko Jankovic).

In the period from 2005 to 2007 the following persons were arrested and extradited to the International Criminal Tribunal for the former Yugoslavia: Milan Lukic was arrested in Argentina, Dragan Zelenovic in Russia, Zdravko Tolimir in Bosnia and Herzegovina and Vlastimir Djordjevic in Montenegro. Stojan Zupljanin and Radovan Karadzic were arrested and extradited to the Tribunal in the Republic of Serbia in 2008.

Out of 1 700 assistance requests the Office of the Prosecutor of the International Criminal Tribunal for the former Yugoslavia submitted to the Republic of Serbia until May 2008 relating to the submission of documents and releasing witnesses from the obligation to preserve secret, it was completely responded to over 95% of requests, whilst it was partially responded to the remaining 5%.

In accordance with the conditions defined in the Agreement on the Insight into the Archives of State Authorities of the Republic of Serbia as of March 2006 to date, 20 visits of the representatives of the Office of the Prosecutor of the International Criminal Tribunal for the former Yugoslavia were realized to the archives of the Republic of Serbia, inclusive of the archives of the Ministry of Defence, the Security Information Agency and the Ministry of Interior.

All witnesses for whom the Office of the Prosecutor of the International Criminal Tribunal for the former Yugoslavia demanded the release from duty to preserve the secret imposed in order to testify in the proceedings before the Tribunal (over 400 persons) were released from this duty.

The Republic of Serbia followed the requests of the International Criminal Tribunal for the former Yugoslavia relating to the delivery of court warrants and other letters to the persons in the territory of the Republic of Serbia.

Organized crime

Proceedings relating to the organized crime offences and war crimes offences are conducted before the War Crimes Chamber of Belgrade District Court.

The total number of initiated criminal proceedings in the Special Prosecutor's Office for Organized Crime in the period 2004-2008 amounts to 1,004, out of which 248 criminal proceedings were completed.

The competencies of the Office of the War Crimes Prosecutor are completed by adopting the Law on the Amendment of Organization and Jurisdiction of State Authorities in War Crimes Proceedings (*OG of the RS* No. 101/07). Its competencies will encompass the pursuit of protectors of war crimes suspects (so far they were prosecuted before the Municipal Court). The War Crimes Department was established within the Ministry of Defence. The cooperation between the prosecutor's offices was established in the region. There are agreements on cooperation with Croatia (the Agreement Memorandum on Realization and Enhancement of Co-operation in Fighting All Forms of Grave Crimes was concluded on 5 February 2005 and Agreement on Cooperation in Prosecuting Perpetrators of War Crimes, Crimes against Humanity and Genocide of 13 October 2006), Bosnia and Herzegovina (the Agreement Memorandum on Realization and Enhancement of Co-operation in Fighting all Forms of Grave Crimes was concluded on 1 July 2005) and Montenegro (Agreement on Cooperation in Prosecuting Perpetrators of Criminal Offences against Humanity and Other Assets Protected by International Law of 31 October 2007).

Based on the request by the Office of the War Crimes Prosecutor relating to the conducting of an investigation, investigations against 69 persons were initiated. The main hearing against 60 persons is underway based on the issued indictments of the Office of the War Crimes Prosecutor.

First-instance sentences were pronounced with regard to four cases. Two cases against six persons are currently going through the appeal proceedings before the Supreme Court of Serbia (cases Scorpions-Trnovo and Sinana Morina-Orahovac Group). Two cases referring to 17 persons have been suspended in the appeal proceedings and the cases are being retried. (cases Ovcara 1 and Ovcara 3).

The sentences that have become enforceable have been pronounced with regard to two cases. Convicted Milan Bulic (case Ovcara 2) was sentenced to two years of imprisonment due to the offence – war crime against war prisoners under Article 144 of the CC of the SFRY. Convicted Anton Lekaj (case Djakovica) was sentenced to 13 years of imprisonment due to the offence – war crime against civilians under Article 142(1) of the CC.

Following the exhumation of corps from the mass grave in Batajnica, defining the identity and the cause of death of buried persons, the Office of the War Crimes Prosecutor used the data in the cases in which criminal proceedings were initiated against the identified people.

As for other exhumated bodies, significant activities that are currently in pre-trial proceedings are underway aimed at defining the facts depending on which it will be determined whether the criminal proceedings for war crimes offences or other offences subject to public prosecution will be initiated and against whom.

As for the proceedings conducted in spite of the defined legal framework and efficient activities of relevant bodies obligated to look after the families of injured persons or witnesses of Albanian nationality, one has to admit that the current political situation affects this area of work, having impact on the efficacy in the proceedings within the competence of the Office of the War Crimes Prosecutor.

An individual petition was submitted to The UN Human Rights Committee on 23 November 2006 against the Republic of Serbia by Marija and Dragana Novakovic, on behalf of deceased Zoran Novakovic, due to the violation of Article 6 (right to life) and Article 2 in conjunction with Article 6 (right to effective legal remedy) of the International Covenant on Civil and Political Rights. The proceedings are underway, whereas the Republic of Serbia submitted the responses to the Human Rights Committee in March and September 2009. The Committee drew a conclusion on 21 October 2010 that there was a violation of Article 2 in conjunction with Article 6 requesting the completion of criminal proceedings and ensuring an adequate compensation in case the defendant is pronounced guilty.

110. Please specify how human dignity and the right to integrity of the person are guaranteed, both within the legal framework and in practice.

Human dignity is guaranteed by Article 23 of the Constitution of the Republic of Serbia (*Official Gazette of RS*, No. 98/2006), which states as follows: “Human dignity is inviolable and everyone shall be obliged to respect and protect it. Everyone is entitled to develop freely their personality if this does not violate the rights of others guaranteed by the Constitution.

The Constitution of the Republic of Serbia Article 25 establishes that physical and mental integrity is inviolable. Nobody may be subjected to torture, inhuman or degrading treatment or punishment, nor subjected to medical and other experiments without their free consent.

Under Article 24 of the Constitution of the Republic of Serbia, entitled- Right to life, the inviolability of human life is guaranteed, there is no death penalty in the Republic of Serbia and cloning of human beings is prohibited. The inviolability of human life, and therefore his criminal law protection is absolute. Criminal law protection is abandoned solely in certain cases, when the deprivation of other person’s life is the only way to protect life, that is in the cases of the exclusion of unlawfulness (right of self-defense and necessity) Human life is protected from its beginning until the end, regardless of its quality and form.

Death penalty is abolished in the criminal legislation of the Republic of Serbia in 2002. Legal legislation of the Republic of Serbia, as well as Criminal Code (*OG of RS*, No. 85/2005, 88/2005 – corrigendum, 107/2005 – corrigendum, 107/2009 and 111/2009), do not comprise of provisions regarding the death penalty. Criminal Code protects the right to life through established criminal offenses in Chapter XIII – *OFFENCES AGAINST LIFE AND LIMB*, which are as follows: Murder (Article 113), Aggravated Murder (Article 114), Manslaughter in a Heat of Passion (Article 115), Infanticide (Article 116), Mercy Killing (Article 117), Negligent Homicide (Article 118), Incitement to Suicide and Aiding in Suicide (Article 119). Criminal Code in Chapter XIV entitled Criminal Offenses against Freedoms and Rights of Man and Citizen contains, in Article 137, criminal offense *Ill-treatment and Torture*. This criminal offense in its original form represents the ill- treatment against other or acting towards other in a way, which offends human dignity, which is punishable with

imprisonment up to one year. For more serious form of this criminal offense- act of force, threatening or other unlawful act, infliction of pain or anguish to another in order to get from the person or third party confession, statement or other information, intimidating him or a third party or to exert pressure on such persons, or if done from motives based on any form of discrimination, shall be punished with imprisonment from six months to five years. The person committed this criminal offense could be defined more widely, so in paragraph three it is stated that if the offense of ill treatment is committed by an official in discharge of duty, such person shall be punished for the offense by imprisonment from three months to three years, and for more serious criminal offense by imprisonment of one to eight years. In Chapter XIV the following are criminalized: Violation of Equality (Article 128), Violation of the Right to Use a Language or Alphabet (Article 129), Violation of the Right to Expression of National or Ethnic Affiliation (Article 130), Violation of the Freedom of Religion and Performing Religious Service (Article 131), Violation of Freedom of Movement and Residence (Article 133), Ill-treatment and Torture (Article 137), Endangerment of Safety (Article 138). In addition to criminal offences, Criminal Code defines the following criminalisation: Serious Bodily Harm (Article 121), Light Bodily Injury (Article 122), Brawling (Article 123), Threat by Dangerous Implement in Brawl or Quarrel (Article 124), Abduction (Article 134), Coercion (Article 135), Extortion of Confession (Article 136), Rape (Article 178), Sexual Intercourse with a Helpless Person (Article 179), Sexual Intercourse with a Child (Article 180), Sexual Intercourse through Abuse of Position (Article 181), Prohibited Sexual Acts (Article 182), Pimping and Procuring (Article 183), Mediation in Prostitution (Article 184), Showing Pornographic Material and Child Pornography (Article 185), Domestic Violence (Article 194), Racial and Other Discrimination (Article 387), which all comprise of some kind of torture or inhuman or degrading action or punishment. From January 1st 2010 in the Chapter XVIII Criminal offenses against sexual liberty, the following criminal offenses are criminalised: making a minor person to be present during sexual acts (Article 185a), use of electronic network of communication or other technical means in order to commit an offense against the sexual liberty of a minor (Article 185b). Important amendments in this Chapter are regarding the criminal offense of rape, where a spouse may report criminal offense of rape, as well as to commit this criminal offense on a male. A special procedure is established when police officers are dealing with minors.

Within Chapter XXVIII of the Criminal Code- Criminal Offenses against Constitutional Order and Security of the Republic of Serbia, provides for the criminal offence of murder of highest government officials and representatives (Article 310). In addition to this, Criminal Code in Chapter XXXIV- *CRIMINAL OFFENSES AGAINST HUMANITY AND OTHER RIGHT GUARANTEED BY INTERNATIONAL LAW*, establishes the following criminal offenses:

Genocide (Article 370), Crimes against Humanity (Article 371), War Crimes against Civilian Population (Article 372), War Crimes against the Wounded and Sick (Article 373), War Crimes against Prisoners of War (Article 374), Organising and Incitement to Genocide and War Crimes (Article 375), Unlawful Killing and Wounding of Enemy (Article 378), War of Aggression (Article 386), International Terrorism (Article 391), Taking Hostages (Article 392).

In addition to this, there are groups of criminal offenses, which may threaten people's lives, such as:

- OFFENCES AGAINST HUMAN HEALTH (Chapter XXIII of Criminal Code), ad in this group there are also criminal offenses regarding the abuse of drugs, which were

previously been regulated by the Law on Basic criminal Offenses, as well as the new criminal offenses: Transmitting HIV Infection, Illegal Conducting of Medical Experiments and Testing of drugs,

- CRIMINAL OFFENSES AGAINST GENERAL SAFETY OF PEOPLE AND PROPERTY (Chapter XXV of CC),
- CRIMINAL OFFENSES AGAINST ROAD TRAFFIC SAFETY (XXVI of CC),
- CRIMINAL OFFENSES AGAINST THE ENVIRONMENT (Chapter XXIV of CC)

The Criminal Procedure Code (*OJ of SRY*, No. 70/2001 and 68/2002 and *OG of RS* No. 58/2004, 85/2005, 115/2005, 85/2005, 49/2007, 20/2009, 72/2009 and 76/2010) establishes the rules that no one cannot be punished if innocent, and that criminal offense doer shall punished under the conditions stipulated by Criminal Procedure Code and according to the legal procedure.

CPD establishes that person deprived of liberty must be informed presently, in his/ her own language or the language which he/ she understands, on the reasons o deprivation of liberty and at the same time informed that he/ she has no obligation to give a statement, that he/ she has a right to legal counselor, which he/ she chooses and that his immediate family is to be informed on the deprivation of the liberty of person in question.

It is prohibited and punishable every violence against the person deprived of liberty and the person, whose liberty is limited, as well as any kind of extortion of confession or any other kind of statement from the defendant or other person involved in the proceedings.

Defendant has the right to defend himself/herslef or with professional assistance of a defence counsel.

Defendant has the right to be brought before a judge in the shortest period and to have trial without delay.

Providing proofs (search of apartment and person, temporary taking of objects, acting with suspicious matters, defendant's hearing, witness hearing, investigation, witness expertise) should be performed with the respect of human rights.

By- laws establishing the respect and guarantee of human dignity and the right to person's integrity:

- Code of Police Ethics (*Official Gazette of RS* No. 92/2006),
- Code on Behaviour of Civil Servants (*Official Gazette of RS* No 29/2008)
- Rulebook on Performing Police Duties ("Official Gazette of RS" No. 27/2007)
- Rulebook on Police Authority (*Official Gazette of the RS*, No 54/2006)
- Rulebook on Complaint Procedures (*Official Gazette of the RS*, No 54/2006)

Police officers carrying out law enforcement duties pursuant to the law and international standards accepted by the Republic of Serbia, following the objectives set before the police in a democratic society and abiding by the principle of the rule of law.

Police activities are performed with the objective and in a way that everyone should be provided with the equal protection of safety, rights and freedoms and support the rule of law.

Police activities are founded on the principles of professionalism, cooperation, lawfulness in work and in equality in implementing police authorities and with the least of harmful consequences.

When on police duty, the police honours the international standards of police conduct, and especially supports those established according to international acts in relation to:

- Respect of legitimacy and preventing illegitimacy,
- implementing of human rights,
- Non- discrimination when conducting police duties,
- Limited and restrained use of force,
- prohibition of torture and inhuman and degrading acts,
- providing aid to people who suffer

Police maintains good cooperation with NGOs, especially housing of the victims into shelters (for victims of violence), providing psychosocial and medical help, as well as organising special training courses jointly, specialist courses and training for police personnel.

111. Please provide information on specific national legislative as well as administrative measures designed to prevent the occurrence of torture, inhuman or degrading treatment or punishment in state institutions, prisons or police stations. In this respect, what measures are in place for the inspections of detention centres or police stations? Is legal redress foreseen for victims?

Pursuant to Article 6 of the Law on Execution of Criminal Sanctions (*Official Gazette of RS* No. 85/05 and 72/09) it is stipulated that the criminal sanctions shall be enforced in a manner that ensures respect for the dignity of the person subject to enforcement, and that actions of subjecting the person under enforcement to any form of torture, abuse, humiliation, or experimentation are thus prohibited and punishable. In addition, coercion against the person subject to sanctions is punishable if being disproportionate to the needs of the execution thereof.

Provisions of the Law on Execution of Criminal Sanctions provided for the defendant's right of complaint and appeal, including the cases of torture and other forms of inhuman and degrading treatment or punishment. The process is twofold within the Administration and legal protection before the Administrative Court is provided.

Supervision of convicted persons is performed by the organizational unit of the Administration competent for supervision (whereby the supervision also includes the status and protection of the rights of prisoners - Article 270(3)(1)), and Ombudsman in accordance with the Law on the Ombudsman, as well as non-governmental organizations dealing with protection of persons deprived of their liberty.

In order to prevent torture, the Administration for Execution of Penal Sanctions, within the Centre for Training and Professional Advancement in Nis, performs periodic training of the Administration employees, including the treatment of persons deprived of their liberty, training for proper and lawful use of coercive measures and protection of the rights of persons deprived of their liberty. Training includes gaining knowledge related to the European

standards in this field (European Prison Rules and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment).

It should also be noted that regarding the inflow of funds from the budget of the Republic of Serbia, the resources allocated for Administration for Execution of Penal Sanctions are used to renovate the existing prison facilities and build new facilities in existing institutions, as well as new institutes (Correctional Institute in Belgrade) in accordance with European standards.

Supervision over the enforcement of custody measure is conducted by the President of the Higher Court in the area where the headquarters of the institution is located. According to Article 152 of the Criminal Procedure Code (*Official Journal of FRY* No. 70/01 and 68/02 and *Official Gazette of RS* No. 58/04, 85/05, 115/05 – other law, 49/07, 20/09 – other law, 72/09 and 76/10) the President of the court or a judge designated by him shall at least once a week visit the detainees and, if deemed necessary, and without the presence of supervisors or guards shall inform about the detainees' food habits, how they are supplied with other necessities and how they are being treated. President or a judge designated by him shall be obliged without delay to notify the Ministry of Justice about the irregularities observed during his visit to the prison, while the Ministry shall be obliged within 15 days from the receipt of the notification to inform the president of the court, or the judge about the measures taken for elimination thereof. The designated judge may not be investigative judge. Paragraph 3 of the same Article stipulates that the president of the court and the investigative judge shall be allowed to visit all detainees at any time, to talk with them and to receive complaints from them. Article 150 of the same Code provides that the Ombudsman shall also have the right to freely visit detainees and to talk with them without the presence of other persons, in accordance with the law.

If the victim was subject to criminal offence of abuse and torture, the victim in this criminal proceeding has the status of the injured party and shall be entitled to all of the rights under the law (property request and other).

The Law on the Ombudsman (OG of RS No. 79/05, 54/07) stipulates that the Ombudsman has a deputy who assists him in performing tasks related to protection of rights of the persons deprived of their liberty, under delegated powers. Deputy Ombudsman for the protection of the rights of persons deprived of their liberty shall proceed on complaints of persons deprived of liberty in order to control the legality and regularity of the administrative authority and shall supervise the work of institutions where these persons are placed. He is authorized to perform periodic preventive monitoring visits to all institutions where these persons are located: police stations, detention units, prisons, as well as inpatient social and psychiatric facilities.

The Ministry of Human and Minority Rights has initiated the establishment of the National Mechanism for the Prevention of Torture at the national level, which is, pursuant to Article 19 of the *Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment*, empowered to: 1. regularly examine the treatment of persons deprived of their liberty in detention facilities, in order to, if necessary, strengthen their protection against torture, cruel, inhuman or degrading punishment and treatment; 2 to give recommendations to the competent authorities to improve the treatment and status of persons deprived of their liberty and to prevent torture, cruel, inhuman or degrading treatment or punishment, as well as 3. to submit proposals and opinions concerning existing or proposed legislation.

The Ministry of Human and Minority Rights has initiated the establishment of the National Mechanism for the Prevention of Torture at the national level, holding consultative meetings with the Ombudsman of the Republic of Serbia and the Provincial Ombudsman. At the said meetings, the agreement was made that the role of the National Mechanism for the Prevention of Torture shall be taken over by the Ombudsman of the Republic of Serbia.

The Republic of Serbia ratified OPCAT (Optional Protocol to the Convention against Torture), but is for several years late with the determination of NPM (National Preventive Mechanism) in Serbia. In the absence of NPM in Serbia, the Ombudsman established a Preventive mechanism for the monitoring of institutions where persons deprived of their liberty are placed, in accordance with his authority and duties, in order to establish the systemic prevention of torture: police stations, detention units, prisons, as well as inpatient social and psychiatric facilities. The Ombudsman's Mechanism for the Prevention of Torture has its own strategy, work methodology, structure and organization of visits to institutions as well as a formed multidisciplinary team which consists, apart from lawyers and doctors, of forensic experts and psychiatrists. A systematic link between the questionnaires (check-lists) that are used during the visit and report was established in a way that any data from the questionnaires has its place in the model report. The above mentioned original solution enabled establishment of a monitoring system.

Given the importance of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, and particularly the importance of the Committee for the Prevention of Torture of the Council of Europe, in accordance with the obligations undertaken by the Republic of Serbia as a signatory thereof, a "Committee to monitor implementation of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment", whose composition and term of office are similar to those of the Committee for the Prevention of Torture of the Council of Europe, was established by the Minister's decision at the level of the Ministry of Interior in 2005. Appreciating the former activities that the Committee has successfully realized in the previous period, and its contribution to the reputation of the Ministry in the areas of prevention and promotion of human rights and freedoms, the Minister of Interior issued a new decision in 2009, extending thereby the competences and authorities of the Committee.

The Committee consists of president, three members and three deputy members of the Committee, and its tasks pertain to the following:

- visiting the premises for detention of persons within the organizational units of the Ministry;
- exercising direct inspection of the buildings and premises used for temporary residence of detainees, persons deprived of their liberty and minors;
- performing control of the hygiene conditions in the premises for the detention of persons;
- visiting the premises intended for conducting interviews with persons in order to find non-standard items and to directly inspect the buildings and places designed for disposal and storage thereof;
- conducting control of the records of detained persons and the authorizations exercised in relation to the said persons;

- exercising control and supervision of processed cases with elements of torture, inhuman or degrading treatment conducted by the police officers of the Ministry;
- organizing and initiating training in the field of prevention of torture, inhuman or degrading treatment or punishment, as well as the treatment of the Ministry police officers of the persons deprived of their liberty, detainees and minors;
- conducting other activities aimed at preventing and promoting the protection of rights of persons deprived of their liberty, detainees and minors.

The Report on the Committee work and activities is submitted to the Minister of Interior.

112. What is the average length of time a person may be detained without being brought before a competent legal authority? What is the average length of time between the lawful arrest and detention of a person and his trial? Please provide statistics.

Detention may be ordered only under conditions and in the cases determined by law. The conditions are enumerated in Article 142 of the Criminal Procedure Code (OJ of FRY Nos. 70/2001 and 68/2002 and OG of RS Nos. 58/2004, 85/2005, 115/2005, 85/2005 – other law, 49/2007, 20/2009 - other law, 72/2009 and 76/2010), as follows: detention may be ordered against a person reasonably suspected of committing a criminal offence 1. if defendant is in hiding or it is impossible to determine his identity, or the circumstances imply to danger of escape, 2. if there are circumstances indicating that defendant is to destroy, hide, alter or forge evidence of criminal proceeding or other evidence; or if specific circumstances indicate to disruption of criminal proceeding by defendant through the influence on witnesses, accomplices or aiders and abettors, 3. if specific circumstances indicate that defendant shall repeat a criminal offence or complete the attempted one, or perpetrate criminal offence he threatens to commit, 4. if duly summoned defendant avoids appearing at trial, 5. if sentence for the criminal offence the defendant is charged with is 10 years of imprisonment or more, and order of detention is justifiable due to especially severe circumstances of criminal offence and 6. if defendant has been sentenced by the first instance court to five years in prison or more, and ordering detention is justified due to particularly severe circumstances of the criminal offence. Duration of detention has to be reduced to the shortest possible time. During the proceedings, detention shall be vacated as soon as the reasons, because of which detention was ordered, cease to exist. In such cases the duty of all authorities is to act with particular urgency.

When the requirements referred to in Article 142 of the Criminal Procedure Code (hereafter referred to as: the CPC) are met, the police can deprive a suspect of liberty and order detention of up to 48 hours. The ruling on detention shall be issued immediately, no longer than within two hours. Immediately upon issuing the ruling, and obligation of providing a suspect with a defence counsel, they shall have the right to appeal the ruling on detention, which shall immediately be submitted to the investigative judge who is obliged to make a decision within 4 hours.

If the measure is not terminated, the police are obliged to bring the suspect before the investigative judge before the expiration of a 48-hour period. Under the authorizations referred to in Article 229 of the Criminal Procedure Code, police shall detain a person deprived of liberty under Article 227 of this Code or a suspect referred to in Article 226 of the same Code, for approximately 33 hours (according to the unified information system data of

the Ministry of interior of Republic of Serbia for 2009 and ten months of 2010). The investigating judge is obliged, first of all, to hold the hearing, and subsequently to decide on detention. He/she may order a detention for up to one month. The detention may be extended at the reasoned proposal of the investigative judge or public prosecutor, by the decision of the Trial Chamber, for more than 2 months. As for criminal offence which is punishable by imprisonment for 5 years or more, the Chamber of the immediately higher instance court may, upon a reasonable proposal and for important reasons, extend the detention for another three months. Parties shall have the right to appeal against the decisions ordering or extending detention.

Accordingly, detention during the investigation may last for up to 6 months. If the prosecutor fails to file charges until the expiry of that period, the defendant shall be released.

After submitting the indictment to the court, until the completion of a main trial, the chamber is obliged to investigate whether there grounds for detention exist, and without the proposal of the parties to render a decision on termination or extension of detention after every 30 days until indictment enters into force, i.e. after every 2 months upon enforcement of the indictment.

If the ruling on rendering detention is issued without hearing the defendant (e.g., if the defendant is in escape, the warrant has also been issued for him/her), and the defendant is deprived of liberty, the court shall be obliged to hear the defendant within 48 hours following the detention and to make a decision to extend or vacate the detention.

The duration of detention is also very precisely defined in Article 144 of the CPC, as follows:

(1) Based on decision given by investigative judge, defendant can remain in detention up to one month from the day of deprivation of liberty. After this deadline, defendant can be held in detention based only on ruling on extending the detention.

(2) Detention can be extended by a decision of the Chamber for up to two months. Filing of appeal against this ruling of the Chamber is allowed but it does not stay the execution of the ruling.

(3) If the proceeding is conducted for the criminal offence punishable with up to five years in prison or more, the Chamber of the immediately higher instance court, upon an explained motion of the investigative judge or prosecutor, for very important reasons, extend the detention no longer than for another three months. Appeal is allowed against this ruling but it does not stay the execution of the ruling.

(4) If, before the expiry of deadlines referred to in Paragraphs 2 and 3, no indictment has been issued, the defendant will be released.

Independence and integrity of the court in relation to the position of authorized prosecutor is protected by the provision of Article 145 of the CPC, as follows:

(1) In the course of investigation, investigative judge can vacate detention with consent of the authorized prosecutor. If there is no consent between investigative judge and the prosecutor, investigative judge shall request the Chamber to decide thereof, which is obliged to render a decision within 48 hours

(2) If detention has been vacated due to expiration of the term it was set for, the decision thereof shall be rendered by the investigative judge.

The reasons for ordering detention and the grounds thereof during the main proceedings are reviewed constantly on the basis of Article 146 of the CPC, which reads:

(1) After the indictment has been submitted to the Court, until the termination of trial, the detention may be ordered or vacated pursuant to Article 142a of the Criminal Procedure Code.

(2) Even without a motion submitted by parties, the Chamber is bound to review whether the grounds for detention exist and to extend or vacate it by a ruling, every month from the moment the last ruling on detention becomes final, and every two months from the moment the indictment becomes final.

(3) An appeal against the decision referred to Paragraphs 1 and 12 does not stay the execution of the ruling.

(4) The appeal is not allowed against the ruling of the Chamber on rejecting to order or vacate detention.

Obligation of public authorities towards the family of the suspect or organizations required to get acquainted with the act of detention of the suspect is governed by the provision of Article 147 of the CPC, as follows:

(1) The police authority, i.e. the Court, is obliged to immediately inform the family or the spouse, or other person the arrested lives with in a matrimonial or any other community, about deprivation of liberty, unless the person deprived of liberty explicitly objects it.

(2) The police authority, i.e. the Court is obliged to immediately inform the competent Bar Association of depriving the lawyer of the liberty.

(3) The competent authority of social protection shall be informed of deprivation of liberty, if necessary to take measures for the care of children and other family members the person deprived of liberty takes care of.

Under the authorizations as referred to in Article 229 of the Criminal Procedure Code, police shall detain a person deprived of liberty under Article 227 of this Code or a suspect as referred to in Article 226 the same Code, for approximately 33 hours (according to the Unified Information System (JIS) data of the Ministry of Interior of Republic of Serbia for 2009 and ten months of 2010).

113. What actions have been taken to ensure effective investigation of ill-treatment allegations by law enforcement officers, and strengthening internal control services dealing with ill-treatment allegations, including cases targeting members of minorities?

Through a number of preventive and repressive measures, the Ministry of Interior endeavours to provide lawful and professional performance of police operations and the use of police powers.

Preventive measures are related to creation of a legal framework, regulating the use of police powers, the establishment of organizational units and other organizational forms (commissions, etc.), involved in the control of the legality of the work of police officers and their continuous education.

In its work, the Ministry of Interior is guided by the principles of general international law, including the prohibition of torture which is, pursuant to international law, given a special status and which is contained in numerous international treaties on human rights.

- Following the adoption of the Law on Police (2005), the Ministry of Interior adopted a series of by-laws for the purpose of creating legal framework for professional and lawful performance of the police tasks aligned with the following international conventions:
- The Code of Police Ethics (*Official Gazette* No. 92/2006)
- The Rulebook on the Methods of Police Work (*Official Gazette* No. 27/2007)
- The Rulebook on Police Powers (*Official Gazette* No. 54/2006)
- The Rulebook on Technical Characteristics and the Method of Using Coercive Measures (*Official Gazette* No. 19/2006)
- The Guidelines on the actions of police officers against minors and young adults (internal act passed in May 2006)
- The Regulation on Disciplinary Responsibility within the MoI (*Official Gazette* No. 8/2006)
- The Rulebook on the Procedure for Solving Complaints (*Official Gazette* No. 54/2006)

The said regulations strictly define the manner of the police officers actions in performing security tasks, particularly the conditions for the enforcement of coercive measures.

All cases of incorrect enforcement, excess and abuse of police powers are covered by the provisions of the Criminal Code of the Republic of Serbia and the Regulation on disciplinary responsibility. The Ministry regularly controls the justification of the use of coercive measures. Thus, in cases of excessive use of police powers, criminal charges shall be filed against police officers on the basis of grounded suspicion of committing some of the criminal offences, or the disciplinary proceedings shall be initiated due to serious or minor violation of official duty and decisions shall be made on temporary suspension from the MoI, until the completion of the proceedings. The legality of the work and actions of police officers are regularly analyzed at the meetings of the heads of organizational units of the Ministry, and all police officers of the MoI are kept informed about the cases of excessive use of coercive measures and the measures taken thereof.

Commitment of the Ministry of Interior to ensure the legality of the work of police officers and to sanction cases of abuse of police powers is also illustrated by the establishment of the Sector of Internal Control of the Police in 2003. The said Sector performs regular checks on all information acquired in relation to excessive use of police powers in exercising the coercive measures, and files criminal charges against the police officers who exceeded the powers and proposes the initiation of relevant disciplinary proceedings.

In accordance with the obligations which the Republic of Serbia has undertaken as a signatory to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, the MoI Committee for monitoring Implementation of European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment was established by the Minister's Decision in 2005. So far, the Committee has consistently visited all the regional police directorates (27) and their organizational units where, in accordance with the recommendations of the Committee for the Prevention of Torture of the Council of Europe, the control of the condition of detention facilities was carried out, as well as the control of the methods of keeping records of detainees and minors. The Committee also conducted visits of offices with the purpose of finding non-standard items (suitable for torture), and places of storage thereof, and performed the inspection of the actions of organizational units heads in the cases with elements of torture, inhuman or degrading treatment, conducted by the Ministry police officers, etc. The Committee made the report on the current situation with recommendations for remedying the identified deficiencies. During the visits, the Committee also conducted interviews with police officers on the circumstances of familiarity with and respect of fundamental rights of the persons deprived of their liberty, as well as of detainees, with the aim of determining whether the complaints about police officers actions towards them existed. The Committee developed the Guidelines for police officers, entitled "The Prohibition Against Torture in International Documents" as well as the "Collection of Recommendations of International Authorities Addressed to the Republic of Serbia, Relating to Human Rights and Prevention of Torture". In accordance with the obligations of the Ministry of Interior to take actions on the recommendations of the Committee for the Prevention of Torture of the Council of Europe and the UN Committee on the Rights of the Child, the Committee developed and implemented in police practice the forms containing the rights of detainees and minors (The rights of minors as a citizen, The rights of minors as a suspect, The rights of a person deprived of liberty, The rights of detained person, and The rights of minors deprived of liberty). A network of liaison officers from all regional police directorates (27) was established to contact with the Committee, whereby the said officers will act in accordance with the Committee guidelines and will contribute to the efficient implementation of recommendations of international treaty bodies.

In the period October-November 2010, the Ministry of Interior, in cooperation with the OSCE Mission, organized four workshops entitled "Safer conditions of stay and treatment of persons deprived of their liberty in the detention premises", which were intended for the Ministry police officers in charge of the security of persons deprived of their liberty, but also for liaison officers with the Committee and the police officers of the Department and Administration for Vocational Education, Development and Science.

The Ministry of the Interior annually adopts the Programme on specialized vocational training for police officers, in particular emphasizing the importance of the subjects of human rights, police ethics and police work with marginalized, minority and socially vulnerable groups, while the representatives of the Ministry of Interior take active participation in all seminars and courses organized by the OSCE Mission to Serbia and the Belgrade Centre for Human Rights et al., with the subject of prevention of torture and protection of human rights and freedoms.

Administration for Execution of Penal Sanctions shall take all measures within its jurisdiction to verify allegations of abuse and torture. Article 127 of the Law on Execution of Criminal

Sanctions provides that only the measures for maintaining order and security, established by this Law and regulations issued under this Law, only to the extent necessary, may be applied to the convict, as well as that the measures more severe than necessary shall not be applied given the nature of the needs and the content thereof. Article 128 the same Law prescribes the cases where coercive measures may be used, while Article 129 prescribes the types of coercive measures to be applied. After the application of coercive measures, the repeated medical examinations of the convict are required. Written report of the security service and reports of conducted physical examinations are submitted to the prison warden without delay. The reports on medical examinations shall also contain the statement of persons on whom the coercive measures were applied, the way in which injuries appeared as well as medical opinion on the connection between the measures applied and the resulting injuries. The manager of the Institute shall notify the Director of the Administration on the use of coercive measures and shall submit reports within 24 hours from the time of application of coercive measures.

Surveillance Department within the Administration for Execution of Penal Sanctions has the authority to check such cases through direct inspection and interviews with the persons on whom the coercion was used, without the presence of employees of the Institute. In case of reasonable suspicion that a crime which is prosecuted ex officio, economic or disciplinary infringement, person authorized for supervision are required to file criminal charges to the competent authority, or to initiate appropriate proceedings (Article 272 of the Law on Execution of Criminal Sanctions). In addition, given the criminal offence that is prosecuted ex officio, there is also a legal obligation to report the perpetrator of such criminal offences. In addition, excess in the application of coercive measures by the employees in the Administration for Execution of Penal Sanctions shall constitute grave violation of work duties and obligations, for which reason disciplinary measure of termination of employment may be imposed.

The Ombudsman shall proceed on complaints of persons deprived of liberty who are informed about violation of their rights, i.e. which suggest an illegal or improper operations of Administration authorities. Apart from the mentioned, in order to prevent torture, the Ombudsman shall also perform periodic preventive visits to all facilities in which these persons are located: police stations, detention units, prisons, as well as inpatient social and psychiatric facilities. According to the implemented proceedings on complaints, and conducted preventive monitoring visits to institutions, the Ombudsman shall determine the observed violations of rights and shall make recommendations to administrative authorities to rectify the violations of rights or omissions in their work. Special attention is paid to the complaints and the status of persons vulnerable on several criteria, such as members of minorities or persons with invalidity.

114. To what extent is support to victims provided?

As for the former activities, the Ministry of Interior was also, inter alia, giving the priority to checking all information about police officers who illegally exercised the coercive measures towards the citizens. All indications that pointed to the excessive use of police powers during enforcement of coercive measures by the police officers, were the subject of detailed inspections carried out by the police officers of the Sector for Internal Control of the Police - interviews were conducted with citizens who had submitted complaints to the police officers

they complained about and with the witnesses, the verification of official documents was also conducted as well as other measures to completely determine the factual situation.

As for all the cases where determined that the police officers had illegally and unprofessionally exercised the coercive measures, the Sector for Internal Control of the Police recommended the application of respective measures to the police officers responsible thereof - for criminal charges to be filed (if there was grounded suspicion of committing criminal offences) or for disciplinary proceedings to be initiated due to serious or minor violations of official duty. In addition, the Sector for Internal Control of the Police regularly informed the citizens who complained to police torture of the outcome of inspections conducted and shortfalls identified in the police officers work. In the period from 2006 to December 2010, the Sector for Internal Control of the Police filed 42 criminal charges against police officers suspected of committing criminal offences with elements of violence.

In order to support victims and to strengthen public confidence in the police, the Ministry of Interior have also conducted a number of programmes aimed at establishing closer relationship between the police and the local community, and have also taken measures with respect to the principle of publicity in the MoI work.

The support to victims is also provided for by the provisions of the Law on Police (OG of RS No. 101/2005 and 63/2009 - Decision of the CC (Constitutional Court)) which stipulate that citizens' complaints about the work and actions of the police officers shall be checked in the special proceedings governed by separate Rulebook (Regulations on the Procedure for resolving complaints), which provides for the inclusion of the representatives of the public in the second instance procedure.

This Rulebook provides that any complaint against a police officer, as well as related circumstances, must be considered first by the head of the organizational unit in which the implicated officer is employed, or by a person authorized by the head (if the cases of violation of the citizens' rights, not older than 30 days) When the opinions of the complainant and the head of the organizational units do not comply, and when the complaint further initiates doubts about the committed criminal offence, prosecuted ex officio, the cases shall be delivered to the three-member committees (representative of the Sector for Internal Control of the Police, police representative and representative of the public) competent to resolve complaints.

Sector for Internal Control of the Police has made the web presentation, providing citizens with accessible information about the work and activities of the Sector for Internal Control, explaining the procedures for filing complaints and commendations in relation to the police work, allowing their direct filing and obtaining answers from the Sector in the shortest deadline possible.

In addition, the Internal Control of the Police, in cooperation with the OSCE Mission to Serbia, made the promotional material which is printed in Serbian, English and the languages of 9 national minorities. The material was distributed to all police directorates and police stations for the control of crossing the state border in the Republic of Serbia. In this way, conditions are created for citizens to directly and without any formalities submit petitions and complaints to the police officers work.

According to Article 109 of the Criminal Procedure Code (*Official Journal of FRY* No. 70/01 and 68/02 and *Official Gazette of RS* No. 58/04, 85/05, 115/05, 49/07, 20/09, 72/09 and 76/10), the court is obliged to protect the witness and victim from insults, threats, or any other attack. At the proposal of the investigative judge or the President of the Chamber, Court President or Public Prosecutor may require special measures to protect the victim. Articles 109a to 109f of the Criminal Procedure Code prescribe the specific measures of witness protection that can be applied to injured persons when examined as a witness within the meaning of Article 96(2) of the Criminal Procedure Code.

According to provisions of the Law on the Protection Programme for Participants in Criminal Proceeding (*Official Gazette of RS* No. 85/05), the injured party may be involved in the protection programme, which is a set of measures of protection and assistance to participants in criminal proceedings and the persons close to them, whose life, health, physical integrity, liberty or property is jeopardized due to giving statements or information relevant to evidence in criminal proceedings.

Articles 152 to 154 of the Law on Juvenile Criminal Offenders and Criminal Protection of Juveniles (*Official Gazette of RS* No. 85/05) stipulate that in case of criminal proceedings for criminal offences done to the detriment of minors, public prosecutor or the judge conducting the proceeding shall treat the injured by taking into account his/her age and personality traits, especially trying to avoid harmful consequences. The injured minor hearing shall be conducted with a help of psychologist, pedagogue or other expert, and in special cases, also by use of technical resources, as well as by asking questions indirectly, through experts. It is forbidden to face the injured minor and the defendant if, due to the nature of the offence or other circumstances, the minor is especially sensitive. As an injured party, the minor must be assigned a proxy starting from the first hearing of the defendant.

Article 89a of the Criminal Code (*Official Gazette of RS* No. 85/05, 88/05, 107/05, 72/09 and 111/09) prescribes the security measure of a restraining order and communication with the victim, which is reflected in the court order prohibiting the offender to approach the injured at a certain distance, to access the area around the residence or work of the injured and to further harass the victim through communication. This measure may take up to three years.

In accordance with Article 11 of the Law on Organization and Competences of Government Authorities in War Crimes Proceedings (*Official Gazette of RS* No. 67/03, 135/04, 61/05, 101/07 and 104/09), the Higher Court in Belgrade shall set up the Witness and Victim Support Office. The work of this Office shall be regulated by an act passed by the President of the Higher Court in Belgrade, with the consent of the Minister of Justice.

115. What guarantees are in place to ensure a public hearing in court? Give details of the circumstances in which limitations may be applied and the extent to which this occurs.

On the basis of Article 291(1) of the Criminal Procedure Code (*Official Journal of FRY* No. 70/2001, 68/2002, *Official Gazette of RS* No. 58/2004, 85/2005, 115/2005, 46/2006, 49/2007, 122/2008, 20/2009, 72/2009, 76/2010) the trial shall be public. The adults may attend the main trial. From opening of the session until the trial's end, the Chamber may at any time, ex

officio or at the request of the parties, but always upon taking their statements, exclude the public for the entire main trial or a part thereof, if required by the interest of protecting morals, public order, national security, the minors or for protecting privacy of the parties in proceedings or, at the opinion of the court, when necessary given the special circumstances due to which the publicity could make damage to the interests of justice. Interrogation of protected witness can be conducted by excluding the public from the main trial. If a person under the age of fourteen is being interrogated as a witness, the Chamber may decide to exclude the public from interrogation. Exclusion of the public does not apply to the parties, the injured party, their proxies and a defence counsel. The Chamber may allow for the trial, from which the public is excluded, to be attended by some officials and scholars, and at the request of the accused, may also allow attendance to his/her spouse, his/her close relatives and to the person the accused lives with in marital or any other permanent community. The Chamber president shall warn the persons attending the main trial from which the public is excluded, that they are required to keep secret of what they learn at the hearing and shall inform them disclosure of such information is considered a criminal offence. The decision to exclude the public shall be made by the Chamber, and shall be explained and publicly announced. The decision to exclude the public can be challenged only by appealing the verdict.

If the public has been excluded from the main trial, the verdict shall always be read at a public session. Chamber shall decide whether to exclude the public when announcing the reasons for the verdict. The record must contain information on exclusion of the public.

One of the essential violations of provisions in criminal proceedings exists if public was excluded from main trial contrary to the Criminal Procedure Code (Article 368(1)(4)), which may result in the abolition of the first instance decision on the appeal.

116. Is the presumption of innocence a central part of your criminal justice system and, if so, how is it applied in practice? How are the rights of defence guaranteed?

According to the Constitution of the Republic of Serbia (*Official Gazette RS* No. 98/2006), Article 34 and the Criminal Procedure Code (*Official Journal of FRY* No. 70/2001, 68/2002, *Official Gazette of RS* No. 58/2004, 85/2005, 115/2005, 46/2006, 49/2007, 122/2008, 20/2009, 72/2009, 76/2010), (Article 3(1)), everyone is presumed innocent until his guilt is established by a final decision of a competent court. The first principle of the Criminal Procedure Code lays down the rules aimed at preventing the conviction of innocent persons, and imposing criminal sanctions on the perpetrator of criminal offence under the conditions provided for in criminal law and on the basis of legally conducted proceedings. Furthermore, before making a final or sentencing verdict, the defendant may be restricted in the freedom and other rights only under the conditions stipulated by the Criminal Procedure Code.

State authorities, the mass media, civil associations, celebrities and other persons are required to comply with rules on the presumption of innocence and to prevent the offence of other rules of proceeding, as well as rights of the defendant and the victim and the independence, authority and impartiality of the court, through their public statements on the ongoing criminal proceedings.

Any person charged with a criminal offence is entitled, within shortest time possible and in accordance with the law, to be thoroughly informed in the language he/she understands about the nature and reasons of the accusation raised against him/her, and about the evidence gathered thereof. Any person charged with a criminal offence shall be entitled to defence counsel and shall have the right to take the defence counsel of his/her choice, to freely speak with the defence counsel and to be allowed adequate time and facilities to prepare the defence.

The defendant, who can bear the costs of the defence counsel, shall be entitled to free defence counsel if required by the interest of justice, in accordance with the law. Any person charged with criminal offence available to the court shall have the right to a trial in his/her presence and may not be sentenced unless he/she has been given the opportunity to a hearing and defence. Any person prosecuted for criminal offence shall have the right to present evidence in his/her favour by himself/herself or through the defence counsel, to examine witnesses against him/her and demand that witnesses on his/her behalf be examined under the same conditions as the witnesses against him/her and in his/her presence. Any person prosecuted for criminal offence shall have the right to a trial without undue delay. Any person charged or prosecuted for criminal offence shall not be obligated to provide self-incriminating evidence or evidence to the prejudice of persons related to him, nor shall he/she be obliged to confess guilt. Any other natural person prosecuted for other offences punishable by law shall have all the rights of a person charged with criminal offence pursuant to the law and in accordance with it. The presumption of innocence is confirmed by the Law on Public Informing (OG of RS No, 43/03, 61/05, 71/09, 89/2010 –CC (Constitutional Court)), which provides that no one should be proclaimed a perpetrator of a punishable act, or guilty or responsible before the final decision of a court or other competent authority is made.

According to the latest amendments to the Criminal Code, public disputes on judicial proceedings shall be prohibited (Article 336a).

According to the Criminal Procedure Code (Article 6(2)), final judicial decision can not be changed to the detriment of the defendant in extraordinary legal remedy proceedings.

Violation of the right to a fair trial-the presumption of innocence (Article 6(2)) of the European Convention on Human Rights and Fundamental Freedoms, is set forth in the ruling of the European Court of Human Rights, in case “Matijasevic against Serbia”.

“Matijasevic against Serbia”, application no. 23037/04) 23037/04

- The verdict was rendered on 19 September 2006.
- The applicant complained about the violation of the presumption of innocence under Article 6(2) of the EC. A violation has occurred during the extended detention which the applicant was ordered in the criminal proceedings against him conducted under the charges of murder and fraud. At the explanation of the decision, the District Court in Novi Sad stated that the applicant committed the offences he was arrested for. The Supreme Court of Serbia rejected his appeal stating that the District Court in Novi Sad has violated the presumption of innocence and prejudicated the outcome of criminal proceedings, in which he was later sentenced to eight years in prison for the criminal offence of the murder before the fact.

- the ruling of the European Court of Human Rights established that no violation of the presumption of innocence occurred (Article 6(2) of the European Convention) by the District Court in Novi Sad and that the Supreme Court of Serbia failed to rectify that mistake.
- the applicant was awarded the amount of EUR 662 for the costs of the proceedings.

Measures which the Republic of Serbia has taken relating to enforcement of this verdict are the following:

- the verdict was published in English and Serbian languages in the Official Gazette;
- the proxy sent a verdict in the Serbian language to all district courts in the Republic, with a request to distribute the verdict to municipal courts within their jurisdiction, as well as to pay special attention to prevent the similar violations of rights under Article 6(2) of the EC.
- in the daily newspaper "Politika" an article of the proxy was published listing several statements concerning this case, and the case itself was analyzed in a legal journal.
- the amount awarded was paid to the applicant.

117. What measures are there in place to prevent a person from being removed, expelled or extradited to a State where there is a serious risk that s/he would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment? Which bodies are responsible for fact-finding in such cases and do they have an adequate institutional framework to facilitate effective action? Please provide details.

According to the Law on Mutual Assistance in Criminal Matters (*Official Gazette of RS*, No. 20/2009), the extradition of a person to another state shall be prohibited if the extradition is demanded due to a crime for which the death penalty is prescribed or pronounced. The extradition is possible solely under the condition that the state demanding it provide guarantees that the death penalty prescribed for the crime due to which the extradition is demanded will not be pronounced, i.e. executed.

According to the mentioned law, under the Decision allowing the extradition, the Minister competent for justice shall make the extradition conditional by prohibiting prosecution, imposing criminal sanctions on the person or extraditing the person to a third state for a crime perpetrated prior to the extradition, which is not the cause of extradition, except in case that the person explicitly renounced the mentioned guarantees.

The Minister competent for justice may impose other conditions for extradition in the mentioned Decision. In addition, it should be mentioned that the Republic of Serbia adopted certain conventions prohibiting pronouncement and execution of the death penalty, torture or other inhuman or degrading treatment or punishment. According to the Constitution of the Republic of Serbia (*Official Gazette of RS*, No. 98/06), ratified international treaties have been integrated into the legal order of the Republic of Serbia and they are directly implemented, meaning that the Ministry of Justice may refuse to extradite a person for the mentioned reasons.

It should also be emphasized that under the Law on Mutual Assistance in Criminal Matters in Criminal Matters (Article 7), a request for mutual assistance, including the extradition, may be refused in case it refers to a political crime or an offence related to a political crime, or a crime involving nothing else but the violation of military duties. The request for mutual

assistance, including the extradition, shall also be refused if the provision of mutual assistance violates sovereignty, security, public order or other interests of vital importance to the Republic of Serbia. The Minister competent for justice gives the opinion and decides on the fulfilment of all the mentioned prerequisites.

Exceptionally, with regard to political crimes or offences involving the violation of military duties, legal aid shall be provided when it comes to crimes against international humanitarian law which are not subject to limitations on prosecution.

118. Please provide information on any legislative measures designed to protect and uphold respect for private and family life, home and communications. In which circumstances can these rights be set aside?

Constitutional and legal measures for the protection and respect of private and family life and home, and the implementation of these measures

Constitution of RS in Article 40 establishes that person's home is inviolable, that is no one may enter a person's home or other premises against the will of their tenant nor conduct a search in them. Entering a person's home or other premises, and in special cases conducting search without witnesses, is allowed without a court order if necessary for the purpose of immediate arrest and detention of a perpetrator of a criminal offence or to eliminate direct and grave danger for people or property in a manner stipulated by the law. Criminal Code (*Official Gazette of RS* no 85/05, 88/05, 107/05, 72/09 and 111/09, hereinafter: CC) from 6th October 2005, establishes the punishment for violation of inviolability of home (Article 130 of CC) with fine or imprisonment up to three years, as well as illegal search of the house or apartment (Article 140 of CC) with the imprisonment up to three years.

Personal data protection is guaranteed by constitutional, legal and judicial protection. The right on the protection of personal data is constitutional right. Constitution of RS in Article 42 guarantees the protection of personal data, establishes that collecting, keeping, processing and using of personal data is regulated by the law. Also, Constitution of RS in the same Article establishes that use of personal data for any the purpose other the one were collected for is prohibited and punishable in accordance with the law, unless this is necessary to conduct criminal proceedings or protect safety of the Republic of Serbia, in a manner stipulated by the law. In addition to this, Constitution of RS in Article 42 establishes that everyone has the right to be informed on the gathered data about personal data collected about him, in accordance with the law, and the right to court protection in case of their abuse.

The main, general law in the area of personal data protection is the Law on Personal Data Protection (*Official Gazette of RS*, No 97/2008 and 104/2009- sec. law, hereinafter: LPDP) aims to provide establishing and protection of the right to privacy and other rights and freedoms to every natural person. The provisions of LPDP are applicable to every format of electronic processing, as well as processing in the data collection, which is not electronic.

Elements, conditions, content and procedure of the respect of family life is established by Family Law (*Official Gazette of R S*, No 18/05) of 24th February 2005, which establishes the following: "Everyone has the right to protection of their family life" (Article 2(2)). Family Law does not contain provisions defining family, and pursuant to provisions of Article 2

paragraph 2 of the Law, family life is established as legal standard, that is the possibility remains for courts in the Republic of Serbia to define in each concrete case the notion of family, with the practice of the European Court for Human Rights practise as the foundation.

The Rulebook on organization, norms and standards for work of Social Work Centres (*Official Gazette of RS*, No 59/08 and 37/10) establishes principles, which commit social work centres (administrating authority) in performing their public powers in the area of protection and aid to families, that is that in implementing right and providing services, human rights and dignity of the user (Article 6) is respected, to keep confidentiality of information on personal and family situation of the user (Article 14), stand for the interest and rights of users and provide equal access to services for all citizens, regardless of their ethnic, cultural, religious, gender o socially economic differences, disability and sexual orientation.

Violation of right of private and family life from Article 8 of European Convention for the Protection of Human Rights, which is in relation to the violation of right to family life, is established in six judgements of European Court for Human Rights, while in one case it was established that there was no violation of right of the complaint submitter. The judgements establish violation of right to trial in reasonable time frame and right to efficient legal remedy and amounts for compensation on the behalf of immaterial damage were adjudged, and in three cases on the behalf of procedure costs. Complaint submitters complained on the long procedure for divorce and custody of children, paternity test for establishing fatherhood and child support, dragging out judgement enforcement that is non- enforcement of binding judgements on child custody, that is seeing the child, as well as the legality of the proceedings/ judgement reference: V.A.M against Serbia, complaint No 39177/05; Tomic against Serbia, complaint No 25959/06; Jevremovic against Serbia, complaint No 3150/05; Felbab against Serbia, complaint No 14011/07; Salontaji- Drobnjak, complaint No 26500/05; Damnjanovic against Serbia, complaint No 5222/89; Krivoshej against Serbia, complaint No 42559/08)/

Measures taken by the Republic of Serbia in relation to enforcing its judgements, in order to provide the respect of private and family life, and which are directed to removing shortcomings in the entire legal system of the Republic of Serbia, are as follows:

- judgement are published in the Official Gazette of RS, in the Serbian and English language;
- judges fees are paid;
- in September 2008 the Seminar on implementation of Article 8 of European Convention was organised, in which in addition to judges of European Court for Human Rights and representatives of the Secretariat, the representatives of all state authorities, whose work is closely connected to implementing and protection of this right also participated. The discussion contributed to better indentification of problems, and the ideas on their solving were also presented;
- Ministry of Labour and Social Policy adopted the guidelines on authorities of the Centeres for social work, time frame and procedure, which should be implemented in relation to implementation of Family Law. Acting according to this guidelines started on 1st April 2009.
- it is expected that the new Law on Executive Procedure establishes measures, which should provide more efficient execution of judgements in family matters.

Constitutional and legal measures for protection and respect of privacy of communication and implementation of these measures

Constitution of RS pursuant to Article 41 establishes that the confidentiality of letters and other means of communication are inviolable, and derogations are allowed only for a specified period of time and based on decision of the court if necessary to conduct criminal proceedings or protect the safety of the Republic of Serbia, in a manner stipulated by the law. Criminal Code punishes the violation of privacy of letters and other packages (Article 142 of CC) with the financial fine or imprisonment up to two, that is three years, as well as unauthorised bugging and recording (Article 143 of CC) with financial fine or imprisonment up to three, that is five years.

The Law on Electronic Communication (*Official Gazette of RS* No 44/10, hereinafter: LEC) from 30th June 2010, with scope of action and principles of regulations in the area of electronic communication (Article 3 of LEC), establishes that the above mentioned are established on the basis of, inter alia, providing the high level of protection of personal data and privacy of users, and in accordance with LPDP and other laws. This makes the Commissioner competent for, in his scope of action, the protection of personal data in electronic communication (especially for withholding data and secrecy of communication).

Pursuant to Article 126 of LEC the interception of electronic communication, which reveals the content of communication is not allowed without the user's consent, except for temporal period and according to court's decision, if it is necessary for criminal procedure or protection of security of the Republic of Serbia, and it does not prevent taping of communication and related data on communication, performed in order to prove commercial transactions and other business relations, in which both sides are aware or should be aware or have been specifically warned on the fact that the performed communication could be taped. The use of electronic communication networks and services for keeping or accessing data stored in terminal equipment of subscriber or user, is permitted under the condition that subscriber or user was given clear and complete notification on the purpose of gathering and data treatment, in accordance with the law establishing personal data protection, and with the possibility to decline such accessing, which does not prevent technical keeping and access to information with the aim of providing communication in the area of electronic communication networks or giving services, which the subscriber or user specifically asked for.

Pursuant to Article 127 of LEC, the operator has to enable legal interception of electronic communication, where the competent authority, which implements the work of legal meetings has to keep records on the electronic communication that were met, under article, which specifically contains the establishing of act, which represents the legal foundation for interception, date and time of interception, as well as keeping such records confidential, according to the law establishing the confidentiality of data. When competent authority, which performs the jobs of legal interception is not in a position to perform legal interception of electronic communication without the access to the facilities, electronic communication networkm belonging equipment or electronic communication equipment of the operator, the operator has to keep records om accepted requests for interception of electronic communication, which especially contains the identification of the person authorised for intercepting, establishing of act, which presents the legal basis for interception, date and time of the interception, as well as to keep the evidence confidential, according to the law establishing the confidentiality of data. Operator has to, in order to provide the legal

interception of electronic communication, on his expense to provide the necessary technical and organisational prerequisites (devices and programme support), as well as to submit the proof to the Republic Agency for Electronic Communication.

Pursuant to Article 128 of LEC, the operator is responsible to keep the data on electronic communication (hereinafter: kept data) for implementing investigation, disclosing criminal offences and leading the criminal procedure, in accordance with law, which establishes criminal procedure, as well as for the needs of protecting national and public security of the Republic of Serbia, in accordance with laws establishing the work of security services of the Republic of Serbia and the work of authorities of the interior. Operator is responsible to keep data in original form or as data processed during the process of electronic communication and is not responsible to keep the data, which were not produced or processed. Operator is responsible to keep the kept data for 12 months since the day of performed communication and in the way to be able to access them, that is to be able to submit them without delay upon request of the competent authority body.

The competent authority, which is accessing, that is to whom the kept data are submitted, is responsible to keep record on the access, that is submitting of the kept data, which comprise the following: establishment of the act, which represents the legal foundation for access, that is submitting of the kept data, date and time of access, that is submitting of the kept data, as well as to keep the records confidential, according to the law establishing the confidentiality of data. When competent authority body is not in a position to establish the access to kept data without the access to the facilities, electronic communication network, to resources or electronic communication equipment of the operator, the operator is responsible to keep records on the received requests for access, that is on submitting of the kept data, especially if those records contain the identification of person authorised to access the kept data, that is to whom the requested data were submitted, establishment of the act, which represents the legal foundation for access, that is submitting of the kept data, date and time of access, that is submitting of the kept data, as well as to keep the records confidential, according to the law establishing the confidentiality of data.

Commissioner and Ombudsman have submitted the joint proposal for the constitutional approval of provisions of Article 128 (1) and (5) of LEC to the Constitutional Court on 30th September 2010. The position of these two institutions is that the mentioned provisions are not in accordance with Article 41 paragraph 2 of the Constitution, because they allow the implementation of special measures, which provide the derogation from the confidentiality of letters and other means of communication, not only pursuant to the court decision, but even without the court warrant- when such possibility is established by law, that is upon the request of the competent authority. In addition to the position on unconstitutionality of these provisions, there is also court decision from the Constitutional Court IY3 -149/2008 of 28th May 2009, adopted on the initiative of the Provincial Ombudsman for the constitutional approval of Article 55 (1) of the Law on Telecommunication (*Official Gazette of RS*, No 44/05 and 36/09). The same proposal demanded for the constitutional approval of provisions of Article 13 paragraph 1 of the Constitution in relation to Article 12 (1) point b), that is Article 16(2) of the Law on Military Security Agency and Military Intelligence Agency (*Official Gazette of RS*, No 88/2009) from 28th October 2009, which establish that MSA "on the basis of orders of MSA Director or person authorised by him" applies special procedures and measures, which are derogations from the confidentiality of letters and other means of communication, though they could be applied only according to court decisions.

Pursuant to the Law on Police (*Official Gazette of RS* No. 101/05) from 14th November 2005, Criminal Procedure Code (*Official Journal of FRY* No. 70/01 and 68/02, and the “Official Gazette of RS”, no. 58/04, 85/05, 115/05, 49/07, 20/09 - sec. law and 72/09) from 28th December 2001 and the Law on Minor Offences (*Official Gazette of RS*, No 101/05) from 21st November 2005, police officers may deprive some of the person’s rights guaranteed by the Constitution of RS, that is change the legal authorisation according to them.

Violation of the right to privacy of communication of prison inmates

Violation of the right for the respect of private and family life from Article 8 of the European Convention for the Protection of Human Rights regarding the reading of written communication of inmates is established in two judgements of the European Court for Human Rights. In this case it was established that only finding of violation of the right is sufficient satisfaction for the submitter, so that only trial costs were ruled. Judgements: Stojanovic against Serbia, request No 34425/04 and Jovancic against Serbia, request No 38968/04/. Measures taken by the Republic of Serbia regarding the implementation of these judgements, and with the aim of providing respect of private and family life regarding the reading of written communication between inmates, and which are directed toward the removal of inconsistencies in the complete legal system of the Republic of Serbia are as follows:

- judgement Jovancic against Serbia published in the Official Gazette of RS, in the Serbian and English language and on the internet page paragraph.net with the commentaries from the experts;
- Republic of Serbia has changed legal provisions in relation to reading of written communication of inmates. Article 34 of the Law on Amendments and Additions of the Law on Enforcement of Penal Sanctions (*Official Gazette of RS*, No 72/09) from 3rd September 2009, amends the Article 75 of the Law on Enforcement of Penal Sanctions (*Official Gazette of RS*, No 85/05) of 6th October 2005. According to this provision, the inmate has unlimited right to written communication on his own expense. In closed type institutions with special security, closed institutions and closed wards of an institution, upon the request of the prison governor or director of the institution, the Court of First Instance in the headquarters of the institution may, if it is necessary for the reasons of maintaining order, safety and security, prevention of criminal offences and the protection of damaged party, adopt the decision that, temporarily, the text of the letters is supervised and may prohibit written communication. The inmate has the right to appeal against such decision within three days directly to Higher Court, and the appeal does not postpone the implementation of the decision. In the case of doubt for sending and receiving prohibited things in letters, the letter sent to the inmate, as well as the letter, which he sends, will be opened in his presence and reviewed, and prohibited things shall be taken from him/ her. The inmate has the right to confidential correspondence with legal counsel, Ombudsman and other state authorities and international organisations for protection of human rights. In order for this legal provision to be implemented, the director of Institute for Implementation of Prison Sanctions with the Ministry of Justice, has sent notifications to the directors of Correction Institutions on the need for strict respect of legal provisions on opening the correspondence of inmates and that it is allowed only on the grounds of suspicion of the suspicious package and that it could be opened only in the presence of the inmate.

119. Elaborate on the legislative structures in place to ensure protection of the right to freedom of thought, conscience and religion. Please give details and explain any limitations to this freedom which are permitted.

Guaranteeing freedom of thought, conscience and religion

Freedom of thought, conscience and religion is guaranteed under Article 43 of the Constitution of the Republic of Serbia (*Official Gazette of RS*, No. 98/06). Paragraph (1) of this Article of the Constitution provides also for the right to stand by one's conviction or religion or change them by choice. Paragraph (2) of the same Article provides that no person shall have the obligation to declare his/her religious or other convictions, whereas paragraph (3) stipulates that everyone shall have the freedom to manifest his/her religion or religious convictions in observance, worship, religious teaching, individually or in community with others, and to manifest his/her religious convictions in private or in public.

Freedom of thought and expression is guaranteed under Article 46, which provides for the freedom of thought and expression, as well as for the freedom to seek, receive and impart information and ideas through speech, writing, picture or in some other manner.

Under Article 48, the Republic of Serbia shall promote understanding, consideration and respect of diversity arising from specific ethnic, cultural, linguistic or religious identity of its citizens through measures applied in education, culture and public information.

In accordance with Article 50(1), everyone shall have the freedom to establish newspapers and other forms of public information without prior permission and in a manner laid down in the Law.

Article 18(1) and (2) of the Constitution provides that human and minority rights guaranteed by the Constitution, as well as by generally accepted rules of international law, ratified international treaties and laws, shall be implemented directly. The same Article of the Constitution provides that the law may prescribe the manner of exercising the rights guaranteed by the Constitution only if explicitly stipulated in the Constitution or if it is necessary for the exercise of a specific right owing to its nature, whereby the law may not under any circumstance influence the essence of the relevant guaranteed right.

The manner of exercising the freedom of thought, conscience and religion is regulated by provisions of several laws. The Law on Churches and Religious Communities (*Official Gazette of RS*, No. 36/06) is the most important Law concerning the exercise of the freedom of religion. Article 1 of the Law stipulates that the freedom of religion includes: freedom to have or not, preserve or change religion or religious convictions, i.e. freedom of belief; freedom to profess belief in God; freedom to, either alone or in community with others and in public or private, manifest religion or religious convictions in worship, observance, religious practice and teaching, cherishing and developing religious tradition; freedom to develop and improve religious education and culture.

Under Article 5 of the Law, citizens shall have freedom of association and public assembly for the purpose of manifesting their religious convictions, and in compliance with the Constitution and law, and they also have the freedom to join churches and religious communities, in accordance with the law. In accordance with Article 7 of the Law, the state

shall not interfere with the application of autonomous legislation of churches and religious communities.

The Law stipulates that churches and religious communities are entered into a special Register of Churches and Religious Communities kept by the Ministry competent for religious affairs. Article 10 of the Law provides that the traditional churches and religious communities are the Serbian Orthodox Church, the Roman Catholic Church, the Slovakian Evangelist Church AC, the Christian Reformist Church, the Evangelist Christian Church AC, the Jewish Community and the Islamic Community. It is stipulated that they are entered into the Register upon submitting an application containing the name of the church or religious community, the seat of the church or religious community and the name, surname and function of the person authorised to represent the church or religious community. Other religious communities shall submit also the decision on founding the religious organisation with names, surnames, number of identification documents, signatures of at least 0.001% of the Republic of Serbia citizens of age, with residence in the Republic of Serbia, according to the latest official census, or foreign nationals with permanent residence on the territory of the Republic of Serbia, the Statute or other document of the religious community which contains: description of the organisational structure, method of management, rights and obligations of the members, information on fundamentals of religious teachings, religious rites, religious goals and basic activities of the religious organisation, as well as information on other sources of income of the religious organisation.

Under Article 31, churches and religious communities shall perform worship, observance and other religious activities in their temples, other buildings, other premises of their own or in rented premises. Worship, observance and other religious activities may also be performed in hospitals, army and police facilities, state penitentiaries, in schools, social and children's welfare institutions in appropriate circumstances, or open places, as well as places related to important historical events or individuals, pursuant to the relevant laws. In accordance with the Constitution, law and the right of churches and religious communities to autonomy, the Law guarantees the protection and inviolability of the places where religious activities are held for the time of their holding.

Article 40 of the Law guarantees the right to religious teaching in public and private elementary and secondary schools, pursuant to the relevant Law.

In compliance with the Constitution and the relevant laws and aiming at advancing religious freedoms and freedom of information, churches and religious communities have the right to use the public broadcasting service, as well as to independently conduct their own information and publishing activity. In performing their information and publishing activity, churches and religious communities are obliged to visibly post their full name. When informing the public on their activities, churches and religious communities are obliged to clearly state the nature and contents of the particular activity.

Article 25 of the Act on the Serbian Armed Forces (*Official Gazette of RS*, No. 116/07 and 88/09) provides that worship shall be organised for the purpose of exercising the freedom of religion in the Serbian Armed Forces. Article 26 of the aforementioned Act provides that the Government shall regulate the conduct of worship in the Serbian Armed Forces, whereas Article 27 stipulates that mutual relations of the Ministry of Defence and churches or religious communities pertaining to the conduct of worship are regulated by special agreements.

Protection of the freedom of thought, conscience and religion

Article 22 of the Constitution of the Republic of Serbia provides that everyone shall have the right to court protection when any of his/her human or minority rights guaranteed by the Constitution have been violated or denied, as well as right to elimination of consequences arising from the violation. Protection of human rights within the legal order of the Republic of Serbia is ensured by courts. Article 198(2) of the Constitution provides that the lawfulness of final individual administrative acts, i.e. acts of state authorities against which appeals may not be lodged or have already been lodged, and which decide on a right, duty or legally grounded interest of physical and legal entities shall be subject to revision before a court, in administrative dispute proceedings. On the basis of the presented constitutional provision, Article 23 of the Law on Churches and Religious Communities provides that the decision of the Ministry of Religion on registration, refusing the application for registration, refusing the registration or deleting from the Register of Churches and Religious Communities is final in administrative proceedings, and it could be challenged by administrative dispute proceedings conducted before the competent court.

The Constitution of the Republic of Serbia provides also for constitutional and court protection of human rights and freedoms, and hence the freedom of religion. Article 170 of the Constitution provides that a constitutional appeal may be lodged against individual acts or actions performed by state authorities or organisations endowed with public powers which violate or deny human or minority rights. A constitutional appeal may be lodged in case other legal remedies for the protection of human and minority rights guaranteed by the Constitution have already been applied or not specified. The Constitutional Court of the Republic of Serbia decides on the constitutional appeal.

Under Article 22(2), the Constitution of the Republic of Serbia stipulates that citizens shall have the right to address international institutions in order to protect their freedoms and rights guaranteed by the Constitution.

Permitted limitations to the freedom of thought, conscience and religion

Article 20 of the Constitution of the Republic of Serbia regulates the issue of limitations to human and minority rights. Under this Article of the Constitution, human and minority rights guaranteed by the Constitution may be restricted by the law if the Constitution permits such restriction and for the purpose allowed by the Constitution, to the extent necessary to meet the constitutional purpose of restriction in a democratic society and without encroaching upon the essence of the relevant guaranteed right. Paragraph (2) of this Article of the Constitution explicitly stipulates that the attained level of human and minority rights may not be lowered, whereas paragraph (3) provides that when restricting human and minority rights, all state authorities, courts in particular, shall be obliged to consider the essence of the restricted right, pertinence of the restriction, nature and extent of the restriction, relation between the restriction and its purpose and whether there is a possibility to achieve the purpose of the restriction with restriction of the right to a lower extent.

Under Article 46 of the Constitution, the freedom of expression may be restricted by law if necessary to protect the rights and reputation of others, to uphold the authority and objectivity

of the court and to protect public health, morals of a democratic society and national security of the Republic of Serbia.

Article 43(4) of the Constitution regulates in more detail the manner, scope and reasons for which the freedom of religion may be restricted. This constitutional provision provides that the freedom of manifesting religion or convictions may be restricted by law only if it is necessary in a democratic society to protect lives and health of people, morals of a democratic society, freedoms and rights of citizens guaranteed by the Constitution, public safety and order, or to prevent instigation or incitement of religious, national or religious hatred. Article 49 of the Constitution provides that instigation of religious inequality, hatred and enmity shall be prohibited and punishable.

Under Article 50(3), censorship shall not apply in the Republic of Serbia. The competent court may prevent the dissemination of information and ideas through means of public information only when it is necessary in a democratic society, in order to prevent incitement of violent overthrow of the system established by the Constitution, or to prevent violation of territorial integrity of the Republic of Serbia, to prevent propagation of war or instigation to direct violence, or to prevent advocacy of racial, national or religious hatred inciting discrimination, hostility or violence.

Under Article 3(1) of the Law on Churches and Religious Communities, the freedom of religion and religious convictions may be subject only to such restrictions as are prescribed by the Constitution, laws and ratified international documents and as are necessary in a democratic society in order to protect public safety, public order, morals, freedoms and rights of others, whereas paragraph (2) of the same Article of the Law provides that religious freedom may not be used in such a way to either threaten the right to life, right to health, children's rights, right to personal and family integrity and right to property, or to instigate or incite religious, national or racial enmity. With respect to the presented provisions of the Constitution and the Law, Article 20(4) of the Law stipulates that in the registering procedure, the Ministry competent for religious affairs passes the decision on refuting the application for entering into the Register if the goals, teachings, rites or activities of the religious organisation are contrary to the Constitution and public order or if they threaten the life, health, freedom and rights of others, children's rights, right to personal and family integrity and right to property. If the activity of an existing religious community threatens the right to life, right to physical and mental health, children's rights, right to property, public safety and public order, or if it instigates and incites religious, national or racial enmity, the Constitutional Court of the Republic of Serbia may impose a ban on such a religious community. Having regard to the developed religious pluralism and good inter-confessional cooperation, in the Republic of Serbia, proceedings have not been initiated for banning some church or religious community so far, nor has any of the registered churches or religious communities been deleted from the Register of Churches and Religious Communities.

The Constitution provides for the possibility of derogation from human and minority rights. Under Articles 200-202 of the Constitution, derogation from human and minority rights is allowed only in special cases, namely if a state of emergency or war is declared. Upon declaration of the state of emergency or war, derogations from human and minority rights guaranteed by the Constitution shall be permitted to the extent deemed necessary. Article 202 of the Constitution explicitly stipulates that measures providing for derogation shall not bring about differences based on race, sex, language, religion, national affiliation or social origin.

Article 13(1), points (1) and (2) of the Act on the Serbian Armed Forces provide that members of the Serbian Armed Forces are obliged, during their service, to act in accordance with the Constitution, law and other regulations, according to the rules of the profession, objectively and in a politically neutral manner; may not display political party or other political features and may not express their political convictions.

120. Are the freedoms of assembly and association assured?

a) Provide statistics regarding the number of non-governmental organisations and associations or foundations active in your country.

b) What is the legal status of non-governmental organisations and associations or foundations, including as regards financing, taxes, and restrictions on membership or on activities?

c) Which, if any, justifications are permitted as regards possible restrictions placed on the exercise of these freedoms? Which body may impose such restrictions?

a) The Constitution of the Republic of Serbia from 2006 guarantees the freedom of association as one of the human rights and freedoms. Namely, pursuant to Article 55 of the Constitution, freedom of political, union and any other form of association shall be guaranteed, as well as the right to stay out of any association; associations shall be formed without prior approval and entered in the register kept by a state body, in accordance with the law.

Whereas, pursuant to Article 194 paragraph 4 of the Constitution, ratified international treaties and generally accepted rules of the international law are the part of the legal system of the Republic of Serbia, it is necessary to note that the following provisions are directly applied in this part: the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols (11, 4, 6, 7, 12, 13 and 14), the United Nations Convention on the Rights of the Child, etc.

Establishment and legal status of associations, entry and deletion from the register, membership and authorities, changes of status and termination of the association, as well as other matters significant for the work of the association are established pursuant to the Law on Associations (*“Official Gazette of the RS”*, No. 51/09) which was adopted on 8 July 2009, and came into effect on 22 October of the same year. This Law establishes the status and activities of the foreign associations in the Republic of Serbia.

The Law was prepared by the Working Group consisting of the representatives of the Ministry of Public Administration and local self-government and several representative civic associations. Furthermore, the Law was subjected to an exhaustive public comment procedure which was taken part in by all relevant bodies that the law pertains to, most importantly the numerous civic associations, social organisations and their federation; the draft was also positively reviewed by the Belgrade office of the Council of Europe.

For the purposes of this Law, an association shall be a voluntary and non-governmental non-profit organisation based on the freedom of association of several individuals or bodies

corporate, established in order to pursue and promote a particular shared or general goal and interest which are not prohibited by the Constitution or the law.

As one of the most important innovations, the Law provides that an association shall be established before the entry in the register, but it shall acquire the status of a legal entity at the date of its entry in the Register. Practicably, entry in the Association Register shall be made on a voluntary basis. The legal rules on contract partnership shall apply accordingly to any associations not holding the status of a legal entity. However, it is important to emphasize that the Law on Association provides numerous advantages to the associations entered in the Register (to independently act in legal matters, to carry out economic and other activities in accordance with law, to apply for financial means from the budget of the Republic, Autonomous Province or local self-government units provided for funding of certain programs of public interest, etc).

This Law significantly liberalised the conditions for the establishment of associations, so that now instead of “10 employees and citizens”, an association may be established by at least three natural and/or legal persons holding working capacity. A minor who has turned 14 years of age may be a founder of the association subject to the statement by his legal representative granting consent to that effect.

In addition to the above mentioned, an individual may be a member of an association under the same circumstances in accordance with its statute. A natural person may be a member of an association regardless of his/her age, but the statement on accession to membership of the association for a minor below fourteen (14) years of age shall be made by his legal representative.

It is necessary to stress that this Law establishes the regulatory framework which for the first time enables a foreign association (or its representative office in the Republic of Serbia) to perform activities on the territory of the Republic of Serbia having previously been registered in the Register of foreign associations, as the trusted work of the Ministry for Public Administration and Local Self-Government.

Moreover, the Law establishes in detail the issue of the manner of property acquisition and performance of the association's activities. Pursuant to this Law, an association may acquire assets from membership fees, voluntary contributions, donations and presents (in cash or in kind), financial subsidies, dead persons' estates, interest rates on deposits, rental fees, dividends and in other ways permitted by the law. In addition to this, an association may perform any activities which help achieve goals set forth in its statute. An association may directly perform both a business activity and another profit-making activity in accordance with the law regulating the classification of activities, under the following conditions: that the activity is linked to its statutory goals; that the activity is stipulated by its statute; that the activity is of a narrower scope or that the activity is performed in the scope required for achieving the association's goals. In this regard, associations are obliged to keep ledgers, draw up financial reports and shall be subject to financial report and shall be subject to financial report auditing in line with the accounting and auditing regulations.

Any social organisations, civic associations and their (con)federations established under the previously valid regulations and entered in the appropriate Registries, shall continue their activities as associations at the date of the start of the present Law's implementation but shall

be required to bring their statute and other regulations into harmony with the provisions of the present Law within eighteen (18) months as of the start of implementation of the present Law, as well as to submit their application for entry of harmonisation in the Register of Associations, which is run by the Serbian Business Registers Agency, through the Association's Registrar, as the trusted work of the public administration from the scope of the Ministry for Public Administration and Local Self-Government.

With regard to the fact that the procedure of entry of harmonisation in the Register of Associations is in progress, regarding the number of associations working on the territory of the Republic of Serbia, we stress that since the date of the adoption of this Law in the Register of associations, social organisations and political organisations (led by the Ministry of Public Administration and Local Self-Government) 13,594 civic associations, social organisations and their (con)federations have been entered, and in the Register of Social Organisations and Civic Associations (led by the Ministry of Internal Affairs) – 25,732 civic associations, social organisations and their (con)federations.

According to the data of the Business Registers Agency, the total of 4,968 associations and their (con) federations were entered until 1 December 2010. Out of that number, 2,523 associations and 73 (con)federations were entered in the Register after the submission for the entry of harmonisation, and 2,349 associations and 23 (con)federations were established after the adoption of the new Law on associations and entered in the Register in accordance with that regulation.

Furthermore, according to the data of the Business Registers Agency, until the above mentioned data, 53 representative offices of foreign associations were entered in the Register of Foreign Associations.

The data on the number of associations and representative offices are available at the official website of the Business Registers Agency (www.apr.gov.rs).

The Constitution establishes that secret and paramilitary associations shall be prohibited, and according to the highest legal act, the Constitutional Court may prohibit, only the association whose activities are directed towards the violent overthrow of the constitutional order, infringement of human and minority rights and provocation of racial, national or religious hatred.

The Law on Associations elaborates on these Constitutional provisions by stating other Constitutional human rights and freedoms which are included in the anti discrimination norms of the Constitution. It is thus established that that the activities of associations may not be directed towards the violent overthrow of the constitutional order and violation of the territorial entirety, infringement of human and minority rights and provocation and encouragement of inequality, hatred and intolerance based on racial, national, religious or other affiliation or orientation, as well as sex, gender, physical, psychological characteristic and abilities. It is thus established that that the activities of associations may not be directed towards the violent overthrow of the constitutional order and violation of the territorial entirety, infringement of human and minority rights and provocation and encouragement of inequality, hatred and intolerance based on racial, national, religious or other affiliation or orientation, as well as sex, gender, physical, psychological characteristic and abilities.

b) **The Law on Associations** provides the establishment and legal status of an association, entry and deletion from the register, membership and authorities, status changes and termination of an association, as well as other matters of importance for the work of the association.

An association, under this law, is a **voluntary and non-government non-profit organisation** based on the freedom of association of more natural or legal persons, established for the purpose of achievement and improvement of a specific common or general purpose and interest, which are prohibited by the Constitution or Law.

The Law on Endowments and Foundations (*“Official Gazette of the RS”*, No. 88/10) provides the establishment and legal status of **endowments and foundations**, property, internal organisation, entry and deletion from the register, membership and authorities, status changes, supervision of the work of endowments and foundations, termination, as well as other matters of importance for their work, as well as the legal status and activities of foreign endowments and foundations.

Endowments and foundations, under this Law, are non-profit non-governmental organisations.

1. Pursuant to the Law on Value Added Tax (*“Official Gazette of the RS”*, No. 84/04, 86/04-corrigendum, 61/05 and 61/07 – hereinafter: The Law on VAT), a tax payer may be any individual who independently and in the course of his/her activity performs a supply of goods or services, or imports goods, as a permanent activity for the purpose of gaining income. According to this law, the Republic and its bodies, bodies of territorial autonomy and local self-government, as well as legal entities legally founded for the purpose of performing government activities shall not be considered taxpayers if they perform the supply of goods and services in the course of government activities or for the purpose of performing government activities.

However, the Republic and its bodies, bodies of territorial autonomy and local self-government, as well as legal entities legally founded for the purpose of performing government activities shall be considered taxpayers if they perform supply of goods and services taxable in accordance with this law outside their government activities, i.e. outside the activities of the government administration that are taxable under the provisions of this Law.

Any individual who independently and in the course of his/her activity performs a supply of goods or services, or imports goods, with no purpose of gaining income is not a taxpayer.

In this respect, non-governmental organisations who exclusively perform activities within the implementation of purposes for which they are established, and who are not of commercial nature, are not VAT taxpayers, which means that based on those activities they have no obligation of calculation and payment of VAT. For the supply of goods and services to the non-governmental organisations, the VAT taxpayer is obliged to calculate and pay VAT (unless it is the supply for which is exempt from taxation). Non-governmental organisations may not claim pre-paid tax deductions in case of VAT paid as invoiced by supplier.

However, if non-governmental organisations also perform activities of commercial nature (e.g. lease of business premises), in that case shall be considered taxpayers with all rights and obligations stipulated by the Law on VAT.

2. Pursuant to the Law on Value Added Tax of legal entities (*“Official Gazette of the RS”*, No. 25/01, 80/02, 43/03, 84/04 and 18/10 – hereinafter: the Law), Article 1 paragraph 3 provides that taxpayers shall be legal entities and other legal entities (non-profit organisations) which are not organised as companies and cooperatives, if they gain income by selling products on the market or perform services at a charge. In accordance with the Law, the profits of non-profit organisations gained on the market shall be the profits from sales of goods, products and services; profits from leases and profits from interests.

With respect to this, from the point of view of tax legislation, non-governmental organisations and associations or foundations are considered other legal entities – non-profit organisations, which are required to pay corporate income tax if they derive income from selling goods in the market or performing services at a charge, whereby the excess market income over expenses (incurred in relation to earning such income) represents the tax base established in the manner set out in the Regulation on the Content of the Tax Balance for Other Legal Entities (Non-Profit Organisations) – Corporate Income Taxpayers (*“Official Gazette of the RS”*, Nos. 19/05, 15/06 and 20/08). The tax rate applicable to the tax base established in this manner is the same as for other corporate income taxpayers, and stands at 10 %.

However, under Art. 44(1) of the Law, the tax exemption shall apply to any non-profit organisation declaring income that is up to 400,000 dinars in excess of its expenditures in the year for which the right to exemption is granted, on the following conditions: that the non-profit organization does not distribute the thus generated surplus to its founders, members, executives, employees or persons associated with them; that the salaries paid by the non-profit organization to its employees, executives and persons associated with them are not greater than twice the average salary paid in the branch to which that non-profit organization belongs; that the non-profit organization does not distribute assets in favour of its founders, members, executives employees or persons associated with them.

The right to exemption does not apply to any non-profit organization which declares income that is more than 400,000 dinars in excess of its expenditures, as well as to any non-profit organization that enjoys a monopolistic or dominating position on the market as determined by legislation governing the limitation of monopolies or dominant positions (Art. 44(2) of the Law).

Under the Law, the taxpayer is required to file a tax return (along with the tax balance) detailing the tax for the period for which the tax is assessed. For the purposes of assessing income tax, the tax period is the business year, which is equal to the calendar year, except in cases referred to in the Law.

The content of the tax return for non-profit organisations (filed on Form PDN – Tax Return for the Advance or Final Assessment of Corporate Income Tax for Non-Profit Organisations) is governed by the Regulation on the Content of the Tax Return for the Assessment of Corporate Income Tax (*“Official Gazette of the RS”*, Nos. 139/04, 19/05 15/06 and 59/06).

3. Pursuant to Article 14 of the Property Tax Law (*“Official Gazette of the RS”*, No. 26/01, 45/02, 80/02, 135/04, 61/07 and 5/09 – hereinafter: “ZPI”) stipulates that inheritance and gift tax is payable on rights to real property referred to in Art. 2(1)(1-5) (1-5) of the ZPI inherited by the inheritors or received as gift by recipients. Inheritance and gift tax is payable in case of inheritance or receipt as gift of real property referred to in Art. 2(1)(6) of the ZPI, irrespective of the surface area of the real property inherited or received as gift. Inheritance or gift tax is also payable on the following assets inherited or received as gift: cash, savings deposits, assets deposited with banks, pecuniary claims, intellectual property rights, rights of use of a used motor vehicle, used vessel or used powered aircraft, excepting where these are state-owned, and other movable property excepting shares in a legal entity and securities. Gift tax is also payable in case of transfer without charge of property of a legal entity.

The ZPI considers as “used” any motor vehicle, vessel or powered aircraft that was registered, entered into an appropriate roll, or issued a certificate or permit of sea-worthiness or permit for use in the territory of the Republic of Serbia at least once.

The ZPI does not consider as gift any transfer without charge of rights on real property and immovable property referred to in Article 14 1. (1-4) of the ZPI that is subject to value-added tax, as provided for by legislation governing value-added tax, irrespective of any gift contract.

The ZPI does not consider as gift any income received on grounds making it exempt from taxable income, i.e. not subject to personal income tax, as provided for by legislation governing personal income taxation.

The provisions of Article 2 paragraph of the ZPI list the following rights of taxation: property right; tenancy right; right to a long-term lease on a dwelling or residential building pursuant to the law governing housing; right of use to urban public or other building land exceeding 10 ares in area.

Under Article 15 of the ZPI, any resident and non-resident of the Republic of Serbia is subject to inheritance and gift tax when they inherit or receive as gift any territory of the Republic of Serbia.

Inheritance or gift tax is payable by any resident of the Republic of Serbia who inherits or receives as gift a taxable object referred to in Article 14 of the ZPI (except for real property) in case of an object located in the territory of the Republic of Serbia or abroad. Inheritance or gift tax is payable by any resident of the Republic of Serbia who inherits or receives as gift a taxable object referred to in Article 14 of the ZPI (except for real property) in case of an object located in the territory of the Republic of Serbia or abroad.

Inheritance and gift tax is not payable on cash, rights or items referred to in Article 14 of the ZPI (that are not real property) if the individual market value or nominal value of each taxable item, or its amount if cash, is lower than 9,000 dinars (Article 20 ZPI).

Under Article 21 paragraph 1 items 5), 12) and 13) of the ZPI, inheritance or gift tax is not payable:

- By funds or foundations, on property inherited or received as gift where such property is exclusively intended for the purpose for which the fund or the foundation were established;

- By a recipient of a donation under an international contract entered into by the Republic of Serbia where such contract stipulates that funds, property or rights are not subject to gift tax;
- On assets received from the Republic of Serbia, an autonomous province or local self-government authority.

Therefore, where a gift received by a non-governmental organisation is subject to value-added tax, such gift is not subject to gift tax.

Where value-added tax is not payable on a gift, received by a non-governmental organisation, of rights to real property referred to in Article 2 of the ZPI in the Republic of Serbia, such gift is subject to gift tax, except in cases listed in Articles 20. and Article 21 paragraph 1 items 5), 12) and 13) of the ZPI.

Where value-added tax is payable on cash, items and rights subject to taxation as stipulated by Article 14 of the ZPI (excepting real property) received as gift by a non-governmental organisation that is a resident of the Republic of Serbia, such gift is not subject to gift tax, except in cases in Articles 20. and Article 21 paragraph 1 items 5), 12) and 13) of the ZPI.

Where value-added tax is not payable on cash, items and rights subject to taxations as stipulated by Article 14 of the ZPI (excepting real property) received as gift by a non-governmental organisation that is a resident of the Republic of Serbia, such gift is subject to gift tax, except in cases listed in Articles 20. and Article 21 paragraph 1 items 5), 12) and 13) of the ZPI.

c) Authority for the prohibition of an association or a representative office of a foreign association lies within the remit of the Constitutional Court; the Law stipulates that the procedure for prohibiting an association or a representative office of a foreign association can be initiated at the motion of the Government, the Republic of Serbia Public Prosecutor, the ministry charged with public administration, the ministry charged with regulating the area of activity of the association, and the Association Registrar or the Foreign Association Registrar.

The procedure for prohibiting an association may also be initiated and pursued against associations that are not legal entities.

As for foundations, let us underline that the Law on Trusts and Foundations (*“Official Gazette of the RS”*, No. 88/10) governs the establishment and legal status of foundations, their registration and deletion from the registry, membership and bodies, status changes and dissolutions, as well as other issues of relevance to their work. This law, adopted on 23 November 2010 and coming into effect on 1 March 2011, also governs the legal status and activities of representative offices of foreign foundations in the Republic of Serbia.

The law was drafted by a Working Group made up of representatives of the Ministry of Culture, independent experts in the field and the Balkan Fund for Local Initiatives. In addition, the law underwent a comprehensive public comment period taken part in by all relevant bodies the law pertains to, primarily numerous foundations and funds; the Draft Law on Trusts and Foundations was also positively reviewed by the Council of Europe’s Belgrade Office.

In addition to introducing a number of innovations into this area, the new Law on Trusts and Foundations is intended to resolve deficiencies and problems identified in the course of the implementation of the Law on Trusts, Foundations and Funds (*Official Gazette of the SRS*, No. 59/89) which will be repealed as of the effective date of the Law on Trusts and Foundations. As it was adopted at a time marked by a wholly different political and legal system, it provided for three legal forms by which non-profit, non-membership-based legal entities could operate (namely, trust, foundation and fund), which were differentiated with respect to legal notions (socially-owned property and socially-owned legal entity) that are not in harmony with the current constitutional and legislative framework in force in the Republic of Serbia. The old law also stipulated that foundations could be established only if they were, at the time of establishment, in possession of sufficient funds required to pursue their intended goals – a major obstacle to the pursuit of legitimate (i.e. non-property) interests of the general public and legal entities. At the same time, the old law allowed the body charged with keeping the Registry to refuse to register a foundation even where all statutory conditions were met. In addition, the Law on Trusts, Foundations and Funds did not govern a number of important issues, such as international organisation, dissolution, registration of representative offices of foreign foundations, etc.

Within the meaning of the Law on Trusts and Foundations, a foundation is defined as a non-profit non-governmental organisation that is established on a voluntary basis and can set its goals independently.

A foundation may be established by one or more Serbian or foreign individuals or legal entities having contractual capacity; the law does not stipulate any limitations on membership in foundations. Another innovation contained in the Law is that funds established and registered under the (old) Law on Trusts, Foundations and Funds may continue operating as foundations but using the original name under which they were registered.

In addition, the Law stipulates that a representative office of a foreign foundation may operate in the territory of the Republic of Serbia once registered with the Registry of Representative Offices of Foreign Trusts and Foundations. Within the meaning of the Law, a foreign foundation is defined as a non-membership legal entity whose registered office is in a foreign state and which is organised in accordance with legislation of such foreign state to pursue aims of public interest or interest not prohibited under the Constitution or legislation. These foundations can be registered under the same conditions that apply to Serbian foundations. The Ministry of Culture has devolved tasks relating to registration with the Registry of Representative Offices of Foreign Trusts and Foundations to the Business Registries Agency.

The Law on Trusts and Foundations stipulates that trusts, foundations and funds established and registered under the (old) Law on Trusts, Foundations and Funds may continue operating as trusts and foundations provided they harmonise their Articles of Association and other general bylaws with the Law within 12 months, and file for registration with the Registry of Trusts and Foundations, kept by the Business Registries Agency on authority devolved from the Ministry of Culture. Foundations that do not act as outlined above are to cease operating. As has already been underlined, funds registered under the old law are to continue operating using the original name under which they were registered. It should be noted that the Law on Trusts, Foundations and Funds required to the Ministry of Culture to keep the Registry of Trusts, Foundations and Funds, which contained 692 funds and 79 foundations registered.

After the entry into effect of the Law on Trusts and Foundations, data on foundations and representative offices of foreign foundations entered into the Registry of Foundations and the Registry of Foreign Foundations will be available on the official website of the Business Registries Agency (www.apr.gov.rs).

This Law is the first piece of legislation governing in detail the manner in which foundations can acquire assets and operate. Under the Law, a foundation may acquire assets in voluntary contributions, gifts, donations, financial subsidies, inheritances, interest on deposits, rents, copyrights and dividends, as well as other forms of legally-acquired income. A foundation may directly perform a business activity or another for-profit activity as provided for by legislation governing the classification of activities, under the following conditions: that the activity is linked to its goals as defined in its Articles of Association; that the activity is stipulated in its Articles of Association; and that the activity is ancillary in nature and that the activity is registered. Foundations are required to keep books and prepare and file financial reports as provided for by legislation governing accounting and auditing. Assets acquired by a foundation without charge (voluntary contributions, gifts, donations, financial subsidies, inheritances, etc.) are not subject to statutory taxes.

The Law on Trusts and Foundations explicitly and clearly governs which aims of a foundation are not allowed. Thus, it states that goals and actions of a foundation must not be in contravention of public order, and particularly must not be aimed at the violent overthrow of the constitutional order and the violation of the territorial integrity of the Republic of Serbia, the violation of guaranteed human or minority rights, or the incitement or fostering of inequality, hatred or intolerance based on race, nation or religious creed or any other affiliation or orientation, as well as on sex, physical, mental or other characteristics or capabilities. Additionally, the goals and operation of a foundation must not be aimed at the pursuit of specific interests of political parties.

Representative offices of foreign foundations are also entitled to unimpeded operation in the territory of the Republic of Serbia, provided their aims are not in contravention of the Constitution, the Law on Trusts and Foundations, other legislation or international treaties.

If a foundation or representative office of a foreign foundation should act in contravention of its established goals, or pursue goals defined by this Law as disallowed, or if it should become a member of a foreign or international organisation whose aims are defined by this Law as disallowed, the Ministry of Culture, or the body of the Autonomous Province of Vojvodina tasked with cultural affairs, is to adopt a decision revoking such foundation's operating permit *ex officio*.

121. Freedom of expression and freedom of the media: Provide information concerning the elaboration and implementation of legislation regarding the promotion of the freedom of expression and information in general and, specifically, freedom and pluralism of the media. Please detail measures designed to prevent interference with these freedoms.

In the political and legal system of the Republic of Serbia, the freedom of expression and information, as well as the freedom and pluralism of the media are raised to the level of fundamental principles. The established general guidelines are the starting point in the field of the regulation of public information. The laws regulating this field are implemented by the

competent ministry in charge of the issues regarding public information (in the course of this mandate the Ministry of Culture is in charge).

In order to prevent interference with the exercise of the right to the freedom of expression and information and the right to freedom and pluralism of the media, the Constitution of the Republic of Serbia, the Law on Public Information and the Law on Broadcasting provide for the following:

-The Constitution of the Republic of Serbia guarantees the freedom of thought and expression to all its citizens. Article 46(1) of the Constitution provides for the following:

“The freedom of thought and expression shall be guaranteed, as well as the freedom to seek, receive and disseminate information and ideas through speech, writing, art or in some other manner.”

The promotion of the respect for diversity, and therefore the pluralism of opinions is also guaranteed by the Constitution. Article 48(1) provides for the following:

“The Republic of Serbia shall promote understanding, recognition and respect of diversity arising from specific ethnic, cultural, linguistic or religious identity of its citizens through measures applied in education, culture and public information.”

The freedom of the media and the right to be informed are regulated by the Article 50 and Article 51 of the Constitution. Article 50(1), (2) and (4) provides for the following:

“Everyone shall have the right to establish newspapers and other forms of public information without prior permission and in a manner laid down by the law.

Television and radio stations shall be established in accordance with the law.

The law shall regulate the exercise of right to correct false, incomplete or inaccurately conveyed information resulting in violation of rights or interests of any person, and the right to react to communicated information.”

Article 51 guarantees the right to be informed. The Article provides for the following:

“Everyone shall have the right to be informed accurately, fully and timely about issues of public importance. The media shall have the obligation to respect this right.

Everyone shall have the right to access information kept by state bodies and organizations with delegated public powers, in accordance with the law.”

-The Law on Public Information (“Official Gazette of RS”, No. 43/03, 61/05 and 71/09), in accordance with the Constitution of the Republic of Serbia, raises the freedom of public information to the level of fundamental principles.

Under Article 1(2), the Law defines the right to public information, as well the right to the freedom of expressing opinions, the freedom to collect, research, publish and impart ideas, information and opinions, the freedom to print and distribute (deal out) newspapers and other public media, the freedom to produce and broadcast radio and television programmes, the freedom to receive ideas, information and opinions, as well as the freedom to establish legal persons in charge of public information.

According to the Law, public information is free and in the public interest. Public information is not subject to censorship. No one is allowed to restrict the freedom of public information, not even in an indirect way, especially by the abuse of public or private competences or the abuse of rights, influence or control over the means used for printing and distribution of public media or devices for broadcasting and radio frequency, nor to restrict the free flow of ideas, information and opinions in any other manner. No one is allowed to put physical or any other kind of pressure on public media and their employees, or to exert influence that could interfere with their work. The Court decides on the violation of the freedom of information urgently (Article 2).

-The Law on Broadcasting (“Official Gazette of the Republic of Serbia”, No. 42/02, 97/04, 76/05, 79/05-other law, 62/06, 85/06, 86/06 and 41/09) under Article 3, which provides for the principles regulating relations in the field of broadcasting, defines full affirmation of civil rights and liberties, and especially the freedom of expression and the pluralism of opinions as one of the fundamental principles.

All broadcasters, i.e. persons who are authorized to broadcast programs, are under obligation to adhere to general programme standards, as defined under Article 68 of the Law on Broadcasting. Prescribed standards include broadcasting of programmes with high quality content, accurate, full and timely informing of citizens, the contribution of these programs to raising the overall culture and awareness of the citizens, etc.

Under Article 78, The Law on Broadcasting prescribes specific obligations of the representatives of the Public Broadcasting Service in the achievement of goals of general importance. Apart from being obliged to adhere to general programme standards, the Public Broadcasting Service representatives are under the obligation to secure that the programmes that are produced and broadcast, especially news and documentaries, should be protected from any kind of influence from the authorities, political organisations or centres of economic power. They are also obliged to produce and broadcast programmes intended for all the segments of society, without discrimination, especially taking into account specific social groups such as children and youth, minorities and ethnic groups, the disabled, the underprivileged, those whose health is affected, etc.

As pluralism of the media is one of the fundamental principles in the field of public information, a whole chapter of the Law on Broadcasting (from Article 97 to Article 103) is concerned with regulating prevention of unauthorized media concentration. These Articles define the cases in which unauthorized media concentration takes place, i.e. the cases in which a prevailing influence on public opinion exists and leads to the violation of principles regarding the pluralism of opinions in public information. The Law also prescribes that the Broadcasting Agency (an independent regulatory body) shall not issue a licence for programme broadcasting to an interested applicant, if the Agency decides that the issuing of the licence would help create unauthorized media concentration.

In order to protect the pluralism of opinions, a provision has been provided under which every broadcaster is obliged to notify the Broadcasting Agency about the change in the ownership in written form. If the change in ownership could lead the broadcaster to unauthorized media concentration, the Agency warns the broadcaster about it. If a broadcaster disregards the warning of the Agency, the Agency shall withdraw his/her licence for programme broadcasting in a procedure in accordance with the law.

The Constitution of the Republic of Serbia regulates that the freedom of expression can be restricted only by the law, and solely for reasons defined under Article 46(2) of the Constitution which provides for the following:

“The freedom of expression may be restricted by the law if necessary to protect rights and reputation of others, to uphold the authority and objectivity of the court and to protect public health, morals of a democratic society and national security of the Republic of Serbia.”

Building upon the abovementioned provision of the Constitution, as well as Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, under Article 17, the Law on Public Information regulates the possibility of the prohibition of distribution of information. The Law prescribes that the competent district court may, at the proposal of a Public Prosecutor, prohibit the distribution of information if it determines that it is necessary to do so in a democratic society in order to prevent the following: calls for violent transgression of constitutional order, violation of the territorial integrity of the Republic, the promotion of war, instigation of direct violence or inciting of racial, ethnic or religious hatred which provoke discrimination, hostility or violence, and the broadcasting of information may directly lead to serious, incorrigible effects which cannot be prevented from occurring in any other manner.

Surveillance over the implementation of the Law on Public Information is carried out by a state administration authority in charge of the field of information (the Ministry of Culture), whereas on the territory of Autonomous Province Of Vojvodina it is the competence of a provincial administration authority in charge of the field of information (the Secretariat for Information).

Surveillance over the implementation of the Law on Broadcasting is carried out by the ministry in charge of the field of information (Ministry of Culture), whereas the surveillance over the work of broadcasters is carried out by the Republic Broadcasting Agency, as an independent regulatory body in the field of broadcasting.

In order to protect their rights to the freedom of expression and information, guaranteed by the Constitution and the law, citizens have several legal remedies at their disposal, such as objection, appeal or the right to reply. Citizens can also initiate legal proceedings with Administrative Court, Magistrates Court or Municipal Court. The law prescribes which legal remedies are to be used in the situations given.

Citizens and other parties may start initiatives or proposals for assessing the constitutionality of certain articles of the Law, when they consider that these articles are contrary to the Constitution and prevent the exercise of their fundamental rights guaranteed by the Constitution. Therefore, at the suggestion of the Ombudsman, in September 2010, the proceedings were started before the Constitutional Court on the constitutionality of several articles of the Law on Amendments and Supplements to the Law on Public Information, adopted in August 2010. By the Decision of the Constitutional Court, which was published in the “Official Gazette of the Republic of Serbia” on November 29, 2010, certain provisions of that Act were repealed, and thus the restriction of freedom of opinion and information was prevented.

In several cases, in order to protect their rights to the freedom of expression guaranteed by Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, citizens contacted the European Court of Human Rights. Four such cases have been recorded: Lepojić against Serbia (Complaint No. 13909/05), Filipović against Serbia (Complaint No. 27935/05), Bodrožić against Serbia (Complaint No. 32550/05) and Bodrožić and Vujin (Complaint No. 38435/05).

To enforce these judgements, the Republic of Serbia undertook the following measures:

- refunds were paid as ruled by the Court to the submitters of Complaints
- judgements were published in English and Serbian in the Official Gazette
- the comments on the judgement were published on the Paragraph.net website, in the Paragraph periodical and other daily newspapers
- criminal department of the Supreme Court of Serbia adopted a legal position on 25 November 2008, which was forwarded to all District Courts in Serbia and states the following: “The boundaries of acceptable critique are wider in the cases of public figure, as opposed to private person. Unlike common citizens who do not share this capacity, public figures are inevitably and consciously exposed to detailed scrutiny of everything they say or do, by the press and the public in general, so they have to show a higher degree of tolerance.” This legal paragraph has led the domestic courts to directly apply the practice of the European Court of Human Rights
- the representative asked for the judgment to be removed from the penal records by the competent courts.

122. Have recommendations of experts from the Council of Europe and OSCE been taken into consideration when drafting legislation establishing the broadcasting regulatory body, in particular Recommendation Rec (2000)23 to Member States of the Council of Europe on the independence and functions of regulatory authorities for the broadcasting sector and its annex contain guidelines on independence and functions of regulatory authorities for the broadcasting sector?

(Please refer to related questions in chapter 10 and 23).

An independent regulatory body in the field of broadcasting, the Republic Broadcasting Agency, was established by the Law on Broadcasting (“Official Gazette of the Republic of Serbia”, No. 42/02, 97/04, 76/05, 79/05-other law, 62/06, 85/06, 86/06 and 41/09).

In the course of formulation of the Law, there were regular consultations with the Office of the Council of Europe and OSCE, with the aim of incorporating the European regulation and standards into this provision in the best possible manner.

The Law on Broadcasting was brought on the basis and with full respect of Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and on the basis of Recommendation No.R(2000)23 of the Committee of Ministers to member states regarding the independence and functions of regulatory bodies in the field of broadcasting, which was adopted on 20 December 2000, as well as in accordance with the Annex to Recommendation.

In the course of the formulation of the Law, the provisions of the following were also adhered to:

- European Convention on Transfrontier Television;
- The Declaration on the Freedom of Expression and Information (1982);
- The Recommendation No. R(94) 13 on the measures to promote transparency of the media;
- The Recommendation No. R(96) 10 on the guarantee of independence to the Public Broadcasting Service;
- The Recommendation No. R(97) 20 on the “hate speech”;
- The Recommendation No. R(2000) 7 on the right of a journalist not to disclose his/her sources of information;
- The Recommendation No. R (2001) 97 of the Committee of Ministers to member states on the protection of copyright and related rights and the fight against piracy, especially in digital environment.

The Law prescribes that the Republic Broadcasting Agency is an autonomous, i.e. independent organization, which exercises delegated public powers in accordance with the law. Legal guarantees for the independence of a regulatory body can be found in the provisions which prescribe that the Republic Broadcasting Agency is an autonomous legal entity, functionally independent of any state authority and all other organizations and persons which deal with production and broadcasting of radio and television programmes. (Article 6) The Law provides the Agency with the authority which enables it to perform its tasks independently, effectively and transparently. It is defined that the Council shall be the body of the Agency which shall make decisions on the issues within the competences of the Agency. (Article 7) The issue of appointment, composition, functioning and financing of the independent regulatory body is precisely regulated, thus securing complete independence, autonomy and expertise in work. Regulatory powers exercised by the Agency are also defined.

Building upon the Recommendation No. R (2000)23 on the independence and functions of the regulatory bodies in the field of broadcasting, the Law on Broadcasting defines the manner in which mandates of the members of the Agency’s Council shall be proposed and their duration period, with the aim of them being independent and autonomous with respect to the political circles. The Council of the Republic Broadcasting Agency consists of nine members who are elected for the period of six years. They are elected among respectable experts in the field relevant for the duties within the competences of the Agency, (media experts, advertising experts, legal experts, economists, telecommunication engineers). No one has the right to influence the work of the members of the Council in any kind of way, nor are they under obligation to respect any kind of instructions regarding their work. For their work, the members of the Council are entitled to a salary in the amount equal to the salary of the President, i.e. Judge of the Supreme Court. (Articles 22, 26, 27 and 32).

The members of the Council of the Republic Broadcasting Agency are elected and discharged from duty by the National Assembly of the Republic of Serbia. Under Article 23 of the Law on Broadcasting, the proposal of candidates for the members of the Council is carried out by the following: The National Assembly of the Republic of Serbia, the Government of the Republic of Serbia, the Executive Council of the Autonomous Province of Vojvodina, University rectors, the organisations of broadcasting public media, domestic non-governmental organizations and associations of citizens, churches and religious communities. The ninth member of the Council is proposed by the previously elected members of the Council. The proposed candidate has to meet the criteria for membership in the Council

defined by this Law and has to be a person who resides and works on the territory of the Autonomous Province of Kosovo and Metohija.

The members of the Council of the Republic Broadcasting Agency may not be the members of the National Assembly, persons appointed in the Government (ministers, their deputies, assistants, political party officials, their deputies; members of main and executive boards, as well as other party officials; stakeholders, shareholders, members of administrative authorities, members of supervisory authorities, employees, persons obliged by contracts who deal with the production and/or broadcasting of radio or television programmes; persons validly sentenced for criminal acts against their official duties, corruption, fraud, theft or other criminal acts which would render them improper for performing of the function; a spouse, parent, child or a collateral relative, including those who belong to the second degree of kinship related to the abovementioned persons (Article 25).

The Agency passes the Statute and other bylaws, as authorized by the law.

The manner in which the Agency is financed is one of the major conditions for its independence. The work of the Agency is financed by the fees paid by broadcasters for licences issued for programme broadcasting. The Agency adopts a financial plan for the year in question, which is further approved by the Government of the Republic of Serbia. In the case that the Agency has collected a surplus, it is obliged to pay it in to the Budget of the Republic of Serbia, which shall be apportioned to the development of culture, health service, education and social protection. In case that the Agency fails to collect the intended income on the basis of fees, the missing funds shall be ensured from the Budget of the Republic of Serbia (Article 34 and 35).

The work of the Agency is public. The Agency shall publish a report on its work once a year (Article 36).

Economic, social and cultural rights

123.How is the right to property assured?

Article 58(1) to (4) of the Constitution of the Republic of Serbia, contained in Part II (Human and minority rights and freedoms), provides that the peaceful tenure of a person's own property and other property rights acquired by the law shall be guaranteed (paragraph 1). The right of property may be revoked or restricted only in public interest established by the law and with compensation which can not be less than market value (paragraph 2). The law may restrict the manner of using the property (paragraph 3). Seizure or restriction of property to collect taxes and other levies or fines shall be permitted only in accordance with the law (paragraph 4).

Therefore, the property right is guaranteed as one of the fundamental human rights.

Pursuant to Article 86 of the Constitution, contained in Part III (Economic system and public finance), private, cooperative and public assets shall be guaranteed and all forms of assets shall have equal legal protection. The protection against any form of infringements of the property right may be claimed, in principle, in proceedings before a competent court of law, and in some cases by applying other legal remedy in the administrative proceedings. The

protection of property right as one of the fundamental human rights guaranteed by the Constitution, may also be claimed by means of constitutional appeal under conditions for its lodgement prescribed in Article 170 of the Constitution.

Seizure or restriction of property right in public interest is regulated by the Law on Expropriation (*Official Gazette of RS* No. 53/95, 23/01 and 20/09). The public interest for seizure or restriction of property right according to this law is determined by the Government on the proposal of the Ministry of Finance. Upon the proposal of the qualified person, and after finding that all preconditions are met, the Ministry of Finance prepares proposal of the Government decision on determination of public interest. An administrative dispute proceeding may be instituted against such decision before the Administrative court. After adopting the Government decision on determination of public interest, the expropriation procedure between the owner of an immovable property the user of expropriation, in which the compensation for expropriated immovable property shall also be determined, shall be carried out before the authority of local self-government under the rules of administrative procedure. Against the decision of the authority of local self-government, adopted in the procedure of expropriation an appeal may be lodged to the Ministry of Finance, and against the second instance decision administrative dispute proceedings may be instituted before the Administrative Court in Belgrade. The manner of using the property may be restricted only by the law, depending on the nature of the matter in question. Pursuant to Article 88(1) and (2) of the Constitution, the use and disposition of agricultural land, forest land and municipal building land in private ownership shall be permitted. The law may restrict the forms and stipulate conditions of utilisation and disposition, in order to eliminate the risk of causing damage to the environment or prevent violation of rights and legally based interests of other persons.

124. What steps have been taken to prevent discrimination based on membership of a national minority, ethnic or social origin, sex, race, colour, genetic features, language, religion or belief, political or any other opinion, property, birth, disability, age or sexual orientation? Has Serbia established specialised services to combat discrimination? If so, which legislative framework, institutional context, composition, functions and powers pertain to these services?

The adoption of the Law on the Prohibition of Discrimination in March 2009 (*Official Gazette of RS*, No. 22/09), which stipulates that all persons shall enjoy equal status and equal legal protection, regardless of personal characteristics, as well as that everyone shall be obligated to respect the principle of equality, that is to say, the prohibition of discrimination, has had a significant anti-discrimination impact. The Law specifies certain personal characteristics in regard to the seriousness of consequences of causing or inciting hatred, division or enmity on the basis of these personal characteristics. These personal characteristics are emphasized because, from the historical perspective, incitement to hatred, division and enmity on this very basis had the most serious consequences on the society and the state. In addition, the Law has contributed to raising the awareness of citizens about the harms of discrimination and the affirmation of the principle of tolerance. However, the significance of the penalties prescribed by this Law for every potential perpetrator of acts of discrimination should not be underestimated either. According to the information of the Ministry of Human and Minority Rights, as the competent authority for monitoring the implementation of the

Law on the Prohibition of Discrimination, the existence of this Law has had a strong preventive effect, and for that reason, its adoption was of a great benefit in the elimination of cases of various forms of discrimination. Since the problems of discrimination cannot be solved exclusively or prevailingly by processing the perpetrators, a range of activities focusing on raising the awareness of citizens about the importance and respect of tolerance have also been undertaken. In this regard, an important role belongs to the electronic and print media, which promote tolerance and strongly condemn discriminatory actions in special TV shows and texts.

Considering that behavioral patterns are acquired in youth, the Ministry of Human and Minority Rights implemented a range of actions on the occasion of the Day of Tolerance in 2009: publication of the “Do not Disturb, I am Enjoying My Rights and Freedoms” human rights manual intended for students of elementary and high schools, organisation of classes of tolerance in elementary and high schools throughout Serbia, with the objective to motivate students to be more tolerant in school and their environment, by helping them understand the importance of respecting the principle of tolerance in everyday life, as well as in social functioning.

Serbia has not established special services for combating discrimination. However, the Law on the Prohibition of Discrimination establishes the Commissioner for the Protection of Equality, as an independent state authority elected by the Assembly of the Republic of Serbia, autonomous in exercising its powers. The reason for electing an independent organ instead of some commission, committee or other similar institution lies in the simpler and more apparent election procedure, higher efficiency of its operation and easier individualization of responsibilities.

The National Assembly of the Republic of Serbia elected the Commissioner for the Protection of Equality on 5 May 2010.

Pursuant to the provisions of the Law on the Prohibition of Discrimination (LPD), the Commissioner for the Protection of Equality is an independent, autonomous, specialized, individual public institution, established by the LPD, with a wide range of legal competences, which make it the central public authority for combating all forms and aspects of discrimination. Under Article 28 of the LPD, any citizen of the Republic of Serbia can be elected for Commissioner provided that he/she is a graduate of law, has a minimum of ten years' working experience in legal matters pertaining to the area of human rights protection and has high moral and professional qualities. The Commissioner may not perform any other public or political function, or any professional activity, in accordance with the Law. The Commissioner is elected by the National Assembly, by a majority vote of the overall number of MP's, acting upon a proposal of the Committee of the National Assembly authorized to deal with constitutional matters. The Committee decides upon the proposal by a majority vote of the overall number of Committee members, whereas each group of representatives of the people at the National Assembly have the right to propose a candidate for the post of the Commissioner to the Committee. The Commissioner is elected for a period of five years, and one and the same person may be elected Commissioner twice at the most.

Independence is guaranteed by provisions stipulating that the Commissioner shall enjoy the immunity enjoyed by representatives of the people at the National Assembly, shall have the right to a salary equal to that of a judge of the High Court of Cassation, as well as the right to

reimbursement of the expenditures made in connection with performing his/her function (Article 31, LPD). In addition, in order to guarantee the independence and autonomy of the Commissioner, the manner of cessation of mandate is also precisely regulated, and reasons and procedure for relieving the Commissioner of duty are explicitly specified (Article 30, LPD).

The funds required for the work of the Commissioner, his/her assistants and Expert Service shall be provided from the budget of the Republic of Serbia.

Article 32, LPD stipulates that the Commissioner shall have an expert service to help him/her in performing the work he/she is authorized for. The organisation and work of the Expert Service is regulated by the Commissioner who passes an act on regulation and systematization of activities to be approved by the National Assembly. With respect to the organisation of the Expert Service, the Commissioner is independent; the LPD only stipulates that the Commissioner shall have three assistants, each of them in charge of an area of work in its entirety, appointed by the Commissioner.

Pursuant to the Rulebook on Internal Organisation and Systematization of Jobs in the Expert Service of the Commissioner for Protection of Equality, three sectors have been formed in the Expert Service of the Commissioner: Department for Acting upon Complaints, Department for the Promotion of the Protection of Equality, International Cooperation and Projects and the General Affairs Department, administered by the assistants of the Commissioner. The Expert Service of the Commissioner includes the College, which helps the Commissioner in coordination and harmonization of work activities, standardization of methods of treatment; it defines the general guidelines for the work of the organisation units and performs other activities prescribed by the Rules of Procedure. The Commissioner has established a List of Experts and a List of Mediators. The Commissioner decides independently on employing the Expert Service staff, on the basis of the needs for professional and efficient discharge of the work, whereas regulations pertaining to employment in public institutions apply accordingly to the employees of the Expert Service.

The Commissioner's competences are defined broadly, in accordance with international standards, in order to enable efficient and effective prevention and protection against discrimination and contribution to the promotion of equality.

One of the basic competences of the Commissioner is to act upon complaints in cases of discrimination of individuals or groups of persons connected by the same personal characteristics. Under Article 33, LPD, the Commissioner shall receive and review complaints about discrimination, provide opinions and recommendations in specific cases of discrimination and pass measures stipulated by the Law. In addition, the Commissioner shall provide information to the person lodging the complaint concerning his/her rights and the possibility of initiating court proceedings or some other proceedings for the purpose of protection, or recommend reconciliation, as well as file charges for the purpose of protection against discrimination in his/her own name and with the agreement of the person discriminated against, unless proceedings before a court of law have already been initiated or concluded by passing an enforceable decision. The Commissioner shall also submit misdemeanour notices on account of acts of discrimination defined by the criminal section of the LPD.

The set of competences refers to the promotion of equality. Within the framework of this activity, the Commissioner is authorized to warn the public of the most frequent, typical and severe cases of discrimination, monitor the implementation of laws and other regulations, initiate the passing or amending of regulations for the purpose of implementing and developing protection against discrimination, and provide opinions concerning the provisions of draft laws and other regulations pertaining to the prohibition of discrimination, as well as to recommend measures to public administration organs and other persons aimed at ensuring equality. One of the competences of the Commissioner refers to monitoring the protection of equality, and the Commissioner shall submit an annual report to the National Assembly on the situation concerning the protection of equality. If there should exist reasons of particular importance, the Commissioner may, on his/her own initiative or upon a request of the National Assembly, submit a special report, especially in cases of repeated discrimination, discrimination on the part of public authorities and in cases of severe forms of discrimination. Within the scope of his/her work, the Commissioner shall establish and maintain cooperation with bodies in charge of ensuring equality and protection of human rights on the territory of an autonomous province or a local self-government.

The procedure before the Commissioner is broadly defined by the LPD, whilst the manner of procedure is regulated more precisely by the Rules of Procedure. The provisions of the Law on General Administrative Procedure apply accordingly to the procedure before the Commissioner (Article 40, paragraph 4, LPD).

With regards to the procedure, the LPD and the Rules of Procedures regulate: the manner of initiating proceedings, the right to lodge a complaint, the content and form of the complaint, investigation and the course of the proceedings, as well as decisions and measures passed in the proceedings by complaint.

The procedure before the Commissioner is initiated by lodging a complaint, considering that the Commissioner is authorized to initiate proceedings on his/her own initiative in case he/she acquires information on a case of discrimination upon which no complaint has been lodged, and proceedings shall be conducted. Any physical or legal entity or group of persons who consider themselves discriminated against by any act, activity or omission whatsoever and on any grounds, are entitled to initiate proceedings before the Commissioner. In case the rights of a group of persons have been violated, the complaint may be lodged by any person from the group. In addition, organisations engaged in protection of human rights or another person may also lodge a complaint. In case they initiate proceedings for the purpose of protection of a particular person, they may do so only on behalf of and with the agreement of this person (Article 35, LPD).

The Commissioner shall not act upon anonymous complaints, but if he/she considers that the anonymous complaint has reasonable grounds for conducting proceedings, the Commissioner may initiate proceedings on his/her own initiative.

If the complaint is incomplete, incomprehensible or contains deficiencies obstructing the proceedings, the authorized person in the Commissioner's Service shall, without delay, send a request to the person having lodged the complaint to rectify the deficiencies within 15 days, and list the deficiencies and modes for their rectification (Article 20, Rules of Procedure).

The Commissioner passes a conclusion informing the person having lodged the complaint that he/she shall not take any steps concerning a complaint, for the following reasons: 1. 1. proceedings pertaining to the matter in question have been initiated before a court of law or an enforceable decision has been passed; 2 it is evident that no discrimination pointed to by the person having lodged the complaint has actually occurred; 3. steps have already been taken concerning the same matter and no new evidence has been provided; and 4. in view of the time elapsed since the violation of rights in question, no useful purpose will be served by acting upon the complaint (Article 36, LPD). After having received a complaint and potential rectification of deficiencies, the complaints shall be forwarded to the person claimed to have perpetuated the act of discrimination within 15 days of having received it. This person shall be allowed a period of 15 days of having received the complaint to make a statement concerning the claims made in the complaint.

If the discrimination dispute is subject to conciliation, the parties shall be proposed a conciliation procedure, in accordance with the law regulating the mediation procedure. If both parties agree to a mediation procedure, they designate, by mutual agreement, a mediator from the List of Authorized Mediators, established by the Commissioner upon the proposal of the Commissioner's College (Article 28, Rules of Procedure). Criteria and more precise conditions for the establishment of the List of Authorized Mediators are prescribed by the Commissioner, in accordance with the law regulating the mediation procedure. Mediation shall be conducted within 30 days, considering that by way of exception mediation may be conducted within a longer period but it shall be taken into account that the proceedings before the Commissioner shall be terminated within 90 days (Article 39, paragraph 1, LPD). The rules of the law regulating the mediation procedure apply to the mediation process. If the parties do not agree to a mediation procedure, or if the mediation does not result in conclusion of an agreement, the proceedings before the Commissioner shall be continued.

In the proceedings by complaint, the Commissioner shall establish the facts of the case by reviewing evidence submitted, taking statements from the person lodging the complaint, the person against whom the complaint was lodged, as well as by other manners, in accordance with the Law.

Experts from the List of Experts established by the Commissioner may be engaged in working on certain cases, especially if the circumstances of the case indicate a severe and complex form of discrimination. The criteria for the formulation of the List of Experts are established by the decision of the Commissioner. (Article 26, Rules of Procedure).

On the basis of the results of the investigation, the Commissioner for the Protection of Equality passes a decision, in the form of an opinion on whether there has been any discrimination (Article 39, paragraph 1, LPD). This opinion shall be sent to the person who lodged the complaint and the person against whom the complaint was lodged. If he/she decides that discrimination has occurred, the Commissioner shall issue a recommendation to the person against whom the complaint was lodged, suggesting a way of redressing the violation of rights (Article 39, paragraph 2, LPD), allowing him/her a period of 30 days to act upon the recommendation and redress the violation. The person to whom the recommendation is addressed shall be obliged to act upon the recommendation and redress the violation in question within 30 days of the day of receiving the recommendation and inform the Commissioner of it. In case the person fails to act upon the recommendation, the Commissioner may pass a decision by which he/she cautions the discriminator and allows

him/her an additional period of 30 days to redress the violation in question, and the Commissioner may inform the public about it. The decision is final and it is not allowed to lodge a complaint against it. Should the discriminator fail to redress the violation in question within this additional period of 30 days, the Commissioner may inform the public about it (Article 40, LPD).

When the Commissioner establishes in the proceedings that discrimination has taken place, he/she may file a lawsuit to the competent court of law. The legislator allows the Commissioner to decide on the need for filing a lawsuit. The Commissioner may initiate a lawsuit only with the consent of the discriminated person. In case of discrimination against a group of persons connected by the same personal characteristic, the consent of the discriminated persons is not necessary (Article 46, paragraph 2, LPD). In the lawsuit, the Commissioner may define every anti-discrimination demand of preventive and restoring character provided by Article 43, LPD, except for the claim for compensation of material and non-material damage. Through a lawsuit, the Commissioner may demand that the court should establish in an authoritative and undisputable manner that the defendant has treated the particular person in a discriminatory manner (claim for establishment), imposing a ban on an activity that poses the threat of discrimination, a ban on proceeding with a discriminatory activity, or a ban on repeating a discriminatory activity (claim for omission), redressing the consequences of discrimination and publication of the decision passed (claim for publication and anti-discrimination).

Pursuant to Article 33, point 4, LPD, the Commissioner may submit misdemeanour notices on account of violation of rights guaranteed by the LPD. Pursuant to Article 33, point 6, LPD, the Commissioner may warn the public on the most frequent, typical and severe cases of discrimination. The Commissioner may do so on the basis of complaints, information acquired by means of public information and other sources of information. In his/her warning to the public, the Commissioner shall point to the manner of perpetrating discrimination, perpetrators of discrimination, individuals or groups against whom the most frequent, typical and severe cases of discrimination are performed, with an obligation of protecting personal data, to certain provisions on the prohibition of discrimination, as well as to the consequences and potential consequences of the most frequent, typical and severe cases of discrimination.

Within the framework of his/her preventive function, the Commissioner may recommend measures to public administration organs and other persons aimed at ensuring equality and developing the protection against discrimination. He/she shall monitor the implementation of laws and other regulations in the field of protection of equality and prohibition of discrimination, provide opinions concerning draft laws and other regulations, initiate the passing of new or amending of the existing regulations, as well as submit an annual report and special reports to the National Assembly about the situation concerning the protection of equality (Article 33, LPD). In his/her work, the Commissioner shall establish cooperation with the National Assembly, organs and bodies performing similar activities or engaged in the protection of human rights and freedoms, or the protection of equality, public authorities, organs of an autonomous province or a local self-government, as well as with public services, associations, scientific and educational institutions in the country and abroad.

Over the past period, the Commissioner has received 123 complaints, 13 of them submitted by non-governmental organisations. Four mediation procedures were conducted. Nine proceedings were related to discrimination of groups of persons. The complaint was dismissed

due to lack of competence in 43 cases, and in all of these cases, the person lodging the complaint was given information on the competent authority and legal remedy. In five cases, proceedings were dismissed because proceedings before a court of law are in course. Seven announcements, 6 recommendations and two public warnings were issued. The Commissioner has submitted two initiatives for taking measures aiming at preventing discrimination to competent public authorities.

125. Is the right to join or not to join trade unions legislated for?

The right to join trade unions and any other form of association is provided for in Article 55 of the Constitution of the Republic of Serbia. This Article provides, *inter alia*, that freedom of political, trade union and any other form of association shall be guaranteed, as well as the right to stay out of any association.

Associations shall be formed without prior approval upon entry in the register kept by a state authority, in accordance with the Law.

The Constitutional Court may ban only such associations the activity of which is aimed at violent overthrow of constitutional order, violation of guaranteed human or minority rights, or inciting racial, national and religious hatred.

The right to join trade unions and employers' associations is provided for in the Labour Law (*Official Gazette of the RS* No. 24/05, 61/05 and 54/09). Article 206 of this Law provides that freedom to organise in trade unions and trade union activity shall be guaranteed to employees by entry into the Register, and shall require no approval. Article 215 of this Law provides that trade unions may be established pursuant to the general act of the trade union.

Article 216 of this Law provides that association of employers may be established by employers that employ no less than 5% of employees of the total number of employees in a certain branch, group, subgroup, activity, or territory of a certain territorial unit.

The mode of entry of trade unions into the register is prescribed under the Rulebook on registration of unions in the Register. (*Official Gazette of the RS* No. 50/05 and 10/10) and the entry of associations of employers is prescribed under the Rulebook on registration of associations of employers in the Register (*Official Gazette of the RS* 29/05).

126. How is the freedom of association (set-up of trade-unions, professional associations) implemented in the public administration in general and in the Army, the Police and in the Judiciary in particular?

Freedom of association is guaranteed by the Constitution of the Republic of Serbia (*Official Gazette of RS*, No 98/2006). In Article 55 of the Constitution of the Republic of Serbia it is established that freedom of political, union and any other form of association is guaranteed, as well as the right to stay out of any association. It is further established that associations should be formed without prior approval and entered in the register kept by a state body, in accordance with the law. The Constitution prohibits secret and paramilitary associations.

The Constitution establishes that the Constitutional Court may prohibit only such associations, whose activity is aimed at violent overthrow of constitutional order, violation of guaranteed human or minority rights, and inciting of racial, national and religious hatred.

The Constitution establishes the restriction for membership of political parties, so that the justices of Constitutional Court, judges, public prosecutors, Ombudsman, members of the police and military forces may not be members of political parties.

In relation to establishing the freedoms of political, union, professional and other registered associations of citizens, guaranteed by the Constitution, and whose activity relies on the programmes of significance for defence, here is the overview of the provisions of the Law on Defence and the Law on Serbian Armed Forces, which regulates this area:

The Freedom of Political Association of members of the Serbian Armed Forces is restricted by Article 55 paragraph 5 of the Constitution, and closely established by Article 14(1) and (2) of the Law on Serbian Armed Forces, which establishes that members of the military are prohibited from attending political party's gatherings in their uniforms, except when using their right to active suffrage. Professional military member, student or cadet of the Military school and person attending other professional officer and officer cadet training may not be a member of a political party.

Freedom of Union Organising is permitted for civil servants with the established restriction in relation to the subject of union organizing pursuant to Article 14(4) of the Law on Serbian Armed Forces, which establishes that the subject of union association, organising and union activities may not be the provisions and implementation of the law and other administrative provisions in relation to: composition, organisation and formation of the Serbian Armed Forces; operational and functional capability, use and manning of Serbian Armed Forces; readiness and mobilization; level of being equipped with arms and military equipment; command and leadership in the Serbian Armed Forces and managing the defence system; participation in multinational operations, as well as internal relations in the Serbian Armed Forces based on principles of subordination and singleness of authority.

In relation to **freedom of professional associations** in the country and abroad, it is established by Article 50(3) of the Law on Serbian Armed Forces, which establishes that a member of military may become a member of foreign professional association, with the approval of the Minister of Defence or person authorised by him, and the provisions of Article 76(1) and (2) of the Law on Defence stipulate that citizens' associations may find the foundations for their procedure programmes in the activities in the areas of significance for defence, and the Government and the Ministry of Defence may, based on the previously set criteria, participate in financing of projects and activities in the areas of significance for defence pursuant to Regulation on the criteria and procedure for awarding grants for the participation in financing the programme of work of citizens' associations based on the activities significant for defence (*Official Gazette of RS*, No 100/2008).

In relation to professional and other organising in Serbian Armed Forces we point out the following:

Organising of non-commissioned officers core pursuant to Article 20(3) of the Law on Serbian Armed Forces, which stipulates organising a non-commissioned officers corps in the Serbian Armed Forces, represented by non-commissioned officers of the Serbian Armed

Forces specially organized for the support in command and training, from the company level to the level of General Staff of the Serbian Armed Forces.

Organising the conduct of religious service pursuant to Article 25(1) and Article 27 of the Law on Serbian Armed Forces, which regulates that for the purpose of exercising the freedom of the religious belief, it is allowed to organize the chaplain's service, and relations between the Ministry of Defence and churches, that is religious communities, for the purpose of conducting the religious service in the Serbian Armed Forces, are regulated by special arrangements.

In regard to union, professional or any other organising and activity of police personnel, it is regulated pursuant to Article 134 of the Law on Police (*Official Gazette of RS*, No 101/2005 and 63/2009). Article 134 of the Law on Police regulates that police personnel have the right to union, professional association and all other forms of organising and activity is established according to the Law.

Police personnel may not participate in a political party, or act politically in the Ministry.

Police personnel may not attend political party's or other political gatherings in their uniforms, except when on duty.

Article 135 of the Law on Police regulates the right to strike of police personnel. General administrative provisions on strike are applied on organising and carrying out strike related activities. The same Article regulates special restrictions on the right to strike of police personnel. Namely, the authorized person must exercise their police powers during the period of strike, if so necessary in order to:

- 1) protect lives and safety of people;
- 2) catching and detaining persons caught in the commission of a criminal acts which are prosecuted ex-officio and bringing them before the competent authority;
- 3) prevent criminal offenders and discover criminal offenders of criminal offences which are prosecuted ex-officio.

Article 135 of the Law on Police regulates the prohibition of the right to strike of police personnel in case of:

- 1) state of war or state of present war danger or state of emergency;
- 2) armed mutiny, uprising and other forms of violent endangering of democratic and constitutional order in the republic of Serbia or fundamental rights and freedoms;
- 3) declared natural disaster or present danger from it in the area of two or more regional police directorates of the Ministry or in the entire territory of the Republic of Serbia;
- 4) other disasters and accidents preventing normal life and endangering the safety of people and property;
- 5) threats to public stability in larger extent.

In the Ministry of Interior of the Republic of Serbia eight police unions are organised and function, two of which are competent unions: Police Union of Serbia and Independent Police Union.

Non-competent unions in the Ministry of Interior of the Republic of Serbia are:

- Police Union of the Ministry of Interior with UOSL and OSL status;
- Independent Police Union of Serbia;
- Union of the Employees in Civil Service, Judiciary and Civil Organisations;

- Branch Union of the Authority, Judiciary and Police *Independence*;
- Serbian Police Union;
- Police Union *Independence*.

In relation to the freedom of association in the judiciary, pursuant to Article 7 of the Law on Judges (*Official Gazette of RS*, No 116/2008), for the protection of their interest and preserving their independence and autonomy, judges have the right to associations. Judge may be a member of professional association and other organizations and may take part in their work, which, for the protection and rising the status of judiciary profession, represent their interest and protect the independence and the position of judiciary position.

According to the Law on Public Prosecution(*Official Gazette of RS* No. 116/2008, 104/2009 and 101/2010), public prosecutors, deputy prosecutors, prosecutorial assistants and interns have the right to establish associations to protect their interests and take measures to preserve the independence in their work.

127. Please provide information on how, and to what extent, the right to education is guaranteed in legislative and practical terms. Please comment on the allocation of resources and institutional framework in place to facilitate the exercise of this right.

The right to education is defined by the Constitution of the Republic of Serbia (Article 71, *Official Gazette of RS*, No. 98/2006, Law on the Foundations of the Education System (Article 6, *Official Gazette of RS*, No. 72/2009), Law on Higher Education (Article 8, *Official Gazette of RS*, No. 76/2005, 100/2007, 97/2008, 44/2010) and specific laws.

According to the Constitution, everyone shall have the right to education. Elementary Education is mandatory and free of charge, whereas secondary education is free of charge too. . All citizens shall have access to higher education under equal conditions.

All citizens of the Republic of Serbia are equal in the exercise of right to education and upbringing regardless of sex, race, national, religious or linguistic affiliation, status by birth, social and cultural origin, property status, age, physical and mental constitution, developmental impairments, sensory or motor disability, political opinion or any other personal feature.

Persons with developmental impairments or disabilities have the right to education according to their educational needs within the regular educational system, with additional individual or group support, or in special preschool groups or schools.

Exceptionally gifted persons have the right to education according to their special educational needs, within the regular system, in special classes or in a special school for gifted students.

Foreign citizens and persons without a nationality have the right to education under the same conditions and in the manner prescribed for the citizens of the Republic of Serbia.

For displaced persons who are not familiar with the language in which the educational work is carried out, or specific programme content relevant for the continuation of education, schools

organize language learning, or preparations for classes and additional classes, according to special instructions.

The right to higher education is guaranteed to all persons with previously completed secondary education, and the right to enrol in study programmes related to art is also guaranteed to persons without the completed secondary education, under the conditions stipulated by the Statute of a higher education institution. The Republic of Serbia provides free higher education for successful and gifted students living under unfavourable conditions. Additional conditions for more available, efficient and higher quality education for pupils and students are ensured through the activities of pupils' and students' standard facilities. The Law on Pupils' and Students' Standard (*Official Gazette of RS*, No. 18/2010) defines that pupils' and students' standard facilities aim at the creation of material, cultural, social, health and other conditions which encourage the acquisition of education, social involvement and the overall personality development of pupils and students.

In the institutions for pupils' and students' standard, pupils and students exercise the rights (personal and cannot be transferred) from this law, and these are: the right to accommodation and meals, pupils have the right to pedagogical work as well (pupils' homes, pupils'/students' centres), rest and recovery (pupils'/students' rest centres), cultural, artistic, sporting and recreational activities and information (pupils'/students' cultural centres).

The exercise of rights within the field of pupils' and students' standard are ensured and financed from the Budget of the Republic of Serbia and they involve the rights to the following: pupils'/students' scholarship; scholarship for the exceptionally gifted pupils/students; students' loans. These incomes may not be subject to enforcement or ensuring of claims.

If less strict criteria are applied, which are prescribed by the Minister of Education according to the competences arising from this law, the above mentioned rights may also be exercised by the pupils or students from vulnerable social groups (the disadvantaged families, children without parental care, single-parent families, the national minority of Roma, persons with disabilities, chronically ill persons, persons whose parents are missing or have been kidnapped on the territory of Kosovo and Metohija or on the territories of the former SFRY republics, refugees and displaced persons, returnees according to the readmission agreement, deported pupils and students and others).

Pupils or students with special needs exercise the right to pedagogical work and accommodation in the institution for pupils' or students' standard, with respect for their special needs.

The rights within the scope of pupils' and students' standard are guaranteed to the citizens of the Republic of Serbia who are secondary school pupils, or students of a higher education institution founded by the Republic of Serbia, an autonomous province or a local self-government unit, who have enrolled in a certain grade or first-degree, second-degree or third-degree studies for the first time in the current school year, whose education is financed from the Budget of the Republic of Serbia; these rights may also be exercised, in accordance with international treaties and reciprocity, by pupils or students who are foreign nationals.

In accordance to the Government policy, the Ministry of Finance prepares the Budget of the Republic of Serbia based on the proposal of financial plans of all direct and indirect users of the Budget funds.

In accordance to the Law on the Budget System and the adopted Budget, the Ministry of Education (as a direct Budget user) adopts a financial plan, allocates resources by programmes and indirect users (institutions of preschool, elementary, secondary and higher education and institutions for pupils' and students' standard), according to the proposals of their financial plans and informs them on the amount of funds which they have been granted for specific programmes. Subsequently, the indirect users of the Budget are obliged to adopt financial plans and coordinate their activities in accordance with the granted funds. Funds are transferred to the institutions for the purposes strictly defined by laws. All institutions have accounts opened in the Treasury - Ministry of Finance, and these are:

- registration accounts are intended for the transfer of funds for the salaries of employees;
- accounts for regular work intended for the transfer of funds for material costs;
- donor sub-accounts, accounts for users' own revenues, accounts for parents' contributions and others.

Apart from the Budget of the Republic of Serbia, the activities of preschool, elementary and secondary education are also financed from the funds of the Autonomous Province of Vojvodina (material costs and investments) and local self-governments.

The total Budget of the Ministry of Education for 2010 amounts to 106.9 billion dinars, and 27.4 billion dinars are expected from the remaining sources of revenues and these are:

- Indirect users' own revenues – 13.1 billion dinars
- Foreign countries' donations – 88 million dinars,
- International organizations' donations – 95 million dinars,
- Donations from other levels of government – 12.7 billion dinars,
- Donations from non-governmental organizations and individuals – 172 million dinars,
- Revenues from the sale of non-financial assets – 64 million dinars,
- Revenues from foreign loans – 1 billion dinars,
- Revenues from the repayment of given loans – 202 million dinars,
- Unallocated surplus from previous years – 17 million dinars.

128. Elaborate on the legislative and administrative structures in place to ensure effective protection of the rights of the child.

The answer to this question is provided in detail in the answer to question 98 in Chapter 23: *Judiciary and fundamental rights*

129. Please provide information on the existence / extent of child labour and on measures taken to address this issue.

The Labour Law establishes age 15 as the minimum age of employment of minors. The specific conditions are laid down for employment of minors: the written consent of parent,

adoptive parent or guardian; that such work does not endanger his/her health, moral and education, and that such work is not prohibited by law. A person below the age of 18 (a minor) may be employed only upon certificate of the competent health care body substantiating that he/she is capable of performing such tasks and that these tasks are not harmful for his/her health.

The Labour Law establishes that an employer who employs a person below the age of 18 contrary to its provisions shall be subject to sanctions.

If it is found that a person under 18 years of age but at least 15 years of age is employed without the written consent of a parent, the labour inspector shall, by means of records, warn the employer of his obligation to provide the parental consent, and he may notify parents of the fact that their child is employed without their consent in which case, provided that they do not want to give their subsequent consent, they may request for termination of the employment of such person, under Article 175(1)(5) of the Labour Law. Should the employer subsequently fail to provide the consent of a parent, proceedings for an offence shall be instituted.

In this regard, within the meaning of Article 25(1) and (2) of the Labour Law, if an employer subsequently fails to provide the parental consent and the certificate of the competent health care body, the labour inspector shall file for proceedings for an offence.

Where the labour inspector, during control, identifies violations of the Law, the employer in the capacity of a legal entity shall be fined for the offences in the amount of RSD 600.000,00 (5.687,30 EUR) to 1.000.000,00 (9.478,83 EUR). An entrepreneur shall be fined for the offences in the amount of RSD 300.000,00 (2.843,65 EUR) to 500.000,00 (4.739,42 EUR). The responsible person in a legal entity shall be fined for the offences in the amount of RSD 30.000,00 (284,37 EUR) to 50.000,00 (473,94 EUR).

With regard to labour of persons under 15 years of age, in the last two years the Labour Inspectorate has received no requests for control, nor within this period there have been any cases reported by the labor inspectors of employment of persons under 15 years of age.

130. Please provide details on legislative measures which ensure equality between men and women. Has Serbia ratified the relevant international conventions? Please clarify when, for each convention.

The *Constitution of the Republic of Serbia* provides that the state shall guarantee the equality of men and women and develop a policy of equal opportunities (Article 15). Forced labour shall be prohibited, and sexual or economic exploitation of a person in unfavourable position shall be deemed forced labour (Article 26(3)). The Constitution provides for equality in marriage and family, freedom to decide whether or not to procreate and special protection of mother, single parent and child (Articles 62, 63 and 66).

The *Family Law* regulates: marriage and marital relations, relations in extramarital community, relations between child and parents, adoption, foster care, custody, alimony, property relations within the family, protection against family violence, procedures pertaining

to family relations and personal name (Article 1). Spouses shall be equal (Article 3). Spouses have freedom to choose their job and profession (Article 26).

Under the *Labour Law (Official Gazette of RS, No. 24/05 and 65/05)*, both direct and indirect discrimination are prohibited against persons seeking employment, as well as employees, on the grounds of sex, origin, language, race, skin colour, age, pregnancy, health or disability, national affiliation, religion, marital status, family commitments, sexual orientation, political or other convictions, social background, property, membership in political organisations, trade unions or any other personal characteristic (Article 18). An employed woman is entitled to maternity leave and child care leave, and the father of the child may claim this right, as well (Article 94). Any employee shall be entitled to appropriate remuneration, which is established in accordance with the Law, general act and contract of employment. All employees shall be guaranteed equal remuneration for equal work of equal value performed for the employer (Article 104); work of equal value is defined as work requiring equal level of education, equal working ability, equal responsibility, as well as equal physical and intellectual work. This is one of the basic principles of the prohibition of discrimination, particularly regarding the work of women and men.

Under the *Law on Civil Servants (Official Gazette of RS, No. 79/05, 81/05, 83/05, 64/07, 67/07, 116/08 and 104/09)*, preferential treatment or discrimination against a civil servant with regard to his/her rights and obligations, particularly on the grounds of racial, religious, sexual, national or political affiliation or some other personal characteristic shall be prohibited (Article 7). The Law provides that during recruitment to state authorities, the national composition, gender balance and the number of people with disabilities shall reflect the population structure to the greatest extent (Article 9(3)).

The *Law on the Prohibition of Discrimination (Official Gazette of RS, No. 22/09)* stipulates that discrimination on the grounds of sex shall be considered to occur in case of conduct contrary to the principle of gender equality, i.e. the principle of observance of equal rights and freedoms of women and men in the political, economic, cultural and other aspects of public, professional, private and family life (Article 20(1)), and prohibits the denial of rights or granting privileges, be it publicly or covertly, on the grounds of gender or sex change. The Law also prohibits physical or other kind of violence, exploitation, expression of hatred, disparagement, blackmail and harassment on the grounds of sex, as well as public advocacy, support and conduct in accordance with prejudices, customs and other social behaviour patterns based on the idea of sexual inferiority and superiority, or stereotyped roles of the sexes (Article 20(2)).

The *Law on Employment and Unemployment Insurance* and the *Law on Vocational Rehabilitation and Employment of Persons with Disabilities (Official Gazette of RS, No. 36/09)*, which entered into force on 23 May 2009, are based on the principles of anti-discrimination and gender equality. The principles of the Law on Employment and Unemployment Insurance are the prohibition of discrimination; impartiality during recruitment activities; gender equality; affirmative campaigns focusing on unemployed persons who are difficult to employ; freedom of choice of profession and job and free provision of employment services for unemployed persons (Article 5). The principles of the Law on Vocational Rehabilitation and Employment of Persons with Disabilities are observance of human rights and dignity of persons with disabilities; inclusion of persons with disabilities in all spheres of social life on the grounds of equality – in accordance with their

professional skills; promotion of employment of persons with disabilities for appropriate jobs and in appropriate working conditions; prohibition of discrimination against persons with disabilities; equal rights and obligations and gender equality of persons with disabilities (Article 2).

The *Law on the Foundations of Education System* (Official Gazette of RS, No. 72/09) provides for the prohibition of discrimination and stipulates that in educational institutions, activities which threaten, belittle, discriminate against or single out certain persons or groups of persons on the grounds of: race, national affiliation, ethnic origin, language, religion or sex, physical and mental characteristics, physical and mental disabilities, health, age, social and cultural background, property or political convictions, as well as incitement or non-prevention of such activities, or on any other grounds established by the Law regulating the prohibition of discrimination shall be prohibited; discrimination against a person or group of persons includes any direct or indirect, overt or covert, exclusion or limitation of rights and freedoms, unequal treatment or omission, or unjustified differentiation via preferential treatment or granting privileges; special measures introduced for the purpose of achieving full equality, protection and promotion of a person or group of persons who are in unequal position shall not be deemed discrimination; more precise criteria for recognizing the form of discrimination by an employee, student or third person in the institution shall be prescribed jointly by the Minister and the Minister competent for human rights (Article 44).

Pursuant to the *Law on Textbooks and Teaching Aids* (Official Gazette of RS, No. 72/09), the contents and forms of textbooks and teaching aids shall enable the implementation of the principle of equal opportunities for girls and boys. The contents and form of textbooks and teaching aids shall not threaten, belittle, discriminate against or single out groups or individuals, or incite to such conduct, on the grounds of race, national affiliation, ethnic origin, language, religion or sex, mental or physical disabilities, physical or mental characteristics, health, age, social and cultural background, property or political convictions, or any other grounds established by the Law regulating the prohibition of discrimination (Article 4).

The *Law on Local Elections* (Official Gazette of RS, No. 129/07 and 34/10 - decision of the Constitutional Court) provides that candidates of the less represented sex shall constitute at least 30% of the electoral list (Article 20(3)), and that the electoral list which does not meet this requirement shall be considered deficient to be proclaimed and the list nominator shall be requested to eliminate the deficiencies (Article 20(4)). The Law stipulates that if the list nominator fails to eliminate the deficiencies, the electoral commission shall refuse to proclaim the electoral list (Article 20(5)).

The *Law on Election of Members of Parliament* (Official Gazette of RS, No. 35/00, 57/03 – decision of the Constitutional Court of RS, 72/03 – other Law, 75/03 – other Law corrigendum. 18/04, 85/05 – other Law, 101/05 – other Law and 104/09) provides that one of every four candidates on the electoral list (the first four candidates, the second four candidates etc.) shall be of the sex that is less represented on the list, and the total number of candidates of the less represented sex on the list shall not be below 30% (Article 40a(1)). The electoral list which does not meet this requirement shall be considered deficient to be proclaimed, and the nominator shall be requested to eliminate the deficiencies of the list (Article 40a (2)), and if the nominator fails to eliminate these deficiencies, the Republic Electoral Commission shall refuse to proclaim the electoral list (Article 40a (3)).

The *Law on National Councils of National Minorities* (Official Gazette of RS, No. 72/09) was adopted in order to define comprehensively the status of national councils in the legal order of the Republic of Serbia, which provided for a complete legal framework for the promotion and protection of the rights of national minorities. The Law provides that in direct elections of national councils, at least 30% of candidates on the electoral list shall be of the less represented sex, whereby every third place on the electoral list shall be reserved for the less represented sex (Article 72(3)). The electoral list which does not meet, inter alia, this requirement shall be considered deficient to be proclaimed, and the nominator shall be requested to eliminate the deficiencies of the list (Article 72(4)). If the list nominator fails to eliminate the deficiencies, the Central Electoral Commission, the body in charge of conducting national council elections shall refuse to proclaim the electoral list (Article 72(5)). The same solution for representation of women on electoral lists is provided in electoral elections for national councils (Article 109(3)). Indirect protection of the principle of representation of women in national councils is provided both in direct elections (Article 98(6)) and electoral elections (Article 109(12)), by the established rule that mandates belonging to a certain electoral list shall be assigned to candidates from the list according to the order in which their names are indicated on the list, on which every third place is reserved for the less represented sex.

Pursuant to the *Law on the Serbian Armed Forces* (Official Gazette of RS, No. 116/07 and 88/09) any citizen of the Republic of Serbia may be hired as a professional soldier if he/she fulfils the following condition: he/she has completed the appropriate military and professional training for the office he/she is being hired for; in case of a person of the male sex, he has to have completed military service (Article 39(1), point(9)). Women are not required to have completed military service. The positive side of the Law is that it provides a possibility for women to establish employment relationship as professional soldiers.

The *Gender Equality Law* (Official Gazette of RS, No. 104/2009) is a key law in the field of gender equality, which regulates the provision of equal opportunities in exercise of rights and obligations, special measures for prevention and elimination of discrimination on the grounds of sex and gender, and legal protection procedures of persons exposed to discrimination (Article 1). Pursuant to this Law, gender equality shall be understood as equal participation of women and men in all spheres of the public and private sector, in compliance with generally accepted rules of international law, ratified international treaties, the Constitution of the Republic of Serbia and laws (Article 2), and state authorities shall pursue active policy of equal opportunities in all spheres of social life (Article 3).

Special provisional measures

The *Law on the Prohibition of Discrimination* provides that special measures introduced for the purpose of achieving full equality, protection and promotion of individuals or groups of persons in unequal position shall not be considered to constitute discrimination (Article 14). Pursuant to the *Gender Equality Law*, introduction of special measures for the purpose of elimination or prevention of unequal position of women and men and ensuring equal opportunities of the genders shall not be construed as discrimination or violation of the principle of equal rights and obligations (Article 7). No one shall suffer any harmful consequence due to the statement made before a competent authority as a witness or victim of discrimination on the grounds of gender, or for notifying the public about a case of discrimination (Article 8). Special measures aimed at increasing the employment rate and

employment opportunities of the less represented gender among employed people, and special measures aimed at increasing the participation of the less represented gender in vocational training and ensuring equal opportunities for career advancement shall not be construed as discrimination or violation of the principle of equal opportunities (Article 11(2)). An innovation introduced by this Law is the Plan of Action for elimination or alleviation of unbalanced gender representation for every calendar year, which employers employing more than 50 employees for indefinite period are obliged to adopt, and they are also obliged to submit an annual progress report on its implementation for the preceding year, not later than 31 January of the current year. They are obliged to submit the report to the Ministry competent for gender equality matters (Article 13).

Article 3 of the Gender Equality Law guarantees the policy of equal opportunities – equal participation of the genders in every stage of planning, decision making and implementation of decisions relevant for the position of women and men in all spheres of social life.

Public authorities are obliged to apply affirmative measures, in accordance with the Law on Civil Servants and the Law on Public Administration, in case representation of the less represented sex in managerial positions and in management and supervision bodies is below 30%.

Differentiation on the grounds of sex shall not be allowed during the announcement of vacancies and selection of the applicant, unless there are reasonable causes provided for under the Labour Law .

Gender or maternity leave shall not represent an obstacle for promotion at work or vocational training, nor shall it be a basis for placement to inadequate assignments or termination of the contract of employment.

Regardless of their gender, employees shall exercise the right to equal remuneration for equal work, and in each course of vocational or other training, the employer shall pay attention to the fact that the representation of the genders shall reflect the structure of employees, to the greatest possible extent.

Harassment, sexual harassment or blackmail shall be construed as violation of work rules, representing the grounds for termination of the contract of employment, whereas initiation of proceedings by an employee, due to discrimination on the grounds of sex, harassment, sexual harassment or blackmail may not be construed as justifiable reason for the termination of the contract of employment.

When establishing a collective bargaining team, trade unions and associations of employers shall ensure at least 30% of its members are of the less represented sex.

The organisation responsible for employment matters shall ensure equal access to jobs and equality in the employment procedure of both genders alike.

Discrimination on the grounds of gender in exercise of social welfare and health care rights shall be prohibited.

The Republic of Serbia has ratified the following international conventions:

- Convention on the Elimination of all Forms of Discrimination against Women, which was signed by then SFRY in July 1980 and ratified in 1981 (Official Journal of SFRY - International Treaties 11/81). After the changes in 2000, FRY made a statement of succession in the UN, in March 2001, which included also the re-accession to international legal acts in the field of human rights, and thus the Convention.

Serbia is a member of almost every international convention in the field of human rights, women's and children's rights and international humanitarian law, adopted under the auspices of the UN:

- International Covenant on Civil and Political Rights¹⁰, the Optional Protocol¹¹ and the Second Optional Protocol¹² to this Covenant;
- International Covenant on Economic, Social and Cultural Rights¹³;
- Convention on the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, and the Optional Protocol to this Convention¹⁴;
- Convention on the Elimination of All Forms of Racial Discrimination¹⁵;
- Convention on the Political Rights of Women (*Official Journal of FPRY*, No 7/54);
- Convention on the Nationality of Married Women (*Official Journal of FPRY*, No 6/59);
- Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages (Regulation on Ratification 13/64);
- Convention for the Suppression of the Traffic in Persons and of Exploitation of the Prostitution of Others (*Official Gazette of the Presidium of FPRY*, No. 2/1951);
- Convention Concerning Discrimination in Respect of Employment and Occupation (*Official Journal of SFRY*, No 41/1961);
- Convention Concerning Equal Remuneration of Men and Women for Work of Equal Value (*Official Gazette of the Presidium of the National Assembly of FPRY*, No. 1/1952);
- Convention on the Rights of Persons with Disabilities (*Official Gazette of RS*, No. 42/09);
- Convention on the Rights of the Child¹⁶, the Optional Protocol on the Involvement of Children in Armed Conflict¹⁷, and the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography¹⁸;
- Convention on the Civil Aspects of International Child Abduction¹⁹;
- Slavery Convention²⁰;
- Convention on the Suppression and Punishment of the Crime of Apartheid²¹;
- Rome Statute of the International Criminal Court²²;

¹⁰ Official Journal of SFRY – International Treaties, 7/71

¹¹ Official Journal of FRY – International Treaties, 4/2001

¹² Official Journal of FRY – International Treaties, 4/2001

¹³ Official Journal of SFRY – International Treaties, 7/71

¹⁴ Official Journal of SCG – International Treaties, 9/2003

¹⁵ Official Journal of SFRY, 31/67

¹⁶ Official Journal of SFRY – International Treaties, 15/90 and Official Journal of FRY - International Treaties, 4/96 and 2/97

¹⁷ Official Journal of FRY – International Treaties, 7/2002

¹⁸ Official Journal of FRY – International Treaties, 7/2002

¹⁹ Official Journal of SFRY – International Treaties, 7/1991

²⁰ Official Gazette of the Kingdom of SCS, 234/1929

²¹ Official Journal of SFRY, 14/75

²² Official Journal of FRY – International Treaties, 5/2001

- Convention against Transnational Organised Crime and its Protocol against the Smuggling of Migrants by Land, Sea and Air and the Protocol to Prevent, Suppress and Punish Trafficking in Persons²³;
- Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (First Geneva Convention)²⁴;
- Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked members of Armed Forces at Sea (Second Geneva Convention)²⁵;
- Convention Relative to the Treatment of Prisoners of War (Third Geneva Convention)²⁶;
- Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention)²⁷;
- Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol 1)²⁸;
- Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol 2)²⁹;
- Convention on the Prevention and Punishment of the Crime of Genocide³⁰;
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment³¹;
- International Convention against the Taking of Hostages³²;
- Convention on the Prevention and Punishment of the Crimes against Internationally Protected Persons, Including Diplomatic Agents³³;
- Convention on Special Missions³⁴;
- Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity³⁵; etc.

Serbia ratified the European Convention on Human Rights and Fundamental Freedoms³⁶, and as a member of the Council of Europe, it is obliged to follow the proposals of this organisation. Serbia is also bound by numerous ratified protocols of the UN, International Labour Organisation and World Health Organisation.

After the making the statement of succession in June 2001, Serbia started to monitor the implementation of international standards of human rights and introduced the practice of submitting national reports to the bodies of the United Nations and other international institutions on the implementation of obligations of ratified international conventions³⁷.

²³ Official Journal of FRY – International Treaties, 6/2001

²⁴ Official Journal of FPRY, 24/50

²⁵ Official Journal of FPRY, 24/50

²⁶ Official Journal of FPRY, 24/50

²⁷ Official Journal of FPRY, 24/50

²⁸ Official Journal of SFRY – International Treaties, 16/78

²⁹ Official Journal of SFRY – International Treaties, 16/78

³⁰ Official Gazette of FPRY, 2/1950

³¹ Official Journal of SFRY – International Treaties, 9/91

³² Official Journal of SFRY – International Treaties, 9/84

³³ Official Journal of SFRY – International Treaties, 54

³⁴ Official Journal of SFRY – International Treaties and Other Agreements, 19/75

³⁵ Official Journal of SFRY – International Treaties and Other Agreements, 50/70

³⁶ *Official Journal of SCG – International Treaties*, No. 9/2003, 5/2005 and 7/2005 - corrigendum

³⁷ The following reports have been submitted so far: Initial Report on the Implementation of the International Covenant on Civil and Political Rights in the period between 1992 and 2002; Initial Report on the Implementation of the Convention

131. Are there any other practical measures and mechanisms supporting gender equality? Please provide statistics on women's representation in political life, judiciary, law enforcement bodies and public administration, especially concerning management positions.

Yes, there are special incentive measures both for the public and the private sector for the purpose of achieving full gender equality. These special measures, adopted by the Government via the Package of Measures, for the purpose of promotion of the less represented female sex, members of vulnerable groups (the Roma) or persons with disabilities, are special incentive measures for employers, stimulated by the Government, and they are not construed as discrimination or violation of the principle of equal rights due to positive legislation.

One of the objectives of the National Action Plan for the implementation of the National Strategy on Improved Status of Women and Gender Equality Promotion for the period between 2010 and 2015 (*Official Gazette of RS*, No. 067/10) is to improve the economic situation of women and ensure gender equality. This should provide for the elimination of economic inequality between men and women, introduction of the policy of equal opportunities and better use of female resources for development, by achieving the following results:

- Creation of systematic preconditions for the policy of equal opportunities in the economy
- Encouraging employment, female entrepreneurship and self-employment
- Reduction of economic inequalities which are the consequences of multiple discrimination
- Building the capacities of all stakeholders in the economy and society for the elimination of gender-based discrimination and better use of female resources.

According to the data of the Republic Statistics Office of Serbia, as of 31 December 2009, the statistical data in the Republic of Serbia show that the representation of women, after the Parliamentary elections held in May 2008, amounts for 22.4% of all Members of Parliament, 18.5% hold ministerial positions, none of them is in the security department, 22.7% of holders of the office of secretary of state are women, and 42.6% of holders of the office of Assistant Minister are women. In judiciary, out of 2,400 judges, 1,700 are women and 700 are men.

Of the total number of persons who perform judicial office, women are a majority.

Name of court	Number of women judges (%)	The percentage of women in relation to the total number of judges
Supreme Court of Cassation	17	70,83
The Appellate Court in Belgrade	64	79,01
Appellate Court in Kragujevac	37	69,81
Appellate Court in Nis	22	61,11
Appellate Court in Novi Sad	34	68
Administrative court	24	70,59
Commercial Appellate Court	17	68
Commercial courts	99	71,74
Higher courts	166	60,36
Basic courts	792	72,06
Higher Misdemeanour Court	51	78,46
Misdemeanour Court	407	75,09
TOTAL:	1.730	71,45

Of the said number of managerial positions, the data are as follows:

- Supreme Court of Cassation – 1 president,
- Appellate, higher courts, municipal courts, Administrative Court, Commercial Appellate Court and commercial courts - 42 acting Court Presidents:
- misdemeanour courts - 33 acting Court Presidents
- The number of male judges is 699.

132. Does specific legislative protection for the rights of persons with disabilities exist? Are there measures designed to ensure their independence and social and occupational integration? Please explain.

In Addition to Strategy For Improving the Position of Persons with Disabilities in the Republic of Serbia 2007-2015 (*Official Gazette* no. 01/07), the matter of people with disabilities is included in large number of Serbian general strategic documents: Social Welfare Development Strategy , National Employment Strategy , National Strategy for Youth..

Issues of importance for equality and full inclusion of persons with disabilities in the Republic of Serbia are included in the large number of administrative provisions: The Labour Law (*Official Gazette of RS* no. 98/06) forbids the discrimination on the basis of disability and establishes the protection of persons with disabilities in work places. The Law on Public Procurement (*Official Gazette of RS* no 116/08) establishes the obligation for document applicant in public tenders to include proof on the existence of plans for application of

standards of accessibility for their products and services. The Law on Spatial Planning and Construction (*Official Gazette of RS* no 72/09, 81/09- corrigendum, 64/10) establishes in detail the obligation of respecting standards of accessibility during planning and construction of new several storey high buildings for public and private use and compulsory sanctions for offenders. The Law on Fundamentals of the Education System (*Official Gazette of RS* no 72/09) strongly affirms the concept of inclusive preschool, primary and secondary education for children and young people with disabilities. The Law on Higher Education (*Official Gazette of RS* no 76/05, 100/07 – other provision, 97/08, 44/10) establishes measures for equal possibility for university education for students with disabilities. The Law on Prohibition of Discrimination (*Official Gazette RS* no. 22/09) includes the special Article on prohibition of discrimination on the basis of disability, while this matter is established in detail with the Law on Prevention of Discrimination Against Persons with Disabilities (*Official Gazette of RS* no 33/06). Law on the Safety in Public Traffic (*Official Gazette of RS* no 41/09, 53/10) establishes a few provisions, which provide equal possibility for participation in traffic for the persons with disabilities.

In addition to including the provisions of significant importance for the persons with disabilities in the general strategic documents and laws, Serbia has, in addition to the mentioned Strategy for Improving the Position of Persons with Disabilities in Republic of Serbia 2007-2015, adopted several important laws, which establish, above all, the position of persons with disabilities: In April 2006, the first anti- discriminatory law in our country was adopted- the Law on Prevention of Discrimination Against Persons with Disabilities (*Official Gazette* no 33/06). 33/06). In May 2009, the Law on Vocational Rehabilitation and Employment of Persons with Disabilities was adopted (*Official Gazette of RS*, no 36/2009). On 29th May 2009, National Assembly of the Republic of Serbia has adopted the Law on Ratification the Convention on the Rights of Persons with Disabilities and the Law on Ratification of Optional Protocol to the Convention on the Rights of Persons with Disabilities (*Official Gazette of RS* no 42/09), which made this international document the integral part of the internal legislation of our country.

The consistent and continuing implementation of the quality legislative framework for the position of persons with disabilities in Serbia is one of the key challenges and prerequisite for the real equality and the complete inclusion of these persons into the Serbian society. Establishing equal possibilities for persons with disabilities sometimes asks for substantial financial means, which are not easy to provide in the society in the process of transition. Ministry of Labour and Social Policy sets aside substantial means for the promotion of equality of persons with disability, above all through the The Persons with Disability Support Department. In addition to this, Ministry of Culture and Ministry of Economy and Regional Development systematically and regularly sets aside part of their budget resources for providing equality for persons with disability.

Although there is no registrar of the number of persons with disability, it is estimated that about 600 000 persons with all kinds of disabilities live in Serbia, and only 22 500 is registered in National Employment Service.

According to the data of the Living Standards Measurement Study (LSMS), the rate of unemployment of person with disabilities was 13,6% in 2007 and was approximate to the level of average unemployment rate according to this study (13,9%). The main reason of such low unemployment rate for persons with disabilities is the high rate of inactivity of 69%. It

could be explained with the fact that most are discouraged when looking for employment, so they do not look for it. This is also indicated by the small number of people with disabilities registered with the National Employment Service. The main reason for high discouragement of persons with disabilities in searching for employment is connected to prejudice of the employers when hiring these persons and the lack of their will to adapt the working environment for persons with disabilities. In addition, persons with disabilities are afraid to lose their rights for social security benefits when they are employed.

The Law on Vocational Rehabilitation and employment of Persons with Disabilities (*Official Gazette of RS*, no 36/09) establishes the legal framework as the foundation for more efficient and qualitative inclusion of persons with disabilities in the employment market.

The Law on Vocational Rehabilitation and Employment of Persons with Disabilities establishes promotion for employment in order to develop conditions for equal participation of persons with disabilities in the employment market, different measures and activities of professional rehabilitation, the obligation of hiring persons with disabilities, as well as other matters of significance for the employment of persons with disabilities and for professional rehabilitation.

The Law defines promotion activities for employment of persons with disabilities and they are:

- 1) The affirmation of equal possibilities for persons with disabilities in employment market;
- 2) organizing and implementing measures and activities for professional rehabilitation;
- 3) establishing the right for measures of active employment policy, that is measures for promotion of self-employment and employment of persons with disabilities;
- 4) providing technical, professional and financial support for adapting of jobs, places of work or jobs and places of work, including both technical and technological equipment in order to increase the possibility for employment or maintaining employment for persons with disabilities;
- 5) monitoring effects of employment and social inclusion of persons with disabilities;
- 6) cooperation with organisations and associations of persons with disabilities, employers and other organs and organizations in order to promote employment and inclusion of persons with disabilities;
- 7) other activities with the aim of increasing employment and inclusion of persons with disabilities in the employment market;

The activities of promotion of employment of persons with disabilities is performed by the institution competent for employment activities.

The Law defines the professional rehabilitation of persons with disabilities as organising and implementing programme of measures and activities in order to enable them for appropriate job, employment, keeping job, advancing in or changing professional career.

Professional rehabilitation of persons with disabilities is implemented through the application of measures and activities:

- 1) career guidance, professional informing, counseling and individual plan of employment;
- 2) job training, additional training, retraining and programmes for gaining, maintaining and improving work and social skills and potential.

- 3) individual and group, general and adapted programmes for improving work and social integration;
- 4) development of motivation, technical assistance, competent assistance and estimation of results of professional rehabilitation;
- 5) individual counseling, which includes help in accepting disability from the point of view of possibility of joining to work and individual measures of professional rehabilitation;
- 6) education and training seminars for employers, competent professionals for job training and professional rehabilitation of persons with disabilities;
- 7) proposals and training for application of adequate technical and technological solutions in order to raise efficiency of the person with disabilities in studying and work, as well as the support service;
- 8) other activities.

Job bearers of professional rehabilitation, in addition to the competent organization of the employment service, could also be companies for professional rehabilitation and employment of persons with disabilities, educational institutions and other forms of organization, fulfilling the conditions, criteria and standards for implementation of measures and activities of professional rehabilitation.

Obligation of employment, pursuant to Law, is the commitment of each employer with at least 20 employees to have a specific number of persons with disabilities employed on permanent basis.

Employer with 20 to 49 employees should have one person with disabilities employed.

Employer with 50 or more employees should have at least two persons with disabilities employed and per each next 50 employees started, one person with disabilities.

133. Has Serbia ratified relevant international conventions and agreements regarding the rights of persons with disabilities?

Yes. National Assembly of the Republic of Serbia has adopted the Law on Ratification of the Convention on the Rights of People with Disabilities and the Law on Ratification of the Optional Protocol to the Convention on the Rights of People with Disabilities (*Official Gazette of RS*, no. 42/09).

134. Please indicate what steps have been taken to implement the European Social Charter since its ratification by Serbia.

The National Assembly of the Republic of Serbia adopted the Law on Ratification of the Revised European Social Charter on 29 May 2009 (*Official Gazette of RS*, No. 42/2009), and the ratification instruments were submitted on 14 September 2009.

The Revised European Social Charter entered into force on 1 November 2009.

Regarding the implementation of the Revised European Social Charter in Serbia, we should emphasize that the court protection of social rights contained in the Charter is ensured before the national courts of Serbia, since the Constitution of the Republic of Serbia accepts the concept of monism, which means that: "ratified international treaties are integral part of the legal order of the Republic of Serbia and as such apply directly", (Article 16 of the Constitution of the Republic of Serbia).

The Republic of Serbia has already begun the preparations for the drafting of the First Report on the Implementation of the Charter, with the help of the Secretariat of the European Social Charter of the Council of Europe.

On 24 March 2010, a seminar was held in Belgrade, the topic of which was the drafting of the First Report on the Implementation of the Revised European Social Charter in the Republic of Serbia. The lecturers were members of the European Committee for Social Rights and representatives of the Secretariat of the European Social Charter from Strasbourg, whereas Articles 1, 10, 15, 18, 20, 24 and 25 were discussed, the implementation of which will be included in the report Serbia shall submit by 31 October 2011, based on the report scheme of the Council of Europe. The seminar was attended by representatives of public institutions, as well as by representatives of non-governmental organisations and representatives of social partners.

The report form, in which the report shall be submitted, has been translated into Serbian, and the establishment of a working group is planned, for the purpose of drafting the First Report, which will be composed of representatives of the institutions competent for the implementation of the Articles which will be included in the report in 2011.

135. Are there legal uncertainties in relation to property restitution and what are your plans to solve them?

(For more detailed questions please see chapter 23).

In the Ministry of Finance there is ongoing work on preparation of the Denationalisation Act which will generally regulate the matter concerning rights of the former owners of properties confiscated from them on different grounds after the Second World War, and which will be referred to the Government for consideration. The draft law is expected to be presented by the Government to the National Assembly for consideration and adoption during 2011.

Protection of minorities

136. Please provide statistics concerning the number of people belonging to ethnic, religious and linguistic minority groups in your country. Please indicate the source of these figures (census or other).

1. Population by national or ethnic affiliation, Census 2002

	Total	Serbs	Montenegrins	Yugoslavs	Albanians	Bosniacs	Bulgarians	Bunyevtsi	Vlachs
The Republic of Serbia	7498001	6212838	69049	80721	61647	136087	20497	20012	40054

1. Population by national or ethnic affiliation, Census 2002 (continuation)

	Gorani	Hungarians	Macedonians	Moslems	Germans	Roma	Romanians	Russians	Ruthenians
The Republic of Serbia	4581	293299	25847	19503	3901	108193	34576	2588	15905

1. Population by national or ethnic affiliation, Census 2002 (continuation)

	Slovaks	Slovenes	Ukrainians	Croats	Czechs	The others	Undeclared and undefined	Regional affiliation	Unknown
The Republic of Serbia	59021	5104	5354	70602	2211	11711	107732	11485	75483

/No data for Kosovo and Metohija/

2. Population by religious affiliation, Census 2002

	Total	Islam	Judaic	Catholic	Orthodox	Protestant
The Republic of Serbia	7498001	239658	785	410976	6371584	80837

2. Population by religious affiliation, Census 2002 (continuation)

	Pro- oriental cults	Belonging to religion not cited	Believer, but does not belong to any religion	Undeclared	Not a believer	Unknown
The Republic of Serbia	530	18768	473	197031	40068	137291

/ No data for Kosovo and Metohija/

3. Population by mother tongue, Census 2002

	Total	Serbian	Albanian	Bosnian	Bulgarian	Vlach language	Hungarian
The Republic of Serbia	7498001	6620699	63835	134749	16459	54818	286508

3. Population by mother tongue, Census 2002 (continuation)

	Macedonian	Romany	Romanian	Slovakian	Croatian	The other languages	Undeclared and unknown
The Republic of Serbia	14355	82242	34515	57498	27588	40858	63877

/No data for Kosovo and Metohija/

137. Has the Framework Convention for the Protection of National Minorities and other relevant international instruments been ratified? How are they implemented and monitored? Have recommendations by the Council of Europe and other relevant organisations been implemented?

The Republic of Serbia is party to two multilateral treaties of the Council of Europe - the Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages, which stipulate submission of reports as instruments of monitoring the realization of the obligations undertaken. In the process of monitoring of the above mentioned treaties, very good cooperation has been established with the Advisory Committee and the Committee of Experts, which these bodies also stated in their reports.

Framework Convention for the Protection of National Minorities (hereinafter: Framework Convention) was ratified in the National Assembly of FR Yugoslavia in 1998. Invited by the Committee of Ministers of the Council of Europe, FR Yugoslavia acceded to the Framework Convention on 11 May 2001, and in accordance with the provision of Article 29, paragraph 2 of this document, it entered into force for FR Yugoslavia on 1 September 2001. FR Yugoslavia submitted the First Report on the Implementation of the Framework Convention on 16 October 2002. The Delegation of the Advisory Committee visited Serbia and Montenegro in the period between 27 September and 3 October 2003, in order to obtain additional information from representatives of the Government, non-governmental organisations and other independent sources regarding the implementation of the Framework Convention. The Advisory Committee adopted its Opinion on the Implementation of the Framework Convention on 27 November 2003, whereas the Council of Ministers of Serbia and Montenegro submitted its Comments on it on 18 May 2004. The Resolution on the Implementation of the Framework Convention for the Protection of National Minorities by Serbia and Montenegro (ResCMN (2004) 12) was adopted by the Committee of Ministers of the Council of Europe on 17 November 2004.

The Republic of Serbia, as the successor state of the State Union of Serbia and Montenegro, submitted the Second Periodical Report on the Implementation of the Framework Convention for the Protection of National Minorities on 14 March 2008. The Second Report, prepared by means of inclusion of a large number of relevant stakeholders in the implementation of the Framework Convention, as well as representatives of national minorities, contains extensive information on the legislative framework and the relevant practice. The Advisory Committee obtained additional information in contacts with Governmental and non-governmental organisations during the visit of its Delegation to Belgrade, Novi Sad, Bujanovac, Nis and Novi Pazar in the period between 3 and 7 November 2008. The Advisory Committee adopted its Second Opinion on the Implementation of the Framework Convention on 19 March 2009, which stated that Serbia has a positive approach to the process of monitoring. The Government of the Republic of Serbia adopted the Comments on the Second Opinion of the Advisory Council on the Implementation of the Framework Convention for the Protection of National Minorities on 24 September 2009. The Committee of Ministers is expected to adopt the Resolution on the Implementation of the Framework Convention in Serbia in the forthcoming period.

In the period between the submission of the two reports on the implementation of the Framework Convention, the Republic of Serbia adopted very important measures for improving the situation of national minorities, especially measures for promoting the participation of members of national minorities in public affairs, in particular those affecting them (according to the standard of the Framework Convention), the most significant of which are:

- Abolition of the electoral threshold for political parties of national minorities in republic elections (measure adopted in 2004), which resulted in a significant increase in the number of representatives of the people who are members of national minorities (inter alia two representatives who are members of the Roma national minority) in the elections in January 2007.
- Establishment of the Council of the Republic of Serbia for National Minorities comprised of line ministers of the Government (in charge of the departments of interior, justice, education, public administration and local self-government, culture and religion)

and presidents of national councils of national minorities, representing cultural autonomy and collective rights of national minorities.

- Adoption of the Conclusion of the Government of the Republic of Serbia on the measures to increase the participation of members of national minorities, which provides for special measures to be undertaken by Governmental bodies for the purpose of increasing the participation of members of national minorities in state administration bodies.

During the same period, special measures were undertaken for the benefit of certain national minorities, in particular for the benefit of the Roma national minority, the most important of which are measures of affirmative actions in the field of education (distribution of free text books among members of the Roma national minority, facilitated enrolment to universities and secondary schools etc.) and adoption of special action plans for improving the situation of the Roma in the field of education, housing etc. In addition, bilateral agreements on the protection of national minorities, regulating the situation and protection of certain national minorities were concluded with certain neighbouring countries in this period. On the basis of the bilateral agreements, special mixed commissions monitoring the realization of the provisions of these agreements were formed.

The European Charter for Regional or Minority Languages (hereinafter: Charter) was signed on behalf of Serbia and Montenegro on 22 March 2005. The Assembly of Serbia and Montenegro ratified the Charter on 21 December 2005, and the instrument of ratification of Serbia and Montenegro was deposited with the Secretary General of the Council of Europe on 15 February 2006. The Charter entered into force for Serbia, as the successor state of the State Union of Serbia and Montenegro on 1 June 2006. Having ratified the Charter, the Republic of Serbia undertook the obligations to implement certain measures of protection and promotion of the Albanian, Bosnian, Bulgarian, Hungarian, Romani, Romanian, Ruthenian, Slovak, Ukrainian and Croatian languages.

The First Periodical Report on the Implementation of the European Charter for Regional or Minority Languages in the Republic of Serbia was submitted to the Secretary General of the Council of Europe on 11 July 2007. In this Report, Serbia explained the implementation of measures undertaken for the benefit of each of the above mentioned languages. The Delegation of the Committee of Experts visited the Republic of Serbia in the period between 6 and 8 February 2008, and in Belgrade and Novi Sad, it obtained additional information or explanation from representatives of the Government and national councils of national minorities, as well as from representatives of non-governmental and international organisations, for the purpose of obtaining a complete picture of the implementation of the Charter. The Committee of Experts adopted the Report on the Implementation of the European Charter for Regional or Minority Languages in Serbia, and Comments adopted by the Government of the Republic on 19 December 2008 were submitted to it. The Committee of Ministers adopted the Recommendation (RecChL (2009) 2) on the Implementation of the European Charter for Regional or Minority Languages in Serbia on 6 May 2009.

Having regard to the obligation of drafting the Second Periodical Report on the Implementation of the Charter, the authorities of the Republic of Serbia began the preparations in the end of 2009. Part of these preparations was holding meetings of representatives of the Ministry of Human and Minority Rights, Committee of Experts, the Committee of Experts' Charter Secretariat and representatives of the Bunjevac, Vlach,

Macedonian, German, Roma, Ukrainian, and Czech national minorities. Through constructive dialogue, the participants of these meetings, held on 27 November 2009, tried to analyze jointly the results of the monitoring of the implementation of the Charter in Serbia and indicate the real possibilities of the execution of certain obligations undertaken by the state regarding the protection of rights of the speakers of these languages. The Government of the Republic of Serbia adopted the Second Periodical Report on the Implementation of the Charter at its session held on 16 September 2010, and it was forwarded to the Secretary General of the Council of Europe. The Report contains new information and relevant changes or innovations in connection with the situation of minority languages, information on measures undertaken in accordance with the recommendations of the Committee of Ministers of the Council of Europe, as well as on questions and special recommendations of the Committee of Experts.

In the period after the submission of the First Periodical Report on the Implementation of the Charter and the Second Report on the Implementation of the Framework Convention, the legislation has been improved by adoption of new laws providing for important issues concerning the protection and exercising of minority rights and improving the situation of national minorities in certain segments of society. However, the most important of all was certainly the adoption of two laws, which were stressed in particular in the reports of monitoring bodies, as crucial for promoting the protection of national minority rights - the Law on the Prohibition of Discrimination and the Law on National Councils of National Minorities.

The Law on the Prohibition of Discrimination (Official Gazette of RS, No. 22/09) provides in detail for the constitutional prohibition of discrimination. Under Article 1, paragraph 1, the Law regulates the general prohibition of discrimination, forms and cases of discrimination, as well as the methods of protection against discrimination. Paragraph 2 of the same Article establishes the Commissioner for the Protection of Equality as an independent state authority, autonomous when it comes to performing the tasks prescribed by this Law. The provision of Article 2, paragraph 1, point 1 defines the terms "discrimination" and "discriminatory treatment" as any unwarranted discrimination, unequal treatment, that is to say omission (exclusion, limitation or preferential treatment) in relation to individuals or groups, as well as members of their families or persons close to them, be it overt or covert, on the grounds of race, skin colour, ancestors, citizenship, national affiliation or ethnic origin, language, religious or political beliefs, gender, gender identity, sexual orientation, financial position, birth, genetic characteristics, health, disability, marital and family status, previous convictions, age, appearance, membership in political, trade union and other organisations and other real or presumed personal characteristics. Under Article 24, paragraph 1, the Law forbids discrimination against national minorities and their members on the grounds of national affiliation, ethnic origin, religious beliefs and language.

For the purpose of comprehensive definition of the status of national councils in the legal system of the Republic of Serbia, the Law on National Councils of National Minorities was adopted (Official Gazette of RS, No. 72/09), which provides for a complete legislative framework for the promotion and protection of national minority rights. The Law regulates: competences of the national councils of national minorities in the field of education, culture, public information and official use of languages and script, their relation to state authorities, bodies of autonomous provinces and local self-government units, the procedure of the election of national councils, the funding of the activities of national councils etc. Funds for financing

the work of national councils are provided from the budget of the Republic of Serbia, the budget of the autonomous province and the budget of the local self-government units, as well as from donations and other revenues.

Having regard to the importance and the role of national councils in the legal system of the Republic of Serbia, the Law stipulates that within 6 months of the entry into force of the Law, the minister in charge of matters of human and minority rights shall call elections for national councils. As for the remarks and opinions of the Committee of Experts presented in the First Report on the Implementation of the European Charter for Regional or Minority Languages in Serbia, according to which national councils of national minorities represent a particularly suitable method for taking into consideration the needs and desires of groups using regional or minority languages, as well as that additional efforts need to be invested in order for speakers of the Albanian and Czech languages to have representatives in the form of such bodies as well, meetings were organised with representatives of the interested national minorities which had not had national councils until then, and in particular with representatives of the Albanian national minority, where the Law and the obligations they need to fulfil in order to form a national council were presented. On the basis of rules and procedures of the election process regulated by law, on 6 June 2010 direct elections were held for national councils of the Albanian, Ashkali, Bosniak, Bulgarian, Bunjevac, Vlach, Greek, Egyptian, Hungarian, German, Roma, Romanian, Ruthenian, Slovak, Ukrainian and Czech national minorities and electoral assemblies for the election of national councils of the Macedonian, Slovenian and Croatian national minorities.

In 2009, the operation of intergovernmental mixed commissions, that is to say committees for minorities with Hungary and Croatia, formed in accordance with agreements on the protection of rights of the Serbian national minority in these countries and of the Hungarian and Croatian minorities in Serbia, was reactivated. The Third Session of the Serbian-Hungarian Intergovernmental Mixed Commission for Minorities was held on 21 and 22 May 2009, whereas the Third Session of the Serbian-Croatian Intergovernmental Mixed Commission for Minorities was held on 14 and 15 October 2009. Both of these sessions were dedicated to discussion of current issues affecting the Serbian minority in Hungary and Croatia, and the Hungarian and Croatian minorities in Serbia, review of the fulfilment of obligations provided for in the above mentioned agreements, realization of recommendations adopted at previous sessions and presentation of new recommendations in relation to the implementation of the agreements to the governments of the parties to the agreements. The Serbian-Romanian Intergovernmental Mixed Commission for Minorities held its first session on 23 November 2009. The Rulebook on the Work of the Commission and the text of the minutes of the First Session were harmonized and signed at the session. It was agreed upon to intensify the work of the Commission and analyse the level of fulfilment of obligations undertaken by both countries regarding the protection of minority rights at the following session, as well as to adopt particular recommendations for the purpose of advancing the fulfilment of these obligations. Preparations for the first session of the Serbian-Macedonian Intergovernmental Mixed Commission began in December 2010.

In the period after the submission of state reports on the implementation of the above mentioned multilateral agreements, significant results concerning the development of the protection of national minority rights in Serbia have been achieved, not only in the field of legislation, but also at the institutional level. The Government of the Republic of Serbia adopted a new Regulation on the Council of the Republic of Serbia for National Minorities

(Official Gazette of RS, No. 50/2009), which regulates its competences, composition, the method of decision-making and the annual minimum number of meetings. The Council is in charge of preservation, promotion and protection of national, ethnic, religious, linguistic and cultural specificities of members of national minorities in the Republic of Serbia. The operation of the Council for National Minorities also enables the broadening of the institutional frameworks for the promotion of dialogue and interethnic tolerance, since the Council is another institution in the Republic of Serbia contributing to the development of interethnic relations and intercultural dialogue.

138. Please give an overview on the constitutional and legislative provisions to this effect as well as on the strategic and policy tools adopted for the implementation. To what extent are the rights of persons belonging to minorities respected, protected and monitored?

The Constitution of the Republic of Serbia guarantees a wide spectrum of minority rights, which enabled an improvement of constitutional solutions in this sphere, as it can be concluded from the specific nomotechnique and the specific Section titled “Rights of Persons Belonging to National Minorities”(Articles 75-81). Under Article 75, the Constitution guarantees additional individual or collective rights to persons belonging to national minorities, whereby individual rights shall be exercised individually and collective rights in community with others in accordance with the Constitution, the law and international treaties. Through their collective rights, persons belonging to national minorities shall, directly or through their representatives, take part in decision-making, or decide independently on certain issues related to their culture, education, information and official use of languages and scripts in accordance with the law. Persons belonging to national minorities may elect their national councils in order to exercise the right to self-governance in the field of culture, education, information and official use of their language and script.

The Constitution guarantees the freedom of expressing national affiliation and under Article 79, provides for the following rights: expression, preservation, fostering, developing and public expression of national, ethnic, cultural and religious specificity; use of their symbols in public places; use of their language and script; have proceedings also conducted in their languages before state authorities, organizations with delegated public powers, authorities of autonomous provinces and local self-government units, in areas where they make a significant majority of population; education in their languages in public institutions and institutions of autonomous provinces; founding private educational institutions; use of their name and family name in their language; traditional local names, names of streets, settlements and topographic names also written in their languages, in areas where they make a significant majority of population; complete, timely and objective information in their language, including the right to expression, receiving, sending and exchange of information and ideas; establishing their own mass media, in accordance with the law. Under paragraph 2 of the abovementioned Article, additional rights of the members of national minorities may be established by provincial regulations, i.e. it is laid down that provinces are partially in charge of the exercise of human and minority rights, which is specially important for national minorities living on the territory of AP Vojvodina.

A number of provisions of the Constitution of the Republic of Serbia refer to specific laws for regulation of the manner in which specific minority rights are exercised. That sort of solution

per se does not provide the legislator with considerable authorization. In such case, the Constitution imposes certain restrictions on the legislator's freedom, since the Constitution prescribes that the law which regulates the manner in which certain human and minority rights are exercised may not affect the essence of the right that is guaranteed.

The Law on the Prohibition of Discrimination (*Official Gazette of the RS* No. 22/09) prescribes general prohibition of discrimination, any forms or cases of discrimination, as well as acts of protection from discrimination. Under the Law, Commissioner for the Protection of Equality is established as an autonomous state authority, independent in performing his duties defined by this Law. Article 24 of the Law prohibits discrimination against national minorities and their members on the basis of their national affiliation, ethnic origin, religious beliefs and language.

The Law on the Protection of Rights and Freedoms of National Minorities (*Official Journal of the FRY* No. 11/02 and *Official Gazette of the RS* No. 72/09 – amended by different law), defines the manner of exercise of individual and collective rights guaranteed to the members of national minorities by the Constitution or international treaties. This law also prescribes the protection of national minorities in exercise of their rights from any form of discrimination, establishes the instruments which ensure and protect special rights of national minorities regarding self-governance in the field of education, use of language, information and culture and enables founding of institutions with the aim of facilitating the participation of minorities in government and public administration.

The Law on National Councils of National Minorities (*Official Gazette of the RS* No. 72/09') defines the following: competences of national councils of national minorities in the field of culture, education, information and official use of language and script, relationship with state authorities, the authorities of autonomous provinces and units of local self-government, the procedure for the election of national councils, financing of national councils' activities and other.

The Law on Culture (*Official Gazette of the RS* No. 72/09), provides national councils of national minorities with the opportunity to be in charge of cultural policy of national minorities and to participate in decision-making or decide independently on certain issues related to their culture, to found cultural institutions and other legal persons in the field of culture, in accordance with the law.

The Law on the Foundations of Education and Upbringing (*Official Gazette of the RS* No. 72/09), which regulates foundations of the system of preschool, elementary and secondary education and upbringing and, within the education system, introduces assistant pedagogues into schools, prescribes that the educational activities of national minority members shall be conducted in their mother tongue. **The Law on Elementary School** (*Official Gazette of the RS* No. 50/92 and 22/02) and the **Law on Secondary School** (*Official Gazette of the RS* No. 50/92, 24/96, 23/02 and 25/02) provide for the whole teaching to be performed in national minority languages if at least 15 pupils in an elementary or secondary school apply for it. The pupils belonging to national minorities who attend lessons conducted in Serbian are given the opportunity to learn their mother tongue with elements of national culture. **The Law on Higher Education** (*Official Gazette of the RS* No. 76/05 and 97/08) defines that a higher education institution may organize and provide studies, or certain parts of studies, as well as organize preparation and defence of doctoral dissertation in a language of a national minority

also, in accordance with the Statute. The realization of a curriculum in a language of a national minority is subject to a prior approval, i.e. accreditation.

The Law on Textbooks and Other Teaching Aids (*Official Gazette of the RS* No. 72/09), regulates preparation, approval, publishing and selection of textbooks and sets of textbooks for school, as well as their monitoring and evaluation in the process of education. According to the Law, textbooks shall be printed in the language and script of a national minority for pupils whose education is conducted in that language.

The Law on Pupil and Student Standard (*Official Gazette of the RS* No. 18/10) prescribes that relevant provisions of the Law, which define competences of national councils of national minorities, shall be applied in the institutions within pupil and student standard located on the territory of a local self-government unit where a national minority language is in official use, in the process of appointing or discharging from duty the president, members of the management board and directors.

The Law on Broadcasting (*Official Gazette of the RS* No. 42/02, 97/04, 76/05, 62/06, 85/06, 86/06 and 41/09) prescribes that the representatives of the Public Broadcasting Service are under obligation to provide persons belonging to national minorities with the opportunity to follow certain programmes in their own language and script.

The Law on Official Use of Language and Script (*Official Gazette of the RS* No. 45/91, 53/93 – amended by different law, 67/93 – amended by different law, 48/94 – amended by different law, 101/05 – amended by different law and 30/10) defines that on the territory of local self-government units where members of national minorities traditionally live, their language and script may be in official use on an equal footing. Local self-government unit is under obligation to introduce in its Statute an equitable official use of a language and script of a national minority in case that the percentage of persons belonging to that national minority amounts to 15 % of the total population living on that territory, according to the results of the last census.

The Law on Registers (*Official Gazette of the RS* No. 20/09), which has been implemented since December 2009, specially defines entry of the first names of national minority members into registers, with regard to the language and script of a national minority member.

The Law on Local Self-Government (*Official Gazette of the RS* No. 129/07) prescribes that in the local self-government units with mixed nationalities, a Council for Interethnic Relations shall be established, as an autonomous body which consists of representatives of the Serbian people and national minorities, with more than 1 % of participation in the total number of inhabitants of the local self-government unit. The Council shall discuss issues regarding realization, protection and improvement of national equality, in accordance with the law and the Statute, and decisions shall be taken by consensus of its members.

The Law on Political Parties (*Official Gazette of the RS* No. 36/09), which has been implemented since July 2009, defines the concept of a national minority political party, and the use of the name of a national minority political party in their own mother tongue is regulated in accordance with it. This law strictly specifies that a political party of a national minority may be founded by at least 1,000 adult citizens of the Republic of Serbia having civil capacity, as opposed to other political parties which may be founded by at least 10,000 adult citizens with civil capacity.

The Law on Election of National Assembly Members (*Official Gazette of the RS* No. 35/00 and 18/04), which defines the election and termination of mandate of Members of the National Assembly of the Republic of Serbia, prescribes that mandates may be distributed only among electoral lists which gained at least 5 % of votes of the total number of electors who voted in an electoral constituency. Political parties of national minorities and coalitions of national minority political parties participate in the distribution of mandates even if they gain less than 5 % of votes of the total number of electors who voted.

The Provincial Assembly Decision on the Election of Members for the Assembly of the Autonomous Province of Vojvodina (*Official Journal of the APV* No. 12/04, 20/08 and 5/09) provides for the same solutions with regard to the distribution of mandates as for mandates of Members of the National Assembly. Political parties of national minorities and coalitions of national minority political parties participate in the distribution of mandates for the Assembly of AP Vojvodina in the election, in the part where elections are held according to the system of proportionality, even if they gain less than 5 % of votes of the total number of electors who voted.

The Law on Local Elections (*Official Gazette of the RS* No. 129/07) defines that councillors' mandates shall be distributed among electoral lists in proportion with the number of votes gained by each electoral list. Those lists which gained at least 5 % of votes of the total number of electors who voted shall participate in the distribution of mandates. Political parties of national minorities and coalitions of national minority political parties participate in the distribution of mandates even if they gain less than 5 % of votes of the total number of electors who voted.

The Law on Judges (*Official Gazette of the RS* No. 116/08 and 104/09) prescribes that in the process of election of a judge and proposal for his/her election, any form of discrimination shall be prohibited, and national constitution of population is to be taken into account, as well as proportional representation of national minority members and knowledge of professional legal terminology in the language of a national minority, which is in official use in Court.

The Law on Public Prosecution (*Official Gazette of the RS* No. 116/08 and 104/09) prescribes that in the process of election and proposal for the post of a Public Prosecutor, any form of discrimination shall be prohibited, and national constitution of population is to be taken into account, as well as proportional representation of national minority members and knowledge of professional legal terminology in the language of a national minority, which is in official use in Court.

The Law on Establishing Competences of the Autonomous Province of Vojvodina (*Official Gazette of the RS* No. 99/09) prescribes that AP Vojvodina, through its authorities, ensures and defines more precisely the exercise of rights of national minorities on the territory of AP Vojvodina, with regard to education in their mother tongue, at all levels of education, in accordance with the law (Article 38); defines needs and interest in the field of culture of national minorities and provides means for their realization (Article 41); partially provides means and other conditions for the work of public media in languages of national minorities and ethnic communities (Article 62); defines more precisely the official use of languages and scripts of national minorities on the territory of AP Vojvodina, in accordance with the law and conducts inspections (Article 76).

In 2009, the Government of the Republic of Serbia adopted the **Strategy for Improvement of the Status of Roma** and accompanying Action Plan for its implementation. The Action Plan, adopted with the projection of budget appropriations for the realization of planned measures and activities for the period from 2009 to 2011, consists of the total of 13 fields: apart from action plans regarding four priority fields of Decade of Roma Inclusion, employment, residence, education and health service, adopted in 2005, which have been revised, the Action Plan introduces measures and activities in the field of social protection, internally displaced persons, returned emigrants on the basis of the readmission agreement, it covers the field of improvement of women's position, the field of media, culture and information in mother tongue, as well as the field of discrimination and political participation. With the aim of efficient realization of the Strategy and accompanying Action Plan, The Council for Improvement of the Status of Roma and Implementation of Decade of Roma Inclusion has been established, presided over by the Vice-President of the Government of the Republic of Serbia. The Council is consisted of the representatives of relevant ministries which realize the Action Plan from relevant fields, as well as the representatives of Roma citizens' associations. Together with the Office for Implementation of Roma National Strategy within the Ministry of Human and Minority Rights, the Council took over the coordination of relevant ministries by determining the structure frame of monitoring the successfulness of the realization of measures and priorities defined in the Strategy and Action Plan.

139. How does the Republican Council for National Minorities function? How many members does it have and how are its members appointed? Please describe the frequency of meetings and the scope of its activities.

On 2 July 2009, the Government of the Republic of Serbia adopted a new Regulation on the Council for National Minorities of the Republic of Serbia (*Official Gazette of the RS* No. 50/09). Under the provisions of this Regulation, The Council for National Minorities of the Republic of Serbia (hereinafter: the Council) is in charge of the preservation, improvement and protection of national, ethnic, religious, linguistic and cultural specificities of the members of national minorities in the Republic of Serbia. Its competences are the following: confirmation of symbols, emblems and holidays of national minorities at the proposal of national councils of national minorities; consideration of draft laws and other regulations relevant for the exercise of national minority rights and providing the Government with opinions on the issue; monitoring and consideration of the situation regarding the exercise of rights by national minorities in the Republic of Serbia and the situation regarding interethnic relations in Serbia; proposal of measures for the improvement of full and effective equality of national minority members and consideration of measures proposed by other authorities and bodies with the same aim; monitoring of the realization of cooperation among national councils and competent authorities of the Republic of Serbia, autonomous provinces, municipalities, cities and the City of Belgrade; consideration of national councils' working conditions; consideration of the fulfilment of international obligations in terms of the exercise of rights of national minority members in the Republic of Serbia and international cooperation of national councils; consideration of the list of candidates for the National Education Council in accordance with Article 11 of the Law on the Foundations of Education and Upbringing and consideration of international or regional treaties concerned with the status of national minorities and the protection of their rights in the process of conclusion thereof.

The members of the Council are the following: the President of the Government, who is also the President of the Council, ministers for human and minority rights, for local self-government, culture, education, youth and sports, religion, justice and interior, as well as the representatives of the Government, presidents of the national councils of national minorities and the President of the Federation of the Jewish Communities of Serbia, who holds the position of the President of the National Council. The Council assembles when necessary, at least four times a year, as regulated by the Regulation. The Council takes decisions by majority of votes of the Government representatives and by majority of votes of all the presidents of national councils. At the request of at least one half of the presidents of national councils, the President of the Council is under the obligation to convene a session of the Council within 30 days. The Council shall receive professional and technical-administrative support from the Ministry of Human and Minority Rights.

The Council held its first session on 30 October 2009, when the appointment of the Secretary of the Council and the adoption of the Rules of Procedure marked the constitution of this body. At the request of national councils, the Council endorsed the symbols (coat of arms and flag) and national holidays of Bulgarian, Vlach, Macedonian, Romanian, Ruthenian and Ukrainian national minorities, whereas in the case of German and Slovakian national minorities, the coat of arms and the flag were endorsed. The members of the Council agreed that the subject matter of the discussion at the following session would be the information on the present situation regarding national minorities in Serbia.

140. What measures have been taken to ensure proper representation of minorities? Please specify any budgetary allocations to this end.

The Constitution of the Republic of Serbia guarantees individual and collective rights to the persons belonging to national minorities (Article 75). Individual rights shall be exercised individually and collective rights in community with others, in accordance with the Constitution, law and international treaties. Through their collective rights, members of national minorities shall, directly or through their representatives, take part in decision-making, or decide independently on certain issues related to their culture, education, information and official use of languages and scripts. In order to exercise their rights to self-government in culture, education, information and official use of language and script, members of national minorities may elect their National Councils, in accordance with the law.

National Minority Councils are a form of cultural autonomy of national minorities and functional decentralization, introduced into the legal order in 2002, upon the adoption of the Law on the Protection of Rights and Freedoms of National Minorities (*Official Journal of FR Y*, No. 11/02 and *Official Gazette of the RS*, No. 72/09 – other laws). Under Article 19(1) of the Law, persons belonging to national minorities may elect their National Councils in order to exercise the right to self-government in the field of official use of their language and script, education, information and culture. A National Minority Council is a legal person, and under Paragraph 7 of the mentioned Article, it shall represent a national minority in the field of official use of language and script, education, information in a national minority language and culture, participate in the decision-making process or decide on the matters within these fields and establish institutions within these fields. The law provides for various forms of National Councils' participation in the decision-making process. First of all, under Article 19(8) the Law provides for the obligation of the authorities of the state, territorial autonomy

or a local self-government unit to request the opinion of a Council in the process of decision-making on the matters within the field of official use of language, education, information in a national minority language and culture. National Minority Councils may address the authorities at each level of organization as regards all the issues which have influence on the rights and status of a national minority. Moreover, public powers within official use of language and script, education, culture and information in languages of national minorities may be delegated to the Councils, and the state shall ensure financing necessary for the exercise of these powers. National Councils are financed from the Budget of the Republic of Serbia and the Budget of the Autonomous Province of Vojvodina, as well as by local self-government units. The implementation of the Law on the Protection of Rights and Freedoms of National Minorities has enabled the participation of Representatives of National Minority Councils in certain bodies which are important for the protection and improvement of the status of national minorities (e.g. the Council for National Minorities of the Republic of Serbia), in international cooperation (e.g. mixed commissions for the protection of national minorities), as well as direct participation in decision-making on certain matters of importance for exercise of minority rights (e.g. proposing curricula, deciding on traditional names of settlements, etc.).

As the issues regarding competences of National Councils and the procedure of their election have not been regulated by the Law on the Protection of Rights and Freedoms of National Minorities, in 2009 the National Assembly of the Republic of Serbia adopted the Law on National Councils of National Minorities (*Official Gazette of the RS*, No. 72/09), which regulates the competences of National Minority Councils in the field of culture, education, information and official use of language and script, the procedure for the election of National Councils, their financing and other matters of importance for the work of National Councils.

The Law prescribes that the Minister in charge of the affairs regarding human and minority rights takes the decision on calling the elections for National Councils within 6 months upon the entry into force of the Law. In accordance with provisions of the Law, elections for National Councils may be direct or conducted through electoral assembly. Direct elections for National Councils shall be held if more than 50% of the total number of national minority members, according to the latest census, minus 20%, register on the special electoral roll of a national minority prior to the day when the elections are called. Ministry of Human and Minority Rights formulates a special electoral roll for national minorities which have established their National Councils prior to entry into force of this Law (Bosniak, Bulgarian, Bunjevats, Vlach, Greek, Egyptian, Hungarian, Macedonian, German, Roma, Romanian, Ruthenian, Slovakian, Ukrainian, and Croatian national minority). For national minorities which have not established National Councils until entry into force of the Law, the Law provides that prior to the formulation of the electoral roll, members or organizations of national minorities submit a request supported by signatures certified in court, signed by at least 5% of the national minority members, according to the latest census.

Ministry of Human and Minority Rights has organized a series of meetings with representatives of national minorities which did not have National Councils, where they have been introduced with legal obligations which are to be met so that they could establish their National Councils. Within the specified time limit (30 days upon entry into force of the Law), members of Albanian, Ashkali, Slovene and Czech national minorities submitted requests which were accepted by the Ministry and the right of the mentioned national

minority members to register on a special electoral roll was recognized, which enabled elections for National Councils of the mentioned national minorities.

On 9 November 2009, through mass media the Ministry of Human and Minority Rights informed all the citizens about the beginning of registration on a special electoral roll of national minorities. Special electoral roll is a public document with records on national minority members who have voting rights, and the members of national minorities register on it voluntarily. The data in special electoral rolls enjoy special protection. Every citizen with voting rights, a member of a national minority, may request, in a special form in writing, that he be registered on a special electoral roll.

According to the electoral procedure, 120 days upon the day when the announcement about the beginning of registration had been made, the Minister of Human and Minority Rights temporarily closed the electoral roll (9 March 2010), for the purpose of determining in what manner National Councils would be chosen. In the elections for National Minority Councils, 16 national minorities (Albanian, Ashkali, Bosniak, Bunyevats, Bulgarian, Vlach, Greek, Egyptian, Hungarian, German, Roma, Romanian, Ruthenian, Slovakian, Ukrainian and Czech national minority) fulfilled the legal conditions for direct elections for National Councils. Three national minorities (Macedonian, Slovene and Croatian) elected their National Councils through electoral assembly. Elections for National Councils of all national minorities were held simultaneously, on 6 June 2010.

For the purpose of electing 19 National Minority Councils, the Republic of Serbia set aside 89 139 714.70 dinars from the Budget (around 842 000 EUR at the middle exchange rate of the National Bank of Serbia on 27 December 2010).

141. How is the Law on National Minority Councils being implemented? Have all the Councils foreseen by the Law been constituted following the June 2010 elections? Have they become operational? Please describe the competencies, the functioning and the funding of the National Minority Councils.

Elections for National Minority Councils were held on 6 June 2010. The total of 77 electoral lists participated in direct elections. Out of 436 334 electors registered in special electoral registers, 237 792, i.e. 54.5% of national minority members voted in direct elections. Simultaneously, electoral assemblies were held for the election of National Councils of Macedonian, Slovenian and Croatian national minorities.

Upon the announcement of final results of the elections, Central Election Commission provided all elected members of National Councils with certificates on the obtained mandates, distributed under the D'Hondt's method, based on the results of the elections, and the Ministry of Human and Minority Rights issued identical certificates to the members of National Councils elected in electoral assemblies. Within 30 days upon the elections, constituent sessions of all 19 National Councils elected in the previously held elections were organized. Upon the held constituent sessions, National Councils of 18 national minorities (Albanian, Ashkali, Bulgarian, Bunyevats, Vlach, Greek, Egyptian, Hungarian, Macedonian, German, Roma, Romanian, Ruthenian, Slovakian, Slovene, Ukrainian, Croatian and Czech) began to work and perform their competences without any obstructions.

At the constituent session of the National Council of Bosniak national minority, the representatives of two lists did not show up (the Bosniak Renaissance and the Bosniak List), whereas the representatives of the Bosniak Cultural Association attended the session, but they refused to confirm their presence and to receive the mandates they obtained according to the results of the elections. Servants of the Ministry who opened the constituent session and had the authority to conduct it until the verification of mandates and the constitution of temporary presidency, noted in the record that nobody applied to receive the mandate and that National Council of the Bosniak national minority was not constituted. In the period following the unsuccessful constituent session, considerable efforts were made with the aim of convincing the representatives of the three lists to overcome mutual disputes in order to constitute the National Council which could, in its full capacity, take on the responsibility for the improvement of rights of Bosniak national minority members, as well as a number of other competences the Councils were provided with upon the adoption of the Law on National Councils of National Minorities. Among other, two meetings were held within the Ministry of Human and Minority Rights, on 24 September and 9 November 2010, where the representatives of the Ministry and OSCE Mission in Serbia made an effort to help find a compromise solution and finally constitute the Council.

Since on 9 December 2010 it had been six months from the day when the Central Election Commission announced final results of the elections for National Minority Councils, and the National Council of the Bosniak national minority had still not been constituted, nor had it been able to hold sessions in the mentioned period, according to Article 40 of the Law on National Councils of National Minorities, the Minister of Human and Minority Rights adopted the Decision on Calling Direct Elections for Members of the National Council of Bosniak National Minority, which are to be held on 17 April 2011.

National Councils autonomously adopt and amend their Statute, financial plan and report, have their property at their disposal, decide on the name, symbols and stamp of the National Council, define national symbols, emblems and national minority holidays, establish institutions, organizations, foundations and companies in the field of culture, education, information and official use of language and script, propose representatives of a national minority in the council for international relations in a local self-government unit and decide on and give acknowledgements.

Of special importance is the competence of National Councils with regard to initiating adoption of laws and other regulations in the field of education, culture, information and official use of language and script and monitoring their implementation in practice.

Apart from the abovementioned competences, under certain conditions, National Councils have the right to initiate the decision procedure on the protection of individual and collective rights of national minorities before the Constitutional Court, the Protector of Citizens, provincial or local Ombudsman.

As regards the competences in the field of education, National Councils may establish institutions for pedagogy, education, pupils' and students' standards and exercise the rights of establishment, in accordance with the law. The state, autonomous province and local self-government unit may, partially or completely, transfer rights of establishment with regard to these institutions to National Councils.

National Councils have special competences in educational institutions where educational and pedagogical work is carried out in a national minority language or where the speech, language or culture of a national minority is taught as a special subject.

National Council proposes the following to the National Education Council: general fundamentals of preschool programme, curricula for elementary and secondary education and pedagogy, programme for elementary and secondary education and pedagogy for a national minority language and provides the National Education Council with the opinion on curricula regarding Serbian language in those cases where it is not mother tongue. Provided that a National Council has given its consent, the National Education Council may propose granting approval for the use of textbooks and teaching aids the content of which expresses the specificity of a national minority to the competent minister for educational activities. The minister grants approval for the use of domestic or imported textbooks in a national minority language at the proposal of a National Council.

National Councils establish cultural institutions in order to preserve cultural specificity and national identity of a national minority and exercise the rights and obligations of establishment. The state, autonomous province and local self-government unit may, partially or completely, transfer the rights of establishment to a National Council.

National Councils are authorized to appoint one member of the Management Board of the institution, give their opinion on the members proposed for the Management Board and to give their opinion in the election procedure for the post of managing director of the institution which is, as decided by a National Council, of special importance for preservation of the national minority identity.

National Councils define the strategy for a national minority culture development, define which institutions and manifestations in the field of culture are of special importance for preservation, improvement and development of specificity and national identity of a specific national minority, propose at least one candidate for a joint list of candidates for the election of a National Council for Culture and have other competences in the field of culture.

In the field of information, National Councils may, autonomously or together with another legal person, establish institutions and companies which deal with newspaper publishing and radio and television broadcasting, printing and reproduction of the recorded media and exercise the rights and obligations of establishment. The rights of establishment over public undertakings and institutions in the field of public information, established by the state, autonomous province or local self-government unit may be transferred to National Councils. National Councils participate in institutions management, provide their opinion in the process of appointment of the members of Management Board, Programme Board and Director-General of the Broadcasting Institution of Serbia, provide their opinion in the appointment of the members of Management Board, Programme Board and Director-General of the Broadcasting Institution of Vojvodina, define criteria for the election of editor-in-chief for the programmes in a national minority language in the public service institution, etc.

A National Council adopts the strategy for information development in a national minority language and gives its proposals to the Republic Broadcasting Agency in the course of broadcasting development strategy drafting.

As regards the competences of National Councils in the field of official use of language and script, National Councils define traditional names of local self-government units, settlements and other geographic names in a national minority language, if the language of a national minority is in official use in these areas, they propose emphasizing the name of a local self-government unit, settlement or other geographic names in a national minority language to the competent authority, they propose defining the language and script of a national minority as the official language and script in a local self-government unit, they propose the change of names of streets, squares and other parts of settlements which are defined as places of special importance for a national minority, they propose monitoring over the official use of language and script of a national minority to the competent authority, etc.

Funding of National Councils is ensured from the budget of the Republic of Serbia, budget of an autonomous province and budget of a local self-government unit, donations and other incomes.

Funds ensured from the budget of the Republic of Serbia are allocated in such manner that 30% is allocated in equal amounts to all registered National Councils in the Republic of Serbia, and the remaining funds (70%) in proportion with the number of national minority members represented by a National Council, and in proportion with the total number of institutions of the national minority in the field of culture, education, information and the official use of language and script and the extent of the activities of these institutions.

Funds ensured from the budget of an autonomous province are allocated to National Councils located on the territory of the autonomous province.

Funds ensured from the budget of a local self-government unit are allocated to National Councils representing national minorities which constitute at least 10% of the total population of a local self-government unit or those national minorities whose language is in official use on the territory of a local self-government unit.

Under Article 115(4), the Law on National Councils of National Minorities (*Official Gazette of RS*, No. 72/09) defines that financial means for the work of National Councils shall be ensured from the Budget of the Autonomous Province and allocated pursuant to the decision of the competent authority of the autonomous province and transferred to National Councils located in the territory of the autonomous province.

Upon the election of new National Councils, for the purpose of implementing legal provisions on financing, the Government of the Autonomous Province of Vojvodina adopted a new **Decision on the Manner and Criteria for Allocating Budget Resources of the Provincial Secretariat for Regulations, Administration and National Minorities for National Minority Councils** (*Official Journal of APV*, No. 23/10). The system of financing was constructed by analogy with the system of financing of National Councils by the Republic of Serbia, i.e. Ministry of Human and Minority Rights. In addition, **the Provincial Budget for 2011** envisages resources for financing the work of National Councils located in the territory of AP Vojvodina in the amount of 40,000,000.00 dinars.

In the course of 2010, National Councils obtained the total of 141 615 000 dinars from the budget of the Republic of Serbia intended for regular activities financing (around 1 337 522 EUR at middle exchange rate of the National Bank of Serbia on 27 December 2010), and

from the budget of the Autonomous Province of Vojvodina 30 635 000 dinars (around 289 341 EUR at middle exchange rate of the National Bank of Serbia on 27 December, 2010).

142. How is the cooperation between the various National Minority Councils and the Government ensured?

One Chapter of the Law on National Councils of National Minorities (*Official Gazette of the RS*, No. 72/09) deals with the relationship between National Minority Councils and republic authorities, authorities of an autonomous province and authorities of local self-government units. Under Article 25, a National Council may submit initiatives and opinions on the matters within its competence to the National Assembly, Government and other public authorities and special organizations. Prior to taking decisions on the matters within the field of education, culture, information in a national minority language and official use of language and script, the National Assembly, Government and other public authorities and special organizations are obliged to request the opinion of National Councils. A National Council may submit an initiative to the Government for abolition, or annulment of regulations of public authorities and special organizations which are not in accordance with the provisions of this Law and other laws and regulations related to national minorities.

In a similar manner, Article 26 regulates the relationship between National Councils and authorities of an autonomous province and authorities of a local self-government unit. National Councils give proposals, initiatives and opinions on the matters related to the status of national minorities and preservation of national minority specificities to the authorities of an autonomous province and authorities of a local self-government unit. Authorities of an autonomous province or a local self-government unit are obliged to consider the proposals, initiatives and opinions of National Councils and to take appropriate measures. In the process of adoption of general acts from the field of education, culture, information in a national minority language and official use of language and script, the authorities of an autonomous province, or a local self-government unit, shall request the opinion of National Councils.

The Government of the Autonomous Province of Vojvodina established, by **the Decision of forming Provincial Council of National Communities** (“Official Gazette of APV”, nos. 11/06 and 21/10) the Regional Council of National Communities as an acting authority of the Government of the Autonomous Province of Vojvodina in the course of keeping, improvement and protection of national, ethnical, religious, linguistic and cultural characteristics of members of national communities at the territory of the Autonomous Province of Vojvodina. In functioning of the Province Council, the president of the Provincial Government participates as a president, provincial secretaries competent for the territories of national communities, culture, education, information, local self-government and inter-municipal cooperation, inter-regional cooperation, director of Office for inclusion of Roma people and presidents of the national councils of the national minorities with the headquarters at the territory of the AP Vojvodina, as members.

The cooperation between National Minority Councils and the Government is carried out through the work of the Council for National Minorities of the Republic of Serbia. Regulation on the Council for National Minorities of the Republic of Serbia (*Official Gazette of the RS*, No. 50/2009) provides that the Council shall be in charge of the preservation, improvement and protection of national, ethnic, religious, linguistic and cultural specificities of the

members of national minorities in the Republic of Serbia. The answer to Question 139 of the Political Criteria includes competences, the number of members and the manner of work of the Council for National Minorities of the Republic of Serbia.

For the purpose of preservation, improvement and protection of national, ethnic, religious, linguistic and cultural specificities of national minority members on the territory of the Autonomous Province of Vojvodina, the Government of the Autonomous Province of Vojvodina established the Provincial Council of National Communities, as a periodical working body of the Government of the Autonomous Province of Vojvodina. The tasks of the Council are the following: to monitor and consider the situation regarding the exercise of national community rights and the situation regarding international relations in the Province; to propose measures for the improvement of full and effective equality of national community members and to consider the measures proposed to this effect by other authorities and bodies; to monitor the realization of cooperation between National Minority Councils with competent authorities of the Republic of Serbia, Province, the city of Novi Sad and local self-government units within the territory of the Province; to cooperate with the Ministry of Human and Minority Rights of the RS and other authorities and bodies of the Republic of Serbia and the Province; to consider the working conditions of National Councils; to consider the fulfilment of international obligations with regard to the exercise of rights of national community members in the Province and international cooperation of National Councils and perform other duties stipulated by Provincial Acts. The Provincial Council consists of 20 members. The Members of the Provincial Council are the following: President of the Provincial Government, who performs the function of the President of the Council, Provincial Secretary in charge of the national communities, who performs the function of Deputy President; provincial secretaries in charge of culture, education, local self-government and cooperation between municipalities, information and interregional cooperation; presidents of National Minority Councils located in AP Vojvodina and Director of Office for Roma Inclusion. The Provincial Council meets when necessary, at least twice a year. At the request of two thirds of the presidents of National Minority Councils, the President is obliged to convene a session of the Provincial Council.

143. Do all citizens, including persons belonging to minorities have access to identity documents and how is this right guaranteed? What measures have been taken to improve the civil registration for the Roma minority, including birth certificate and identification documents? Is the ethnic origin registered in the birth certificate? How many such certificates have been delivered?

One of the regulations further regulating personal documents in the Republic of Serbia is the Law on Registers ("Official Gazette" No. 20/09).

This law enacted on 18th March 2009 is applicable from 28th December of the same year, regulates the type and content of registry books as the basic official records of the personal status of citizens, competency for keeping them and resolution in an administrative procedure in the domain of civil register books, the maintenance of register books and records and inspection of register books, renewal of registry books, inscription in registry books based on the documents of the foreign body, type of certificate from registry books and issuing certificates and verification on the basis of registry books, the conditions for performing the

work of the registrar, monitoring the application of regulations on registry books and other matters concerning the procedure preceding the entry to the registry book.

In accordance with the Constitution of the Republic of Serbia guaranteed Rights of the Child (Article 64), the solutions contained in this Law, all necessary legislative requirements for eligibility to register the fact of birth in the birth registry book are provided. Specifically, comparing to the previously applicable regulations in this field, adoption of the Law on Registers from 2009 in particular the eligibility to register the fact of birth in the register of births is improved, regardless of whether it is a child whose parents are known, a child whose parents are unknown, a child without parental care or adopted child. In this respect, the provisions of this law can be assessed as a further implementation of the rights guaranteed by the United Nations Convention on the Rights of the Child, primarily provisions allowing registration of the fact of birth that registered after the legal deadline, i.e. delayed registration of the fact birth in the birth register.

Procedures for realising this right are clearly and precisely regulated by the Law on Registers and the Guidelines on Keeping Registers and Forms of Registers ("Official Gazette of the RS, no 109/09, 4/10- corrected and 10/10), and in a way that allows the Constitution a guaranteed right to equal protection of the rights of all citizens (Article 36(1)), and therefore of all national minorities, including Roma national minority, before the competent authorities.

According to the Law on Registers, the birth of a child is reported to the competent registrar for registration in the register of births. A birth of a child in a medical institution is to be reported by the medical institution, and the birth of a child outside a medical institution is to be reported by the father of the child, and if he is unable to do so, another member of the household or a person in whose home the child was born, or mother as soon as she is capable, or a midwife or doctor attending the birth, and if these persons are absent or unable to report the birth - a person who has learnt about the birth of a child. The birth of a child is reported within 15 days from the date of birth, and if the data on the birth are registered after 30 days from the day the fact of the birth took place, entry to the register of births is provided based on the decision of the competent authority. It should be noted that the tasks of in the first instance administrative procedure in the domain of registry books, and therefore in the process of subsequent registration of the fact of birth in the birth registry, is implemented by the city or municipal administration as well as delegated activities of state administration from the scope of the Ministry of Public Administration and Local Government, to be solved on appeals against first instance decisions of these bodies. **Also a judicial control of administrative operations is provided, as in the case against the final decision in the administrative procedure, an administrative conflict may be initiated by a complaint in the Administrative Court.**

The fact of birth is entered in the register of births in the home area comprising the populated place of the birth of the child, while the fact of birth of the child in a means of transportation during the journey is recorded in the register of births in the home area comprising a populated place where the mother's journey ended. The fact of birth of a child whose parents are unknown is entered in the register of births in the home area comprising a populated place where the child was found. The fact of birth of the child without parental care reported after a period of 30 days from the date when the fact of birth took place, and which is not possible to enter in the specified way, it is entered in the register of births by place of domicile of the child at the time of initiating the procedure for registration and facts in the birth register.

Regarding the registration of data on ethnic origin in the registers of birth, above all one should keep in mind that the Constitution guarantees the expression of ethnicity so that no one is obliged to declare his nationality (Article 47). In accordance with the stated Regulation of the Constitution, the Law on Registers does not prescribe the entry of data on ethnicity or national origin in the registry books. Specifically, in the registry book of births the following data are recorded: about the birth of (name and surname of the child; abbreviated personal name, gender, day, month, year and hour of birth, place and municipality of birth; and if the child is born abroad and the name of the country of birth; identification number and nationality of the child), the parents of the child (name and surname and if the parents are married, the surname before marriage; unique personal identification number, date, month and year of birth; place and municipality of birth; and if the parent is born abroad, the name of the country of birth; nationality; residence and address), as well as other data relating to the change of the personal status of the persons registered in the register of births.

Bearing in mind the facts and data which, pursuant to the Law on Registers registration books, are entered in this record, birth certificate form prescribed by the Guidelines on the registers and forms of registers does not contain a section on ethnic or national affiliation.

Also, it is important to note that, pursuant to the Law on Registers, birth certificates are issued based on data contained in the registry book, which means that in the issued birth certificate (birth, marriage and death) data on the ethnic or national origin is not entered. Therefore, birth and death certificate forms, which are also prescribed by the Instructions on keeping of registers and forms of registers, do not contain a section where data on the ethnic / national affiliation are entered.

Since pursuant to the Law on Registers, the Ministry of Public Administration and Local Government supervises the implementation of this law, there has not been observed any case that in the register of births or birth certificate data on the ethnic / national affiliation were recorded.

Ministry of Internal Affairs of the Republic of Serbia within its jurisdiction in issuing identity documents to the citizens of the Republic of Serbia, applies the regulations from this domain equally to all the citizens of the Republic of Serbia, regardless of their nationality, religion or other affiliation.

Issuing identity cards to the citizens of the Republic of Serbia is regulated by the provisions of the Law on Identity Cards (Official Gazette of the RS, No 62/06), which stipulates that every citizen of the Republic of Serbia over the age of 16 has the right for an identity card.

Also, in accordance with the Article 9 of the above mentioned law, the form of identity card is printed in Serbian language in Cyrillic alphabet and in English, as well as in the language and alphabet of national minorities under the Article 3 (1) (4) of the Law on Official Use of Language and Script.

In the form of identity card, information on the surname and name are registered in their original form, as they are enrolled in the birth certificate, i.e. if the name and surname in the birth certificate was written in the language and script of national minorities, in the same way data are entered in the form of identity card.

At the same time, in accordance with the Law on Official Use of Language and Script, administrative tasks within the purview of this Ministry, which comprise resolving a number of status issues of citizens, such as citizenship status, issuance of identity documents, registration of residence, are conducted in a manner that provides full and effective equality between persons belonging to national minorities, i.e. provides realisation and protection of minority rights, which are primarily related to oral and written communication between with the public authorities and citizens, as well as the conduct of administrative proceedings in the language of national minorities, which is, in the statute of municipal authorities in the area, identified as the language and script that is, in addition to Serbian language and script, in official use.

As to the question of issuing identity documents to persons of Roma nationality, the Ministry of Internal Affairs of the Republic of Serbia within its jurisdiction is actively involved in carrying out action plans through the implementation of the Decade of Roma Inclusion 2005-2015. and in the domain of issuing identity documents, which are necessary to achieve social, health and other rights. Special contribution to the activities undertaken on the occasion of defining and resolving the identified problems of Roma, has been given by this Ministry through various forms of cooperation with entities that are relevant in resolving status questions of these persons, as well as independent activities in terms of the settlement of a claim of priority for acquiring citizenship of the Republic Serbia submitted by the Roma, the timely and complete informing them of the procedures for issuing identity documents, and taking other necessary measures which allow each individual procedure of issuing personal documents to this category of persons to be carried out in a simplified and efficient manner

As one of the measures for the implementation of this Action Plan, the amendments to the Law on Residence and Domicile of Citizens, in order to enable the detection of residence citizen who does not have permanent residence on any of the legal basis, and at his place of actual residence. In this regard, this Ministry has prepared the Draft of the Law on Residence and Domicile of Citizens to which a facilitated procedure of registration of residence of all citizens, including Roma, was proposed, which is necessary for the issuance of identity documents to the citizens of the Republic of Serbia. Adoption of the said Law is expected in the first quarter of 2011.

144. What is the legal basis providing for information and education in minority languages? How are those rights ensured and monitored? Please provide a detailed explanation for each national minority.

The legal basis for the education in national minority languages is provided by the Constitution, Law on the Foundations of the Education System, Law on Higher Education (shown within this chapter under Question No. 127 on the right to education) and special laws: Law on Preschool Education (*Official Gazette of RS*, No. 18/2010), Law on Primary School (*Official Gazette of RS*, No. 50/92, 53/93, 67/93, 48/94, 22/2002, 62/2003, 101/2005), Law on Secondary School (*Official Gazette of RS*, No. 50/92, 53/93, 67/93, 48/94, 24/96, 23/2002, 25/2002, 62/2003, 64/2003, 101/2005), Law on Textbooks and Other Teaching Materials (*Official Gazette of RS*, No. 72/2009), Law on National Councils of National Minorities (*Official Gazette of RS*, No. 72/2009), Law on the Protection of Rights and Freedoms of National Minorities (*Official Gazette of RS*, No. 72/2009), Law on Establishing

Competences of the Autonomous Province of Vojvodina (*Official Gazette of RS*, No. 99/2009) in accordance to the obligations undertaken on the basis of the Law on the Ratification of the Basic Conventions for the Protection of National Minorities (*Official Journal of FRY – International Treaties* No. 6/98) and Law on the Ratification of the European Charter for Regional or Minority Languages (*Official Journal of SCG – International Treaties*, No. 18/2005).

National minority members have the right to education under the same conditions as all other citizens of the Republic of Serbia. Education in a national minority language is carried out in accordance to the above mentioned regulations. For members of a national minority, the educational and pedagogical work in a preschool institution may be carried out in their native language, bilingually or in Serbian language, if at least 50% of parents or guardians of children opt for it. Educational and pedagogical work in elementary schools may be carried out in a minority language or bilingually if at least fifteen students apply for these classes, and with the approval of the Minister of Education in a smaller group as well.

When the educational and pedagogical work is carried out in a minority language, institutions keep records and issue public documents in that language (public document forms are published bilingually, in Serbian language and the language of a national minority).

When enrolling in school, a school psychologist and pedagogue question the child belonging to a national minority in his/her native language, and if the option does not exist, the school introduces a translator at the proposal of the National Minority Council. An elementary school may realize individual programme in a national minority language for students who are not familiar with the language used in the teaching process.

Invitation for enrolment of pupils in the first grade of secondary schools involves the information on the language in which the curriculum is realized (Article 41 of the Law on Secondary School).

The National Council of a national minority shall propose at least one member of the local self-government unit for the managing body of an institution where in most of the classes the educational and pedagogical work is realized in a language of a national minority or the institution which is defined as being of special importance for the national minority, and in these institutions, where minority members receive their education, representatives of the national minority or ethnic group are proportionately represented in the parents' council.

The opinion of the National Minority Council is obligatory in the process of adoption of acts on the network of preschool institutions and elementary schools in a local self-government unit where the language and script of a national minority are in official use, in the process of appointment of local self-government representatives to managing bodies or the election of a principal.

The curriculum for elementary and secondary education of national minority members is adopted by the Minister at the proposal of the National Minority Council and the opinion of the National Education Council.

At the proposal of a National Minority Council and the Institute for the Improvement of Education, the National Education Council defines whether there is a need for textbooks in

the minority language and textbooks for subjects of interest for national minorities. Positive opinion of a National Minority Council is obligatory in the approval procedure of textbooks (at the request of the appropriate expert body in school, it may be a textbook for a certain subject and class which is used in the native country and which is published in a minority language and script).

According to the Law on Higher Education, a higher education institution may realize a programme in a national minority language provided that such programme is accredited. The adoption of a study programme and defining of its content is within the competence of an autonomous higher education institution (university, college, academy of professional studies or college of professional studies) in accordance with the principle of autonomy.

A higher education institution may organize and realize studies, or parts of studies, organize the writing and defence of the doctoral dissertation in the minority language in accordance with the statute.

When teaching is performed in a national minority language, a higher education institution keeps the prescribed records and issues public documents in Serbian language in Cyrillic script and in the language and script in which teaching is performed (bilingually).

In the First Periodic Report on the Implementation of the European Charter for Regional or Minority Languages, the Republic of Serbia specified that in Serbia, minority languages are the following: Albanian, Bosniak, Bulgarian, Valachian, Hungarian, Macedonian, German, Roma, Romanian, Ruthenian, Slovakian, Ukrainian, Croatian and Czech, and Bunjevac shall be related to as a minority language as long as standardization is not a condition for the implementation of certain measures.

The language of educational and pedagogical work (data for school year 2009-2010) taken from the national report on the implementation of the Charter):

1. **ALBANIANS:** teaching in Albanian language is carried out in three municipalities - Bujanovac, Medveđa and Preševo

Work Form	No. of Municipalities (Local Self-Governments)	No. of Institutions	No. of Groups	No. of Children
The Entire Teaching in Albanian Language	3	5 preschool institutions	54	843
	3	17 elementary schools	416	8.327
	2	2 gymnasiums		2.431
	2	2 secondary technical schools		1.394

In school year 2009-2010, the Departments of the Faculty of Economics (19 students, 4 of whom are Albanians) and the Faculty of Law (35 students, 7 of whom are Albanians) of the University of Niš began their work in Medveđa. Students of Albanian nationality attend classes in Serbian language with simultaneous interpretation into Albanian language. Textbooks and teaching aids have been translated into Albanian, and the exam taking will be organized in Albanian language.

At the Faculty of Philology in Belgrade, the Department of Albanian Language and Literature, 35 students study Albanian language and literature.

2. **BOSNIAKS:** educational and pedagogical work in Bosniak language is carried out in Novi Pazar, Sjenica, Tutin and Prijepolje

Work Form	No. of Municipalities (Local Self-Governments)	No. of Institutions	No. of Groups	No. of Children
The Entire Teaching in Bosniak Language	1	1 preschool institution	6	140
Bilingually S/B*	2	2 preschool institutions		1.030
Bosniak language with elements of national culture	4			10.644

* Due to the similarity of the two languages, the division into Serbian and Bosniak speaking persons has not been made and the procedure of submitting requests and parents' choosing the language in which the educational and pedagogical work is to be performed has not been implemented.

Bosniak language is studied, as an elective subject, at two higher education institutions in Novi Pazar, state (40 students) and private (30 students) universities.

3. **BULGARIANS:** education in Bulgarian language is carried out in Bosilegrad, Dimitrovgrad and Pančevo

Work Form	No. of Municipalities (Local Self-Governments)	No. of Institutions	No. of Groups	No. of Children
Bilingually S/B	2	2 preschool institutions	16	330
The Entire Teaching in Bulgarian Language	2	2 elementary schools	3	46
	1	1 gymnasium	1	25
	1	1 secondary school of tourism	1	16
Bulgarian language with elements of national culture	3	3 elementary schools		1.346
	2	2 gymnasiums		490
	2	2 secondary vocational schools		161

At the Faculty of Philology in Belgrade, the Department of Bulgarian Language and Literature, 25 students study Bulgarian language and literature.

4. **HUNGARIANS:** educational and pedagogical work in Hungarian language is carried out in the territory of the Autonomous Province of Vojvodina in about 30 local self-government communities:

Ada, Apatin, Bačka Topola, Bela Crkva, Bečej, Vrbas, Vršac, Žitište, Zrenjanin, Kanjiža, Kikinda, Kovin, Kovačica, Kula, Mali Idoš, Indija, Nova Crnja, Novi Sad, Novi Kneževac, Odžaci, Pančevo, Plandište, Senta, Sečanj, Sombor, Srbobran, Subotica, Temerin and Čoka

Work Form	No. of Municipalities (Local Self-Governments)	No. of Institutions	No. of Groups	No. of Children
The Entire Teaching in Hungarian Language	20	20 preschool institutions 3 elementary schools	231	4.447
	27	77 elementary schools	969	16.168*
	7	9 gymnasiums**	55	1.140
	12	24 vocational schools 2 art schools 1 mixed school	257	5.362
Bilingually S/H	12	12 preschool institutions	47	923
Bilingually H/German	1	1 preschool institution	1	23
Hungarian language with elements of national culture	20	47 elementary schools		1.463

* Only 15 516 children are of Hungarian nationality

** Two of these are gymnasiums for talented students

In the Republic of Serbia, higher education in Hungarian language is carried out on the territory of AP Vojvodina, for 617 students at five faculties (Philosophy, Economics, Sciences, Civil Engineering and Teacher Training) and for 535 students at three colleges of professional studies (for preschool teachers education and a technical college) in Novi Sad and Subotica and at the Academy of Art in Novi Sad (school year 2009-2010).

In 2009-2010, 21 students studied Hungarian language and literature at the Faculty of Philology in Belgrade, the Department of Hungarian Language and Literature, and 99 students at the Faculty of Philosophy in Novi Sad, the Department of Hungarology, Hungarian Language and Literature Study Group.

5. ROMA PEOPLE

In Southeast Serbia, non-governmental Roma organizations, aided by the donations from REF and UNICEF, established educational development centres through which the inclusion of Roma children in educational and pedagogical work is organized, which is performed bilingually, in Serbian and Roma language.

Although the State has initiated numerous activities for raising the educational level of Roma people, in order for teaching to be performed in Roma language, the following is necessary to be done first: defining the dialect, i.e. variant of Roma language which will be used, as Roma language is not standardized; approval of textbooks and other teaching aids and professional training for teachers which would enable them to teach in Roma language. In order for these preconditions to be met, the National Council of Roma national minority has the essential role.

In school year 2009-2010, the study of the subject Roma language with elements of national culture has been organized in schools in AP Vojvodina for 695 pupils in 23 elementary schools in 12 local self-governments (Ada, Bač, Bačka Palanka, Žabalj, Kikinda, Kovačica, Novi Sad, Odžaci, Srbobran, Sremska Mitrovica, Subotica and Titel).

In school year 2009-2010, about 370 members of Roma national minority were involved in adult education, (about 8% more than in the previous school year), out of whom 358 Roma receive their education in Serbian, and 12 in Hungarian language.

At Preschool Teacher Training College in Vršac, in school year 2009-2010 the education of preschool teachers was organized for the first time in Serbian and Roma language. The first group of five students was enrolled and lessons in the subjects Roma language with elements of national culture, Methodology and Practicum have been carried out in Roma language.

In the Republic of Serbia, Roma language and literature are studied in the School of Romology in Novi Sad and at the European Centre for Peace and Development of the University for Peace of the United Nations in Belgrade. The initiative for the School of Romology was launched in 2004 as a part of ACIMSI university studies of the Centre for Gender Studies (Women's Studies and Research). Contribution to the organization of the school was made by the Faculty of Philosophy in Novi Sad, Institute for Culture of Vojvodina and non-governmental Roma organizations. The School of Romology is organized in the form of seminars, workshops, discussions and shows, and the studied subjects are the following: fundamentals of Romology, Roma language, Roma culture, history and religion, and since recently introduction to the Decade of Roma Inclusion and elements of implementation in elementary school curricula. The School of Romology was in cycles attended by students, postgraduates, journalists, non-governmental organizations, and as of 2010 a seminar has been organized for teachers of elementary and secondary schools, pedagogues and psychologists. As of 2010, the European Centre for Peace and Development of the University for Peace of the United Nations has realized study programme for Master's and Doctoral degree in Romology.

6. **ROMANIANS:** educational and pedagogical work, i.e. teaching is carried out in the territory of AP Vojvodina (Alibunar, Bela Crkva, Žitište, Kovačica, Plandište, Vršac, Zrenjanin and Pančevo) and in the region of School Administration of Belgrade in Ovča settlement

Work Form	No. of Local Self-Governments	No. of Institutions	No. of Groups	No. of Children
The Entire Teaching in Romanian Language	5	5 preschool institutions 4 elementary schools	17	138
	10	19 elementary schools	118	1.263*
	1	1 mixed school	4	118
	1	1 school of economics and trade		
Bilingually S/R	4	4 preschool institutions 1 elementary school	5	106
Romanian language with elements of national culture	8	9 elementary schools		244
	2	2 gymnasiums	2	28

* No. of pupils of Romanian nationality 1 092

The entire teaching in Romanian language is carried out at two higher education institutions, Department of Romanian (as native) language at the Faculty of Teacher Training in Belgrade – Department in Vršac (16 students) and Preschool Teacher Training College (20 students).

Romanian language and literature are studied at the Faculty of Philology in Belgrade, the Department of Romanian Language and Literature (49 students) and at the Faculty of Philosophy in Novi Sad, the Department of Romanian Studies, Romanian Language and Literature Study Group (22 students).

7. **RUTHENIANS:** educational and pedagogical work in Ruthenian language is carried out in the territory of AP Vojvodina (Vrbas, Žabalj and Kula)

Work Form	No. of Local Self-Governments	No. of Institutions	No. of Groups	No. of Children
In Ruthenian Language	4	3 preschool institutions 3 elementary schools 1 gymnasium	8 34 4	171 523* 60
Ruthenian language with elements of national culture	7 2	27 elementary schools 2 gymnasiums		266 39

* No. of pupils of Ruthenian nationality 446

Ruthenian language and literature are studied at the Faculty of Philosophy in Novi Sad, the Department of Ruthenian Studies, Ruthenian Language and Literature Study Group (25 students).

8. **SLOVAKS:** educational and pedagogical work in Slovak language is carried out in the territory of AP Vojvodina (Alibunar, Bač, Bački Petrovac, Šid, Beočin, Vrbas, Kovačica, Plandište, Stara Pazova, Novi Sad, Bačka Palanka, Zrenjanin and Boljevcı)

Work Form	No. of Local Self-Governments	No. of Institutions	No. of Groups	No. of Children
In Slovak Language	7 12 2	8 preschool institutions 17 elementary schools 2 gymnasiums	37 172 14	785 3.178* 344
Slovak language with elements of national culture	11 2 2	38 elementary schools 2 gymnasiums 2 secondary vocational schools		620 34 97

* No. of pupils of Slovak nationality 3 062

Teaching in Slovak language is carried out at the Preschool Teacher Training College in Novi Sad (12 students).

In the Republic of Serbia, Slovak language and literature are studied at the Faculty of Philology in Belgrade, the Department of Slovak Language and Literature (48 students) and at the Faculty of Philosophy in Novi Sad, the Department of Slovak Studies, Slovak Language and Literature Study Group (30 students).

9. **UKRAINIANS:** educational and pedagogical work is carried out in AP Vojvodina (Vrbas, Indija, Kula, Novi Sad and Sremska Mitrovica)

According to the data of the Provincial Secretariat for Education of AP Vojvodina for 2009-2010, there are 28 children of Ukrainian nationality included in educational and pedagogical work in Serbian language in preschool institutions distributed in 4 local self-governments, since their parents did not show interest in the work in Ukrainian language.

Teaching in Ukrainian language with elements of national culture has been organized for 114 pupils in nine schools in 4 local self-governments in AP Vojvodina. In Budisava, a settlement on the territory of the city of Novi Sad, in school year 2009-2010, the study of Ukrainian language with elements of national culture was organized for the first time, as a language of the environment for 25 students, only 4 of whom are Ukrainians.

In the Republic of Serbia, Ukrainian language and literature are studied at the Faculty of Philology in Belgrade, the Department of Ukrainian Language and Literature (35 students). At the Faculty of Philosophy in Novi Sad, Ruthenian Language and Literature Study Group, as of 2006-2007 Ukrainian language has been introduced at the second year as a compulsory two-semester subject for all students.

10. CROATS: educational and pedagogical work is carried out in AP Vojvodina (Apatin, Bač, Sombor, Sremska Mitrovica and Subotica)

Work Form	No. of Local Self-Governments	No. of Institutions	No. of Groups	No. of Children
In Croatian Language	1	1 preschool institution	3	58
	1	5 elementary schools	32	319*
	1	1 gymnasium	2	32
Bilingual Teaching in Serbian and Croatian	1	1 preschool institution	1	22
		1 elementary school	1	20
Croatian language with elements of national culture	5	12 elementary schools	12	374
	2	2 gymnasiums		34
	2	2 secondary vocational schools		97

* No. of pupils of Croatian nationality 311

At the Faculty of Philology in Belgrade, the Department of South Slavic Philology, the subject Contemporary Serbian and Croatian Language is studied at the third and fourth year of studies.

11. BUNJEVAC:

Bunjevac speech is not in official use in any of the local self-government units because it has not been standardized yet. Even though Bunjevac language has not been standardized, the Republic of Serbia has taken measures to encourage or facilitate its use in certain areas where the standardization of a language is not a condition for its use.

According to the data of the Provincial Secretariat of Education of AP Vojvodina, in two local self-governments in AP Vojvodina, Subotica and Sombor, there are 87 preschool children of Bunjevac nationality. Out of these 87 children, the educational and pedagogical work for 83 of them is performed in Serbian language, in Croatian for 2 of them and bilingually for 2

children, in Serbian and Hungarian language. In elementary schools in Subotica, and as of school year 2009-2010 in an elementary school in Sombor as well (a total of 12 schools and 171 pupils), the subject Bunjevac Speech with Elements of National Culture has been taught.

12. VALACHIANS

Valachian language is not in official use in any of the local self-government units because it has not been standardized yet.

As the holder of cultural autonomy and initiative for education in native language, the National Council of Valachian national minority defined Romanian language as a native language of the national minority in its Statute and submitted a request to the Ministry of Education that the subject Romanian Language with Elements of National Culture be introduced, although, as the National Council itself has said, over 98% of Valachian speaking community do not understand nor speak Romanian language.

13. MACEDONIANS

Macedonian language is not in official use in any of the local self-government units, because in the Republic of Serbia there are no local self-government units where the number of Macedonian minority members amounts to 15% of the total number of inhabitants according to the latest census.

In the education system of the Republic of Serbia, at preschool level, in elementary and secondary schools, there are no lessons organized in Macedonian language, nor is the subject Macedonian Language with Elements of National Culture taught in elementary and secondary schools, since, according to the information of the Provincial Secretariat of Education of AP_Vojvodina, pupils and their parents have not requested it.

The National Council of Macedonian national minority has developed curricula for Macedonian language with elements of national culture, intended for classes from the first to the fourth grade of elementary school. Upon obtaining positive opinion of the Ministry of Education, lessons in Macedonian language with elements of national culture will be introduced in elementary schools in settlements where a large number of Macedonian minority members live (Jabuka, Kačarevo, Plandište, Hajdučica, Gudurica) if pupils express their interest in attending the mentioned subject.

Macedonian language is studied at three faculties in the Republic of Serbia:

- as an elective subject at the Department of Serbian Language with South Slavic Languages, Faculty of Philology in Belgrade Lectures are organized at the level of readers, delivered at the third year in the course of two semesters. In the academic 2009-2010, 10 students opted for Macedonian language;
- as an elective subject at the Department of Serbian Language, Department of Serbian Literature and the Department of Russian Language and Literature at the Faculty of Philosophy in Novi Sad; Lectures last for two semesters at the fourth year of studies; In academic 2009-2010, 57 students opted for Macedonian language at all three departments;

- As an elective subject within the Study Programme of Serbian Studies (Serbian language and literature) at the Faculty of Philosophy in Niš. Lectures are delivered at the first year of studies and last for two semesters. In academic 2009-2010, 48 students opted for Macedonian language.

12. *GERMANS*

German language is not in official use in any of the local self-government units, since it does not meet legal conditions for mandatory introduction into equitable official use of the language and script, as in the Republic there are no local self-government or settlements or local communities where the number of German minority members amounts to 15%.

In Subotica, educational and pedagogical work for preschool children has been organized bilingually: in Serbian and German language for 50 children distributed in two groups and in German and Hungarian for a group of 23 children.

Since no requests have been submitted and there are few pupils of German nationality in elementary and secondary schools, lessons in German have not been organized, not even for the subject German Language with Elements of National Culture.

German as a foreign language is a part of curricula for elementary and secondary education. At higher education institutions in Belgrade, Novi Sad and Kragujevac in 2009-2010, 584 students studied German language.

13. *CZECHS*

Czech language is in official use on the territory of municipality of Bela Crkva, alongside Serbian, Hungarian and Romanian.

The entire teaching process in Czech is not carried out in any of the elementary and secondary schools, nor are there lessons in Czech Language with Elements of National Culture. We can expect that the Czech speaking community will be encouraged by the election of the National Council of Czech national minority.

At the Faculty of Philology in Belgrade, the Department of Czech Language and Literature, 55 students study Czech language and literature.

Apart from the important role of National Councils, surveillance and evaluation mechanisms have been integrated into the education system in the form of expert-pedagogical and managing surveillance, i.e. inspections, but also in the form of internal surveillance which is performed by the institution itself and external, performed by the competent bodies. (For details see Chapter 26, answer to question No. 11).

Autonomous Province of Vojvodina

Table containing data on educational and pedagogical work in preschool institutions in school year 2009-2010; the Table shows the number of children in preschool institutions who receive education in languages which are in official use in the territory of AP Vojvodina

LANGUAGE	%	NO. OF CHILDREN
Serbian	85.58%	17,680.00
Hungarian	9.86%	2,037.00
Slovak	1.94%	401.00
Romanian	0.58%	120.00
Ruthenian	0.46%	95.00
Croatian	0.13%	27.00
Bilingually:		
Serbian and Hungarian	0.80%	165.00
Serbian and Slovak	0.18%	38.00
Serbian and Romanian	0.42%	86.00
Serbian and German	0.04%	8.00
Hungarian and German	0.01%	3.00
TOTAL	100.00%	20,660.00

Teaching languages at higher education institutions in the territory of AP Vojvodina in academic 2009-2010:

Teaching in **Serbian teaching language** is performed at the Faculty of Agriculture, Faculty of Technology, Faculty of Law, Faculty of Medicine, Faculty of Technical Sciences, Faculty of Sciences, Technical Faculty “Mihajlo Pupin” in Zrenjanin and Faculty of Sports and Physical Education.

In **Serbian and Hungarian teaching languages** teaching is performed at the Faculty of Economics in Subotica, Academy of Art in Novi Sad, Faculty of Civil Engineering in Subotica and Faculty of Medicine in Novi Sad (15 students attend lessons in Sociology in Hungarian teaching language at the first year).

At the Faculty of Education in Sombor, teaching is performed in **Serbian and Slovak language** (Department in Bački Petrovac – 56 students).

At the Faculty of Philosophy, teaching is performed in **Serbian, Hungarian, Slovak, Romanian and Ruthenian teaching languages**.

At the Faculty of Teacher Training in Subotica, teaching is performed in **Hungarian teaching language**.

145. Provide a description of existing arrangements on education in the language of minority communities and the right to have history and culture of the persons belonging to such communities included in the curricula.

According to the Law on the Fundamentals of the Education System, educational and pedagogical work for minority members may be performed in Serbian, native language of the national minority or bilingually.

- If educational and pedagogical work is performed in Serbian, national minority members have the possibility to study their history and culture through the subject *Mother Tongue with Elements of National Culture* in schools.

- Teaching may be carried out in a minority language or bilingually if at least fifteen students apply for these classes, and with the approval of the Minister of Education in a smaller group as well.

- Apart from the subject *Mother Tongue with Elements of National Culture*, lessons in *Civic Education* also offer a wide spectrum of possibilities for intercultural education through the process of development of respect and strengthening of cultural pluralism and tolerance.

Under Article 33 Paragraph 1 Point 21 of the Law on the Establishment of Competences of the Autonomous Province of Vojvodina, it is stipulated that AP Vojvodina shall, through its bodies, in the field of preschool and elementary education and upbringing adopt curricula for certain subjects of interest to national minorities and define conditions and manner of teaching organization in languages of national minorities, in accordance with law and upon the agreement of the competent minister.

Article 33 Paragraph 1 Point 22 of the Law on the Establishment of the Competences of the Autonomous Province of Vojvodina prescribes that AP Vojvodina shall, through its bodies, in the field of preschool and elementary education and upbringing, in accordance with the law: approve textbooks and teaching aids for certain subjects of interest to national minorities upon the agreement of the competent minister.

Under Article 34 Paragraph 1 Point 24 of the Law on the Establishment of Competences of the Autonomous Province of Vojvodina, it is stipulated that AP Vojvodina shall, through its bodies, in the field of secondary education and upbringing adopt curricula for certain subjects of interest to national minorities and define conditions and manner of teaching organization in languages of national minorities, in accordance with law and upon the agreement of the competent minister.

Under Article 34 Paragraph 1 Point 25 of the Law on the Establishment of Competences of the Autonomous Province of Vojvodina, it is stipulated that AP Vojvodina shall, through its bodies, in the field of secondary education and upbringing approve textbooks and teaching aids for certain subjects of interest to national minorities, in accordance with law and upon the agreement of the competent minister.

Pursuant to Article 13 Paragraph 1 Point 1 of the Law on National Councils of National Minorities (*Official Gazette of RS*, No. 72/09), National Councils shall propose the following to the National Education Council: general fundamentals of preschool programme, curricula for elementary and secondary education and upbringing and fundamentals of pedagogical programme for the content expressing specificity of a national minority, especially in the field of history and education in music and art.

When curricula are carried out in the minority language as well, pupils also master the curriculum of Serbian language.

Within preschool programme, special and specialized programmes may be carried out, which also involve the programmes of preservation of national minority language and culture.

When educational and pedagogical work is carried out in the language of a national minority, duties of preschool teachers and class teachers may be performed by persons who have received the appropriate education in the language in which the work is carried out or who

have passed the exam in the mentioned language and methodology, according to a programme of the appropriate higher education institution.

146. What are the measures taken to improve inter-ethnic relations? What is the methodology used to identify ethnically motivated incidents? How are such cases investigated and prosecuted by the law enforcement bodies and the judiciary? Please provide updated figures on the number of ethnically motivated complaints.

Encouraging and fostering the spirit of tolerance and intercultural dialogue is of vital importance to the Republic of Serbia, where over twenty different national minorities and ethnic communities constitute 17.14% of the population. Promotion of the respect for diversity is a special objective according to the Constitution of the Republic of Serbia. Under Article 48 of the Constitution, through measures implemented in education, culture and public information, the Republic of Serbia shall promote understanding, recognition and respect for diversity arising from specific ethnic, cultural, linguistic or religious identity of its citizens.

Fostering the spirit of tolerance and intercultural dialogue has been the theme of numerous joint projects of state authorities, non-governmental organizations and international institutions. Round tables, conferences and seminars on tolerance have been organized and multiethnic sports manifestations in the areas with mixed nationalities. Within its capacities, the Republic of Serbia seeks to take effective measures for the improvement of respect, understanding and cooperation among people belonging to different nationalities. Apart from general and regional projects, these measures are also taken in various areas of social life.

Important measures aimed at the improvement of mutual respect and understanding are taken in the field of education. The Law on the Protection of Rights and Freedoms of National Minorities (*Official Gazette of RS*, No. 72/09 – other law) stipulates that the curricula in educational institutions and schools where teaching is performed in Serbian language are to include teaching material involving the information on history, culture and status of national minorities and other forms of content which promote mutual tolerance and coexistence. For the purpose of promoting tolerance towards national minorities, Article 13 (7) of the Law strictly stipulates that the curricula in educational institutions where teaching is performed in Serbian language shall involve the possibility of learning the language of a national minority in the area where a national minority language is in official use, which is implemented in practice. According to Article 4, Points 14 and 15 of the Law on the Fundamentals of the Education System (*Official Gazette of RS*, No. 72/09), the defined objectives of education are the following: formation of attitudes, opinions and system of values, development of personal and national identity, development of awareness and sense of affiliation to the state of Serbia, respecting and fostering Serbian language and one's own language, tradition and culture of the Serbian people, national minorities and ethnic communities, other nations, development of multiculturalism, respect and preservation of national and world cultural heritage and development and respect for racial, national, cultural, linguistic, religious, gender and age equality, tolerance and recognition of diversity. The faculties of philosophy and philology, which perform their work within various universities in the Republic of Serbia, offer the possibility of studying languages and literature of certain nations to which national minorities in the Republic of Serbia belong.

In the field of culture, state and provincial authorities co-finance projects and programmes which promote multiculturalism and foster the spirit of tolerance.

In the field of media, effective measures for the improvement of mutual respect, understanding and cooperation are based on the legal provisions which regulate fundamental principles of radio and TV programme broadcasting, and which stipulate that in the sphere of public information, programme orientation of the public media shall enable respect and expression of cultural and linguistic identity of national minorities. Under Article 4 Point 9 of the Law on Broadcasting (*Official Gazette of RS*, No. 43/03, 61/05 and 71/09), the public broadcasting service shall entail the production, purchase, processing and broadcasting of news programmes, educational, cultural, art, children's, entertainment, sports and other radio and television programmes of general importance to the citizens, and especially for the purpose of realization of their human and citizen rights, exchange of ideas and opinions, fostering political, gender, international and religious tolerance, and preservation of national identity, whereas Article 68 Point 4 stipulates that all broadcasters are obliged to contribute to raising the overall culture and awareness of the citizens in the course of programme broadcasting. The compliance of public media programmes with the programme principles is monitored by special bodies with mixed constitution. In the Republic of Serbia, the Council of the Broadcasting Agency, which takes all decisions within its competence, consists of nine members, two of whom are appointed by the National Assembly of the Republic of Serbia at the proposal of churches and religious associations, non-governmental organizations and civil associations which primarily deal with the protection of freedom of speech and the protection of rights of national minorities and children, through mutual agreement (Article 23).

The project of the Government of AP Vojvodina "Promoting Multiculturalism and Tolerance in Vojvodina" has been successfully realized since 2005. The holder of this project is the Provincial Secretariat for Regulations, Administration and National Minorities, and it has been realized in cooperation with numerous domestic and foreign organizations and institutions. The Project has been envisaged as a complex multi-thematic and multicultural programme aimed at strengthening the trust between nations among youth in Vojvodina. It involves a number of subprojects ("Tolerance Coup", "How Much Do We Know Each Other" quiz...) and includes thousands of pupils from elementary and secondary schools in Vojvodina through the manifestations held on the entire territory of Vojvodina. The main goal of the Project is to reduce tensions among nations, and in the long run, to develop the spirit of tolerance, mutual respect and trust among the citizens in Vojvodina. The theme of the project "Promoting Multiculturalism and Tolerance in Vojvodina" is fostering and developing the values of multiethnic and multicultural society of Vojvodina as a modern European region, on the basis of an open democratic society founded on the rule of law. The target group of the Project are the young in Vojvodina, primarily those aged 14-19 in higher grades of elementary and all grades of secondary school, regardless of their professional orientation.

Through its legal system, the Republic of Serbia protects the rights of national minorities and guarantees special protection to their members with the aim of realization of full equality and preservation of their identity, development and expression of their ethnic, cultural, linguistic, religious and other specificities and stipulates effective measures against all forms of discrimination, threat, violence and hostility directed towards them due to their ethnic or other specificity. Prohibition of incitement to racial, national or religious hatred is defined in more detail under certain constitutional and legal provisions.

According to the Criminal Code (*Official Gazette of RS*, No. 85/05, 88/05 – corrigendum, 101/05 – corrigendum, 72/09 and 111/09), in the legal order of the Republic of Serbia, ethnically motivated criminal offences involve incitement to national, racial or religious hatred and intolerance (Article 317), violation of equality of citizens (Article 128), violation of freedom of expressing national or ethnic affiliation and culture (Article 130), racial discrimination (Article 387). Apart from criminal offences, certain ethnically motivated acts may be considered misdemeanours, if they cannot be characterized as criminal offences according to the Criminal Code.

Methodology of surveillance of excesses between or among nations in Serbia involves recording all cases for which there are even smallest clues that they have been provoked by national intolerance, and all other acts directed towards national minority members, perpetrated by unidentified persons (and therefore for an unknown motive). A wide spectrum of different forms of surveillance has been established, including, among other, the surveillance of physical assaults, fights between persons of different nationalities, so-called verbal conflicts, i.e. insulting on the grounds of nationality or religion, desecration of cemeteries, damaging religious facilities, facilities of national minority members, writing slogans and graffiti which insult honour and dignity and other. Still, we should bear in mind that police determines only the presumed motive, whereas judicial authorities have the final word on the motive (material gain, revenge, national, religious or racial hatred and other).

The Ministry of Interior pays special attention to suppressing, detecting and solving all incidents between persons belonging to different nationalities, especially when there are leads that they have been motivated by national or religious diversity. The situation is regularly monitored and measures are taken in all cases of public order disturbance and other incidents, especially in areas with mixed population. Whenever excesses or incidents between persons of different nationalities occur or incidents directed towards these persons, the priority is to take measures in order to solve these cases as quickly and fully as possible, according to a special plan developed for each specific case of this sort, which is realized by joint efforts of members of criminal police and uniformed police formation of police directorates (as a territorial authority of the interior).

The analysis of criminal offences based on the work reports indicates that in 2008, criminal offence reports were filed against 81 persons (against 58 persons in 2007) for the criminal offence of inciting national, racial and religious hatred and intolerance (Article 317) of the Criminal Code (hereinafter: CC). Reports against 17 persons were dismissed, as there were no evidence that the acts in question were committed and that motive was hatred. However, apart from these unsubstantiated reports, out of the remaining criminal offence reports accepted by the Prosecutor's Office, the requests were submitted for investigation against 49 persons (32 persons in the earlier period). The investigation was completed and 69 persons were indicted, together with the persons from the earlier period. The investigation was suspended in three cases. Perpetrators were partially identified by nationalities and partially as: 52 Serbs, 4 Muslims and 4 Hungarians. According to social status, these perpetrators belong to lower classes, but what is worrying is the fact that 40 of these persons are students or pupils, and the remaining 16 persons are workers and 4 are farmers. There were 26 sentencing and 4 acquittal verdicts. There were 19 appeals, 8 of which referred to the decision on penalty, and 5 appeals were dismissed. Three persons were sentenced to detention, 15 to imprisonment, 9 persons were sentenced to probation and security measures were imposed on one person.

In 2009, 82 criminal offence reports were filed against the same number of persons for the mentioned act. From 2008, 13 criminal offence reports were transferred to the report period of 2009, at that moment unsolved. Dismissal solved 16 criminal offence reports against the same number of persons. There were 3 unsolved reports at the Prosecutor's Office, and 26 with other authorities. The request for investigation was submitted against 42 persons. There were uncompleted investigations against 22 persons in 2008, which were transferred to 2009. The investigation was suspended against 14 persons and terminated against one. As regards the criminal offence of inciting national, racial and religious hatred and intolerance, at the end of 2009, there were 28 uncompleted investigations left. There were 9 sentences to imprisonment, one person was sentenced to a fine and 28 to probation. Public Prosecutors lodged 8 appeals, 7 of which against the decisions on penalties. Two of these were accepted. Upon the investigation, 16 persons were indicted, out of whom 9 are Serbs, one is Muslim, one Hungarian and five persons are foreign nationals according to national identification.

	2008	2009
No. of cases recorded by police	81	82
No. of prosecuted cases	49	42
No. of cases with convicted perpetrators	26	38

The analysis of the proceedings against other punishable forms of discrimination indicates that in 2008, as regards the criminal offences from Chapter 34 of the CC – against humanity and other rights protected by the international law, for the crime of racial and other discrimination (Article 387 of the CC), 7 received reports were processed, out of which reports against 3 persons were dismissed and requests were submitted for investigation against 6 persons. There were 2 suspended sentences for which appeals against the decision on criminal sanctions were lodged and both appeals were accepted.

In 2009, criminal offence reports were submitted against 5 persons for the criminal offence of racial discrimination (Article 387) CC. One criminal offence report remained unsolved - with other authorities, reports against others were solved in another manner. One verdict was rendered, probation sanctions against one person indicted prior to 2009. Acquittal verdict was rendered for three persons indicted prior to 2009.. Public Prosecutors lodged four appeals and they were all dismissed.

	2008	2009
No. of cases recorded by police	7	5
No. of prosecuted cases	6	4
No. of cases with convicted perpetrators	2	1

Article 49 of the Constitution prohibits any provoking and inciting to racial, national, religious or some other inequality, hatred and intolerance and prescribes that those shall be punishable. The Constitution prohibits such organizations the activity of which is aimed at violent overthrow of constitutional order, violation of guaranteed human or minority rights, or inciting racial, national and religious hatred (provision of Article 55(4) of the Constitution). With regard to this, the freedom of peaceful and undisturbed assembly is guaranteed (pursuant to Article 54 of the Constitution), the right which has been violated by numerous incidents. As regards the implementation of principles under Article 11 of the European Convention on Human Rights and Fundamental Freedoms (the freedom of assembly and association), a proposal has been submitted to the Constitutional Court to ban the activities of 16 subgroups of football fans founded within registered civil associations or founded outside these associations, which include the following: subgroups of fans defined as autonomous legal persons or organizations without the status of a legal person within associations listed in the Associations Register, social and political organizations due to the activities aimed at violent overthrow of the constitutional order and violation of guaranteed human or minority rights or inciting racial, national or religious hatred. A proposal has also been submitted to the Constitutional Court to ban political organizations “Obraz” and “1389” due to the activity aimed at violent overthrow of constitutional order, violation of guaranteed human or minority rights and inciting racial, national and religious hatred. The proposal was submitted upon considering the initiative of the Ministry of Human and Minority Rights which pointed to numerous incidents and public calls to violence which provoke citizens and entire institutions of the society to violent behaviour and attitudes promoting violence towards unlike-minded persons. Incidents involving violation of human rights, in which members of these organizations participated, represent typical examples of intolerance motivated by homophobia, xenophobia, transphobia and other forms of hatred. During 2009, the proceedings were continued before the Constitutional Court at the proposal of the Republic Public Prosecutor’s Office to ban the secret political party (political organization) “Nacionalni Stroj” due to the activity aimed at inciting racial and national hatred.

According to the statistical data of the Republic Public Prosecutor’s Office, in 2005, for the criminal offence of inciting national, religious hatred, discord and intolerance under Article 134 of the Basic Criminal Law (*Official Journal of SFRY*, No. 44/76, 46/77, 34/84, 37/84, 74/87, 57/89, 3/90, 38/90, 45/90 and 54/90, *Official Journal of FRY*, No. 35/92, 16/93, 31/93, 37/93, 24/94 and 61/01, *Official Gazette of RS*, No. 39/03 – repealed), the total of 93 persons were reported. Reports against 40 persons were dismissed. The indictments were issued against 16 persons and 2 were sentenced to imprisonment. There were 2 acquittal verdicts. In 2006, for the same criminal offence, but now under Article 317 of the Criminal Code, 107 persons were reported; reports against 20 persons were dismissed, 71 persons were indicted, 21 were sentenced (6 to imprisonment and 15 to probation), and the Public Prosecutor lodged 5 appeals overall, 4 of which were appeals against the penalty. In 2007, criminal offence reports were submitted against 58 persons for the same crime, out of which reports against 15 persons were dismissed. A total of 29 persons were indicted. There were 15 sentencing verdicts, 7 to imprisonment, 6 to probation and 2 persons were acquitted. Public Prosecutors lodged 7 appeals overall, 5 of which against the decisions on penalties. In 2008, criminal offence reports were submitted against 81 persons for the same crime, out of which reports against 17 persons were dismissed. A total of 69 persons were indicted. There were 26 sentencing verdicts, 15 to imprisonment, 9 to probation, one fine and one security measure. Public Prosecutor lodged 19 appeals overall, 8 of which against the decisions on penalties. In 2009, criminal offence reports were submitted against 82 persons for the same crime, out of

which reports against 18 persons were dismissed. A total of 16 persons were indicted. There were 38 sentencing verdicts for this criminal offence perpetrated in the reporting period and previous periods, out of which 9 were sentences to imprisonment, one fine and 28 probations. Public Prosecutor lodged 8 appeals overall, 7 of which against the decisions on penalties.

147. In the context of implementation of the Constitutional provisions on the protection of national identity of a person belonging to a minority, what measures have been taken to ensure participation of minorities in the political and public life, namely the representation of such persons in elected bodies, the administration (both central and local), police and judiciary? Please provide statistics if available, including their source. (For more detailed questions please see chapter 23).

Effective participation of national minority members in cultural, social and economic life and public affairs in the Republic of Serbia is guaranteed by the provisions of the Constitution of the Republic of Serbia, which defines Serbia as a state of Serbian people and all citizens who live in it, based on the rule of law and social justice, principles of civil democracy, human and minority rights and freedoms and commitment to European principles and values. According to Article 2(1) of the Constitution, sovereignty is vested in citizens who exercise it through referendums, people's initiative and freely elected representatives. Participation of citizens, and therefore national minority members in the political life of the state and forming political will, is guaranteed by the constitutional provisions regarding election rights and freedom of association. Pursuant to Article 52(1) and (2) of the Constitution, every citizen of age and working ability of the Republic of Serbia shall have the right to vote and be elected. Voting rights shall be universal and equal for all, the elections shall be free and direct and voting is carried out by secret ballot in person.

The Constitution of the Republic of Serbia contains special provisions creating the legal ground for participation of members of national minorities in representative bodies at all levels of public authorities. Pursuant to Article 100(2) of the Constitution, in the National Assembly of the Republic of Serbia, as the highest representative body and holder of constitutional and legislative power, equality and representation of members of national minorities shall be ensured. Under Article 180(4), the Constitution stipulates that in autonomous provinces and local self-government units with the population of mixed nationalities, a proportional representation of national minorities in assemblies shall be ensured, in accordance with the law. Furthermore, in the Republic of Serbia provisions of the law, provincial decisions and practical measures have created conditions for efficient participation of members of national minorities in representative bodies at different levels of public authorities.

Under Article 81(2), (3) and (4) of the Law on Election of Members of Parliament (*Official Gazette of RS*, No. 35/00, 18/04 and 104/09), political parties of national minorities and coalitions of political parties of national minorities participate in distribution of mandates even if they polled less than 5% of votes of the total number of voters who voted. Political parties of national minorities are all those political parties whose main goal is representation of interests of a national minority and protection and promotion of rights of members of national minorities, in accordance with international standards. The decision on whether the submitter of a candidate list shall have the status of a political party of national minority, i.e.

collation of parties of national minorities, shall be made by the Republic Electoral Commission when declaring the candidate list, upon proposal of the submitter of the candidate list which is to be put forward when submitting the candidate list. The solutions provided for in the election law are much more favourable in comparison with the previous period and affirmative for members of national minorities as they facilitate election of their representatives to the National Assembly of the Republic of Serbia.

The National Assembly of the Republic of Serbia consists of 250 Members of Parliament, out of whom 31 (12.4%) Members declared as members of ethnic or national minorities.

In the National Assembly of the Republic of Serbia, 10 parliamentary groups have been formed, members of which belong to 23 political parties. There is a Parliamentary Group of Minorities as well, constituted by the representatives of the Alliance of Vojvodina Hungarians, Social Liberal Party of Sandžak, Bosniak Democratic Party of Sandžak and Party of Democratic Action. In addition, members of national minorities are members of different parliamentary groups present in the National Assembly, and the political parties which directly represent interests of national minorities are the following: Alliance of Vojvodina Hungarians, Sandžak Democratic Party, Democratic Alliance of Vojvodina Croats, Social Liberal Party of Sandžak, Bosniak Democratic Party of Sandžak, Party of Democratic Action and Democratic Left of the Roma.

In the Provincial Assembly Decision on the Election of Members to the Assembly of the Autonomous Province of Vojvodina (*Official Journal of APV*, No. 12/04, 20/08, 05-09 and 18/09-the change in the name of the act), the same mixed electoral system is defined, i.e. that Members of Parliament are elected pursuant to the proportional electoral system and majority rule. In the part of the Decision which regulates election of Members of Parliament pursuant to proportional electoral system, it is prescribed that political parties of national minorities and coalitions of political parties of national minorities may propose candidates for Members of Parliament, supported by signatures of at least 3000 voters by candidate list, whereas political parties and coalitions of several parties, which are not parties of national minorities, may propose candidates for Members of Parliament, supported by signatures of at least 6000 voters by candidate list. In the part of the Decision on the distribution of mandates, it is prescribed that candidate lists that polled at least 5% of votes of the total number of voters who voted participate in the distribution of mandates, whereas political parties of national minorities and coalitions of political parties of national minorities participate in the distribution of mandates even if they polled less than 5% of votes of the total number of voters who voted. Political parties of national minorities are all those political parties whose main goal is representation of interests of a national minority and protection and promotion of rights of members of national minorities, in accordance with domestic and international standards. The decision on whether the submitter of a candidate list shall have the status of a political party, i.e. collation of parties of national minorities, shall be made by the Provincial Electoral Commission when declaring the candidate list upon the proposal of the submitter. In the Assembly of the Autonomous Province of Vojvodina, out of six parliamentary groups, the Parliamentary Group of Hungarian Coalition gathers members of the Hungarian national minority.

Pursuant to the Law on Local Elections (*Official Gazette of RS*, No. 129/2007) elections of members to local assemblies are conducted in municipalities as unique electoral units and mandates of members are distributed among candidate lists in proportion to the number of

votes polled by each candidate list. Article 40(5) defines that political parties of national minorities and coalitions of national minority political parties participate in the distribution of mandates even if they poll less than 5 % of votes of the total number of voters who voted. Paragraph 6 of the Article defines political parties of national minorities as all those political parties whose main goal is representation of interests of a national minority and protection and promotion of rights of members of national minorities in accordance with the international legal standards. The decision on whether the submitter of a candidate list shall have the status of a political party of national minority, i.e. collation of parties of national minorities, shall be made by the Electoral Commission of the unit of a local self government upon proposal of the submitter that has to be put forward prior to submission of the candidate list. The listed solutions facilitate participation of members of national minorities in representative bodies at local level.

The Law on Political Parties (*Official Gazette of RS*, No. 36/09) for the first time regulated the notion of a political party of national minority in the legal system of the Republic of Serbia. Political party is defined as an organisation of freely and voluntarily associated citizens, established for achievement of political goals by democratic formation of political will of citizens and for participation in elections (Article 2). Article 3 of the Law stipulates that a political party of national minority is a party whose action, in addition to the listed features, is especially focused on representation of interests of a national minority and protection and promotion of rights of members of the national minority in accordance with the Constitution, law and international standards, regulated by constituent instrument, programme and statute of the political party. Pursuant to Article 9, political party of a national minority may be established by at least 1000 adult and legally capable citizens of the Republic of Serbia, unlike other political parties that may be established by at least 10 000 adult and legally capable citizens. The title of a political party of a national minority, if provided for by the statute, may be in the language and script of the national minority, and it shall be entered in the Register after the title in Serbian in Cyrillic (Article 18).

Provisions on cultural autonomy of national minorities are of extreme importance for facilitated participation of members of national minorities in public affairs. Under provisions of Article 75(2) and (3) of the Constitution, through their collective rights, persons belonging to national minorities shall, directly or through their representatives, take part in decision-making, or decide independently on certain issues related to their culture, education, information and official use of languages and scripts, i.e. they shall realize self-government in the listed fields of public life through National Councils which may be elected by members of national minorities in accordance with the law. The issue of election and competences of National Councils of national minorities, regulated by the Law on National Councils of National Minorities (*Official Gazette of RS*, No. 72/09), is set out in the answer to Question 141 of Political Criteria.

Under Article 77(1), the Constitution of the Republic of Serbia explicitly stipulates that members of national minorities shall have the right to participate in administering public affairs and to come into office, under the same conditions as other citizens. Paragraph 2 of the same Article of the Constitution stipulates that upon employment in state authorities, public services, authorities of autonomous provinces and local self-government units, national constitution of the population and appropriate representation of national minority members shall be taken into account.

The Government of the Republic of Serbia adopted the Conclusion on the Measures to Increase the Participation of Members of National Minorities in State Authorities (*Official Gazette of RS*, No. 40/06). Under Point 1 of the Conclusion, it is pointed out that the Government shall, directly and through its competent bodies and services, continually take measures to increase the participation of national minority members as civil servants and general service employees in state authorities, for the purpose of implementing policy regarding the creation of conditions for the improvement of active participation of national minority members in the work of state authorities. Point 8 of the Conclusion envisages that, when filling in the vacancies through public competition, Human Resource Management Service shall advertise the public competition in languages of national minorities as well, especially when the advertised vacancy is in a territorial unit of a state authority established on the territory where members of national minorities traditionally and predominantly live. The then Service for Human and Minority Rights and Human Resource Management Service of the Government of the Republic of Serbia have taken specific measures to implement the listed solutions set out in the Conclusion. With regard to this, it has been decided that all public competitions intended for filling in vacancies shall be sent to National Minority Councils for translation, and that their publication in minority languages in the media designated by National Minority Councils shall be financed from the Budget. Due to the increase in the costs of public competition advertising in daily newspapers and lack of financial means, advertising vacancies in state administration in the languages of national minorities has been left out in recent years.

Under Article 160 (1), the Law on Civil Servants (*Official Gazette of RS*, No. 79/05, 81/05, 83/05, 64/07, 67/07, 116/08 and 104/09) prescribes the type of data entered in the Central Human Resource Records. The law does not stipulate collecting and entering data on national affiliation of the employees. Since there are no legal grounds for the mentioned data to be collected, at present it is not possible to provide information on national affiliation of employees in state authorities.

The information on the structure of provincial civil servants in provincial administration authorities, organizations and services in 2010 has been provided in order to present the structure of provincial civil servants, among other, by national affiliation and knowledge of national minority languages which are in official use in AP Vojvodina. The provincial authorities mentioned in the information employ a total of 807 provincial civil servants. According to the data of the Human Resource Management Service, the greatest number of provincial civil servants in provincial authorities are of Serbian nationality – 531 civil servants, i.e. 65% of the total number of civil servants. As regards representation, persons belonging to Hungarian nationality are in the second place – 52 civil servants or 6.4%, followed by Croats – 17 or 2.1%, Montenegrins – 16 or 2%, Slovaks – 15 or 1.9%, Romanians – 11 civil servants or 1.4%, Ruthenians – nine or 1.1%, Roma – three or 0.4% and four civil servants who declared as Vojvodani, which makes 0.5% of the total number of civil servants. Other ethnic communities make the percentage of about 1.2% and these are: two civil servants from each ethnicity – Bunjevci, Muslims, Macedonians and one civil servant belonging to Bosniak, Herzegovinian, Ukrainian and Jewish ethnicity. According to the data of the Human Resource Management Service, 139 or 17.2% of provincial civil servants do not express their ethnicity. Out of 807 provincial servants, 135 or 16.7% of employees speak the languages of national minorities which are in official use in the Province, and these are: 77 civil servants who speak Hungarian, 22 Slovak, 15 Romanian, 11 Croatian and 10 Ruthenian. The knowledge of national minority languages which are in official use in AP Vojvodina is

prescribed as a condition for 41 job positions, or 5.1% of the total number of positions (Hungarian language – 18 job positions, Slovak – seven, Romanian – seven, Ruthenian – five and Croatian – four positions).

The Ministry of Interior takes measures to employ human resources belonging to national minorities, especially in areas with population of mixed nationalities. Within the project “Police Work with Minorities”, a large-scale marketing campaign was organized in 2007 (for the admission of the first class) and in 2008 (for the admission of 2-5 class) with the aim of encouraging members of national minorities and provoking their interest in applying for basic police training, which is carried out at the Police High School – Basic Police Training Centre in Sremska Kamenica. Within the marketing activities, a redesigned leaflet was available to all interested candidates at police directorates and other institutions of the local community, in the local printed media and on the website of the School-Centre. Apart from Serbian language, the leaflet was available in eight languages of national minorities as well. At local radio stations with national frequency, a radio announcement was broadcast inviting the interested persons to apply for the competition and training. Several discussions were organized for members of national minorities (Bujanovac, Preševo, Novi Pazar, Kikinda, Subotica, Sombor, Surdulica, Bosilegrad) on the subject of taking the qualifying exam to enrol at the Basic Police Training Centre. Under the auspices and in the organization of the British Council, the preparations of candidates for the qualifying exam for the enrolment at the Basic Police Training Centre were carried out in Bujanovac, Preševo, Surdulica, Bosilegrad, Novi Pazar, Sjenica, Tutin, Kikinda, Subotica and Sombor.

During the evaluation carried out in the process of selection (evaluation of psychological, basic motor status and other), candidates are listed under codes and Personal Identity Number which ensures their full equality and impartiality of procedures. The evaluation of psychological status is carried out through the use of psychodiagnostic instruments (tests) in Serbian (Cyrillic and Latin), Albanian, Hungarian, Roma, Romanian, Ruthenian, Slovak and Ukrainian languages. In the course of interviews, which are a part of the selection procedure through which each candidate goes, in a four-member commission, one member of which is a mentor and coordinator from a police directorate, the presence of a mentor and coordinator who speaks Albanian is obligatory for the candidates in Police Directorate in Vranje. In addition, when the selection of candidates from this directorate was made, the presence of a police officer who speaks Albanian was obligatory at the School-Centre, should the need for aid in communication arise.

According to the records of the Police High School – Basic Police Training Centre, 3 850 candidates applied for the first class of trainees at the Centre in 2007, 463 of whom were members of national minorities (which makes 12.03%) The number of admitted trainees is 130, 13 of whom are members of national minorities (10.00%). In 2008, out of 2 371 candidates, 204 were members of national minorities, i.e. 8.60%. The number of admitted trainees was 569, 40 of whom were members of national minorities (7.02%).

In the procedure of election and proposal for the election of a judge, discrimination on any grounds shall be prohibited. Pursuant to the Law on Judges (*Official Gazette of RS*, No. 116/2008, 58/2009 and 104/2009), in the process of election and proposal for the election of a judge, national constitution of the population shall be taken into account, as well as the proportional representation of national minority members and knowledge of professional legal terminology in the language of a national minority, which is in official use in Court.

When electing a judge to permanent judicial position and proposing candidates for the election to three-year term of office to the National Assembly, High Judicial Council took into account the national constitution of the population on the territory within the jurisdiction of the court to which candidates were elected. In Vojvodina, on the territory of the Appellate Court in Novi Sad, 42 judges belong to Hungarian national minority, but the highest representation of this minority is on the territory of the Higher Court in Subotica. In the Basic Court in Subotica, 13 judges are Hungarians, which makes 40% of the total number of judges, in the Commercial Court in Subotica 60% of judges are Hungarians and in the Misdemeanour Court in Senta 50% of judges are Hungarians. In addition, in the Higher Court in Zrenjanin, Hungarians make 25% of the total number of judges, in the Commercial Court in Sombor 20%, and in the Misdemeanour Court in Bečej 60% of judges.

On the territory of the Higher Court in Novi Pazar, out of 44 judges 23 belong to Bosniak national minority, which makes 52% of judges in this area.

On the territory of the Higher Court in Vranje, there are representatives of Albanian national minority in the Basic Court in Vranje, where Albanians make 13% of the total number of judges and in the Misdemeanour Court in Preševo, where 50% of judges are Albanians.

At the proposal of the Minister of Justice, High Judicial Council appointed juror judges, and in the areas where national minorities live, it appointed juror judges among the members of present national minorities. In the Basic Court in Subotica, out of 67 appointed juror judges 20 are Hungarians, which makes 30% of the total number, in the Basic Court in Kikinda 25% of juror judges are Hungarians, and in the Basic Court in Zrenjanin 11%. On the territory of the Higher Court in Novi Pazar, there are members of Bosniak national minority among appointed juror judges; in the Higher Court in Novi Pazar, 41% of the total number of juror judges are Bosniaks, and in the Basic Court in Novi Pazar 56%.

In the areas where national minorities live, persons belonging to national minorities are not only present among judicial office holders, but among the appointed civil servants and general service employees in courts as well.

When employing judicial interns, national constitution of the population and appropriate representation of national minority members shall be taken into account, as well as the knowledge of professional legal terminology in a national minority language which is in official use in court.

Under Article 182, which refers to the proposal and election of candidates for the post of a Public Prosecutor, the Law on Public Prosecution (*Official Gazette of RS*, No. 116/08 and 104/09) stipulates that a new body, State Prosecutorial Council, shall, in the process of proposal and election, take into account competence, capability and worthiness of the candidate according to the criteria and standards for evaluation of competence, capability and worthiness prescribed by this body in accordance with law. In the process of election and proposal of candidates for the post of a Public Prosecutor, any form of discrimination shall be prohibited, and national constitution of population shall be taken into account, as well as appropriate representation of national minority members and knowledge of professional legal terminology in the language of a national minority, which is in official use in Court. Similar conditions are applied with regard to Prosecutor's interns. Article 122 of the Law on Public

Prosecution stipulates that in the process of employing prosecutor's interns, national constitution of the population and appropriate representation of national minority members shall be taken into account, as well as the knowledge of professional legal terminology in a national minority language which is in official use in court.

III Regional issues and international obligations

Regional cooperation and good neighbourly relations

148. Please provide a list of all regional initiatives in which Serbia participates. Please specify which regional agreements have been signed or ratified.

The Republic of Serbia participates in the following regional organizations and initiatives:

- Central-European Initiative - CEI
- South East European Cooperation Process - SEECP
- Regional Cooperation Council - RCC
- Adriatic-Ionian Initiative - AII
- Migration, Asylum, Refugees Regional Initiative - MARRI
- Central European Free Trade Agreement 2006 - CEFTA 2006
- Szeged Process
- Igman Initiative
- South East European Cooperative Initiative - SECI
- Regional Arms Control Verification and Implementation Assistance Center - RACVIAC
- Disaster Preparedness and Prevention Initiative in the South-Eastern Europe - DPPISEE
- Regional School for Public Administration- ReSPA
- Energy Community Treaty
- South-Eastern Europe Transport Observatory - SEETO
- South-Eastern Europe Health Network - SEEHN
- Regional Anticorruption Initiative - RAI
- Council of Ministers of Culture of South East Europe
- Southeast Europe Defense Ministerials - SEDM
- South Eastern and Eastern Europe Clearinghouse for the Control of Small Arms and Light Weapons - SEESAC
- Danube Commission
- Danube Cooperation Process - DCP
- Organization of the Black Sea Economic Cooperation - BSEC
- International Commission for the Protection of the Danube River - ICPDR
- International Commission on the Sava River Basin -ISRBC
- Electronic South Eastern Europe Initiative - eSEE
- South East Europe initiative for the development of the broadband infrastructure
- OECD Investment Compact
- South Eastern Europe e-Governance Center
- Association of Balkan Chambers - ABC
- South East Europe Trade Union Forum
- Adriatic Region Employers' Centre CE POJAR
- South East Europe's National Employment Services Center

- Regional Employment Network
- Regional Rural Development Standing Working Group (SWG) of South Eastern Europe
- South East European Public Prosecutors Advisory Group - SEEPAG
- Working Group for Human Resources Development
- Education Reform Initiative of South Eastern Europe - ERISSEE
- Steering Platform on Research for Western Balkan Countries
- Regional Secretariat for Parliamentary Cooperation in Southeast Europe
- Southeast Europe Police Chiefs Association - SEPCHA
- Police Cooperation Convention in the Southeast Europe – PCC SEE

The list of the international treaties the Republic of Serbia has ratified and/or signed in the field of the regional initiatives is contained in the following table:

No	The name of the treaty:	Signed	Status
1.	Agreement on Amendment of and Accession to the Central European Free Trade Agreement CEFTA	12/19/2006	ratified on 24/09/2007 came into force 24/10/2007
2.	Agreement between the Kingdom of Belgium and Parties to the Central European Free Trade Agreement CEFTA on the Privileges and Immunities of the Secretariat of CEFTA agreement	26/06/2008	ratified on 13/05/2009
3.	Treaty establishing the Energy Community between the EU and Albania, Bulgaria, Bosnia and Herzegovina, Croatia, Former Yugoslav Republic of Macedonia, Serbia, United Nations Interim Administration Mission in Kosovo 1244/99 SC UN		ratified on 14/07/2006
4.	Memorandum of Understanding between the FMFA of the FRY and the Regional Environmental Center for Central and Eastern Europe	22/06/2001	
5.	Agreement between the Republic of Serbia and the Regional Environmental Center for Central and Eastern Europe on the legal status of the Regional Environmental Center in the Republic of Serbia (REC).	27/06/2008	
6.	Memorandum of Understanding on the Institutional Framework of the Prevention and Readiness Initiative in case of catastrophes in the region of South Eastern Europe	7/04/2007	

7.	Framework Agreement on the Sava River Basin and Protocol on the Navigation Regime joint with the Framework Agreement on the Sava River Basin	3/12/2002	ratified on 27/05/2004 came into force 29/12/2004
8.	Memorandum on the Establishment of the Regional Forum MARRI and the Establishment of the Regional Center in Skopje	2/07/2004	
9.	Agreement on Cooperation to Prevent and Combat Trans-border Crime with Charter- SECI Center		ratified on 20/06/2003 came into force 1/09/2003
10.	Memorandum of Understanding on Inter-parliamentary Cooperation in South East Europe	14/04/2008	
11.	Memorandum between Serbia and Montenegro and South Eastern Europe Transport Observatory- SEETO on Secretariat Status in Serbia and Montenegro	9/06/2005	

Autonomous Province of Vojvodina

The Assembly of European Regions (AER), having the headquarters in Strasbourg was established in 1985, aiming at the promotion of regional democracy in Europe, owing to the fact that an effective presentation of regional interests did not exist in Europe. The AER is consisted of the representatives of up to 270 regions from 30 European countries inclusive of the most developed regions in Europe. AP Vojvodina became its member at the General Assembly of AER in November 2002.

From the moment of becoming a member of AEP, Vojvodina has regularly participated in its activities. It has been the member of the AER Bureau as of November 2004.

In the period 2005-2007, four big meetings took place in the AP Vojvodina organized by the AER and the Assembly of the Autonomous Province of Vojvodina having the international composition:

- 2 March 2005: "The Status of Regional Democracy in Europe", in the Assembly of the Autonomous Province of Vojvodina in Novi Sad.
- 27-28 March 2006: Committee 2- relating to social cohesion, social issues and healthcare, in Vila "Breg", in Vrsac.
- 1-2 September 2006: "The role of border regions in the process of European Integrations", in the Assembly of the Autonomous Province of Vojvodina in Novi Sad.
- 19-20 April 2007: "There's no Innovation without Education"- Conference of European Regional Ministers of Education, in the Assembly of the Autonomous Province of Vojvodina in Novi Sad.

The exchange of youth from Vojvodina and Romania within the "Eurodissey" Programme, as well as the activities related to the first joint project between the Assembly of the

Autonomous Province of Vojvodina and the AER “Peer Review- Creating the Strategy for Development of Energetically Sustainable Municipalities in AP Vojvodina” within the Assembly of European Regions Committee 1, presented the two most important activities within AEP in 2010.

2008 – 2010

Following the completed elections in 2008, a newly-appointed administration in the Assembly of the Autonomous Province of Vojvodina continued its activities in the Assembly of European regions. President of the Assembly of AP Vojvodina, Egeresi Sandor, took over a membership in the AEP Bureau (from the former President of the Assembly of AP Vojvodina Bojan Kostres). The following activity took place in November 2008, during the sitting of the General Assembly of AEP in Finland.

During 2009, President Egeresi authorized the Vice-President of the Assembly of AP Vojvodina, Maja Sedlarevic, to participate in the activities of the Bureau. During the sitting of the Bureau in Goteborg (September 2009), the Vice President Branislava Belic commenced discussions on the first joint project between the AEP and the Assembly of AP Vojvodina. President of the Assembly of AP Vojvodina, Maja Sedlarevic, took part in the activities of Committee 2 having the opportunity to present the activities of provincial authorities in the field of gender equality during her speeches. The Standing Committee on Equal Opportunities was established and Vice President Maja Sedlarevic was appointed the Vice President of the said Committee within the AER at the General Assembly of AER, taking place in November 2009 in France.

On 11 December 2009, Maja Sedlarevic, MSc, the Vice President of the Assembly of AP Vojvodina and Carlos Cesar, the President of the Programme “Eurodissey” signed the Letter of Obligation, presenting the final step to the accession of AP Vojvodina to the full-fledged membership of the said programme.

As for the realization of the programme between the Caraş Severin County and AP Vojvodina, it commenced on 1 February 2010. Two students of the Department of Romanian Language at the Faculty of Philosophy in Novi Sad spent three months having a traineeship in the library and the museum of the city of Resica.

At the same time, an employee of the library of the city of Resica had a traineeship in the Cultural Bureau of Romanians in Vojvodina in the period 1 February-1 May 2010 being an associate-researcher.

The further realization of the programme “Eurodissey” in the AP Vojvodina, takes place in the cooperation with the Career Development Center of the University of Novi Sad being the partner with regard to the informing youth as well as potential employers regularly by the means of the websites. The young people from the region are given an opportunity to acquire working experience and the advancement of foreign language in one of 39 regions of the members of Euro Odysseus Programme.

During 2010, the activities related to the Programme Peer Review continued, whereas the Vice President Maja Sedlarevic continued with the activities within the Standing Committee on Equal Opportunities, as well as working on the presentation of good practice related to the

activities of the Provincial Secretariat for Labour, Employment and Gender Equality (meeting in Valencia, September 2010). Being the Vice President of the Standing Committee on Equal Opportunities, Maja Sedlarevic presented the reports related to the activities of the said Committee on three occasions (in Istanbul and during the two meetings of the Bureau). Vice President Belic participated in "The First European Energy Day" taking part in Brussels (March 2010). During her speech, she presented the state of affairs related to energetics in the AP Vojvodina, as well as the Peer Review project. During 2010, the Assembly of AP Vojvodina jointly with the Secretariat of the Government of the AP Vojvodina, participated in two European regional researches -Energy Research Study and White Paper on Energy and Climate Changes

http://www.aer.eu/fileadmin/user_upload/MainIssues/Energy/final-ETUDE-EN.pdf

On behalf of the Assembly of AP Vojvodina, the Vice President Maja Sedlarevic participated in the drawing up of the Regionalism Report- document printed by the Assembly of European Regions, presenting the regions of 48 EU and non-EU countries.

[http://www.aer.eu/fileadmin/user_upload/MainIssues/Regional_Democracy/AER_Regionalism_Report/Report_2010/Part II - Countries J - Z Annexes.pdf](http://www.aer.eu/fileadmin/user_upload/MainIssues/Regional_Democracy/AER_Regionalism_Report/Report_2010/Part_II_-_Countries_J_-_Z_Annexes.pdf) (pages 66-72).

2011.

The Assembly of AP Vojvodina is to organize the promotion of the project Peer Review jointly with the AER in February, as well as the workshop Euractive (EU Internet Portal) having the international composition. The spring meeting of the Standing Committee on Equal Opportunities is to take place in April 2011 in Novi Sad, whereas the second meeting of Peer Review related to the employment creation of youth- project of several regions, AER members, with Vojvodina participating as of January 2011, is to take place in July.

149. What steps have been taken to ratify, integrate into domestic law, and implement the Rome Statute on the International Criminal Court?

The Law on Confirmation of the Rome Statute of the International Criminal Court (*Official Gazette of FRY- International Agreements*, number 8/01). The Law on Cooperation with the International Criminal Court entered into force on 11th September 2009 (*Official Gazette of the RS*, number 72/2009). In November 2009 the Government has appointed the Representative and Deputy Representative of the Republic of Serbia in the Assembly of ICR Member States, as well as the legal representative of the Republic of Serbia in the International Criminal Court.

150. Please provide an overview of your relations with Kosovo and your efforts to ensure effective cooperation on EU related matters and inclusive regional cooperation?

According to the Constitution of the Republic of Serbia, the Province of Kosovo and Metohija is an integral part of the territory of Serbia having the status of a substantial autonomy within the sovereign state of Serbia. From such status of the Province of Kosovo and Metohija "constitutional obligations of all state bodies follow to uphold and protect the state interests of Serbia in Kosovo and Metohija in all internal and foreign political relations" (preamble of the Constitution of the Republic of Serbia).

The UN Security Council Resolution 1244 (10 June 1999) confirms the sovereignty and territorial integrity of the Federal Republic of Yugoslavia. Its continuity of the state is to be maintained by the Republic of Serbia. Interim international civil and security presence was established under the auspices of the UN in the territory of Kosovo and Metohija.

The Government of the Republic of Serbia adopted on 14 February 2008 a Decision regarding the Abolition of Unlawful Acts of the Provisional Institutions of Self-Government in Kosovo and Metohija in regards to the Unilateral Declaration of Independence.

The Republic of Serbia cooperates actively with the representatives of the international community situated in the territory of the Autonomous Province of Kosovo and Metohija: UNMIK, KFOR, EULEX (Police Cooperation Protocol between the Republic of Serbia and EULEX Mission of 11 September 2009), OSCE, Council of Europe and other, aiming at the improvement of the overall situation and the quality of life of all citizens living there.

The Republic of Serbia is a contracting party to certain regional agreements signed by the special representative of the UN Secretary General (Central European Free Trade Agreement (CEFTA), Energy Community Treaty, European Common Aviation Area (ECAA)) to be implemented in the territory of Kosovo and Metohija in accordance with the UN Security Council Resolution 1244 and Constitutional Framework for Provisional Self-Government in Kosovo.

Serbia supports the implementation of the inclusion principle in the regional cooperation. In the context of its cooperative approach, the Republic of Serbia has agreed on several occasions with the implementation of the so called expanded “Gymnich” format at international and regional gatherings, implying that the participants in the meeting are labelled only by their first names, they are mentioned in the documents from the meeting, an UNMIK representative takes part sitting next to the representative of provisional institutions from Kosovo and Metohija giving speech immediately before him.

In accordance with the UN General Assembly Resolution 64/298 (09 September 2010) submitted jointly by the Republic of Serbia and EU Member States, the Republic of Serbia is ready to start the dialogue between Belgrade and Pristina that will be conducted with the EU support and intermediation as soon as possible.

The Republic of Serbia appreciates to a great extent the readiness of the EU regarding the facilitation of the dialogue process that should be initiated with less controversial issues, aiming at attaining constructive and practical solutions which should contribute to the trust strengthening. Owing to this, the conditions are created for reaching a sustainable and permanent solution regarding the issue of Kosovo and Metohija that will be acceptable for both sides. European perspective of the whole region will be reaffirmed in the concrete manner.

151. Please provide an overview of your relations with neighbouring countries, and countries of the Western Balkan Region. Explain outstanding bilateral issues, including border issues, and prospects for solutions.

BOSNIA AND HERZEGOVINA

Bilateral relations

Political relations with Bosnia and Herzegovina are stable and based on the principles of good neighbourly relations, mutual understanding and respect. In its relationship with BiH, the Republic of Serbia observes strictly the Dayton-Paris Peace Agreement guaranteeing sovereignty and territorial integrity of Bosnia and Herzegovina. Recently, the relations have intensified in order to be improved but also to resolve pending issues such as: borders, return of refugees, succession.

An official visit of the Prime Minister of the Republic of Serbia M. Cvetkovic to Bosnia and Herzegovina was realized in July 2010. The President of PDA S. Tihic visited Belgrade in June 2010, whereas the President of Serbia B.Tadic and Minister of Foreign Affairs V. Jeremic participated in the EU Summit-Western Balkans in June 2010 in Sarajevo. In accordance with the Agreement on Special Parallel Relations between the Republic of Serbia and Republika Srpska, Council Session for the cooperation between the Republic of Serbia and Republika Srpska took place in June 2010 in Banja Luka. The Serbian delegation was led by the President of Serbia Boris Tadic. The President of Serbia Boris Tadic opened a new bridge on the river Raca jointly with M. Dodik in August 2010.

The adoption of the Declaration on Srebrenica in the National Assembly of the Republic of Serbia on 31 March 2010, by which the crimes were condemned, invited the states in the region to reconcile, as well as removed impediments in the negotiations on border issues during the meeting of Inter-state Diplomatic Border Commission regarding the state border on 10 May 2010 in Sarajevo and 29 July 2010 in Belgrade, influenced the improvement in relations.

BiH observes the territorial integrity and sovereignty of the Republic of Serbia. It has not recognized a unilaterally proclaimed independence by provisional institutions of the self-government in Kosovo.

Delimitation

The procedure of delimitation is still focused on overcoming different views regarding the determining of the border lines in the area of vital systems of Hydroelectric Power Plants Bajina Basta and Zvornik and in the area of international railway Belgrade- Bar, constructed in the period of the SFRY when there was no border regime. Serbia advocates that by resolving the issues of delimitation of the state border the issues relating to the uninhibited functioning of crucial vital systems, that is Hydroelectric Power Plant Bajina Basta and Zvornik and railway Belgrade- Bar have to be regulated as well.

Bilateral agreements

Serbia has signed 26 agreements and protocols with Bosnia and Herzegovina that are currently in force.

Refugees

Serbia advocates an accelerated return of refugees into Bosnia and Herzegovina based on Sarajevo Declaration and the fulfilment of the conclusions reached at the International Conference on Refugees that took place on 25 March 2010 in Belgrade.

Economic cooperation

Economic cooperation between Serbia and Bosnia and Herzegovina is satisfying. Serbia is interested in the improvement of economic relations. Total trade in goods with Bosnia and Herzegovina in 2009. amounted to EUR 1.037,6 million, out of which the export to Bosnia and Herzegovina amounted to EUR 724,67 million and export EUR 312,39 million. Serbia is the second largest investor in BiH, with total investments amounting to EUR 840 million.

Succession

Serbia advocates the completion and intensification of arrangements on all issues contained in the Agreement on Succession issues of the Former Socialist Federal Republic of Yugoslavia. The meeting of high representatives in the Standing Joint Committee for the implementation of the Succession Agreement took place on 17-18 September 2009 in Belgrade. The meeting regarding the division of diplomatic and consular property took place in April 2010. On 16 September 2010 the Government of the Republic of Serbia extended the validity of the Decree on the Protection of Property relating to the companies with headquarters in the SFRY until 30 June 2011, with the possibility for the disputes to be resolved on a bilateral basis.

Multilateral cooperation

Serbia and Bosnia and Herzegovina cooperate in the scope of international organizations (Council of Europe, OSCE, UN etc.). Serbia at some time past supported the appointment of Bosnia and Herzegovina for the non-permanent membership in the UN SC. The cooperation also exists in the scope of regional organizations and bodies: Adriatic-Ionian Initiative (AII), Regional Cooperation Council (RCC), Free Trade Central European Agreement (CEFTA), Disaster Preparedness and Prevention Initiative in the South-Eastern Europe (DPPI SEE), Migration, Asylum, Refugees Regional Initiative (MARRI), South Eastern Europe Cooperation Initiative (SECI), Council of Ministers of Culture of South East Europe, Energy Community, Regional Arms Control Verification and Implementation Assistance Center (RACVIAC), International Commission for the Protection of the Danube River (ICPDR), Sava River Commission.

MONTENEGRO

Bilateral relations

Serbia maintains an intensive political dialogue with Montenegro at all levels confirming the readiness for the constructive resolution of pending issues, such as: borders, dual citizenship, refugees, improvement of contractual and legal framework of cooperation, resolving the issues in the field of succession etc. The visit of the President of the Republic B. Tadic to Montenegro was realized in July 2010. During the visit, the mutual readiness to improve the relations was confirmed and the establishment of the Consulate General of the Republic of Serbia in Herceg Novi was confirmed. The Minister of Foreign Affairs V. Jeremic participated in the Ministerial Meeting of the Central European Initiative (CEI) in June 2010

in Budva. The President of the Republic B. Tadic paid a working visit to Montenegro in November 2010 inaugurating the representative office of the Serbian Chamber of Commerce in Podgorica. The Treaty on the Exchange of Resources and Documents was signed in April 2010, during the official visit of B.Vucinic, the Minister of Defence of Montenegro to Serbia.

Delimitation

The delimitation line between Serbia and Montenegro has not been defined yet. Serbia has initiated the resolving of the issue of mutual interest through the activities of the Inter-state Diplomatic Border Commission, which should regulate the delimitation of the border, local border traffic and the opening of border crossings. Serbia has nominated its members for the Inter-state Diplomatic Border Commission and is ready for the beginning of negotiations.

Bilateral agreements

There are 13 agreements and protocols in force.

Displaced persons

Serbia advocates the regulating of the issues of displaced persons based on international standards and conclusions reached at the International Conference on Refugees taking place on 25 March 2010 in Belgrade.

Economic cooperation

Economic cooperation is being continuously improved. A total trade in goods amounted to EUR 609.8 million in 2009, out of which the export to Montenegro amounted to EUR 507.3 million and import EUR 102.5 million. So far Serbian investments into Montenegro amounted to over EUR 235 million.

Status of Serbs

Serbia advocates that Serbs living in Montenegro acquire the status of an autochthon people rather than a minority, as is the case with the Montenegrins living in Serbia.

Multilateral cooperation

Serbia and Montenegro cooperate in the scope of international organizations (Council of Europe, OSCE, UN etc.). The cooperation also exists in the scope of regional organizations and bodies: Adriatic-Ionian Initiative (AII), Regional Cooperation Council (RCC), Free Trade Central European Agreement (CEFTA), Disaster Preparedness and Prevention Initiative in the South-Eastern Europe (DPPISEE), Migration, Asylum, Refugees Regional Initiative (MARRI), South Eastern Europe Cooperation Initiative (SECI), Council of Ministers of Culture of South East Europe, Energy Community, Regional Arms Control Verification and Implementation Assistance Center (RACVIAC), Regional School of Public Administration (RESPA).

REPUBLIC OF CROATIA

Bilateral relations

The relations with Croatia are inseparable from the complex historical heritage. However, they are continuously improving. The relations intensified and improved during the first meeting of the President of Serbia B. Tadic and the President of the Republic of Croatia I. Josipovic in March 2010 in Opatija. The readiness for concrete bilateral and regional cooperation based on democratic and European values was confirmed during the trilateral meetings of the Presidents of Serbia, Croatia and Hungary in April 2010 in Pecuj and the Ministers of Foreign Affairs in March 2010 in Budapest, during the joint visit of President B.Tadic and I.Josipovic to the Croatian community in Vojvodina (Backi Monostor) in April 2010, during the official visit of the President of Croatia I.Josipovic to Serbia in July 2010 and the official visit of the President of Serbia B.Tadic to Croatia in November 2010. A joint paying of respect, of the two Presidents, at the burial sites of the Serbian victims in Paulin Dvor and Croatian victims in Ovcara (Vukovar), in November 2010, highly contributed to the quality of relations and the strengthening of mutual trust. Croatia delivered to Serbia their translations of European regulations in May 2010. A large number of ministerial meetings were realized. The possibilities for the improvement in military cooperation were improved by signing the Agreement on Military Cooperation in June 2010. The cooperation between judicial authorities and the Ministries of Interior was intensified. The session of the Joint Committee on War Crimes was held for the first time in July 2010 in Belgrade, and for the second time in August 2010 in Zagreb. This trend in relations creates positive assumptions for the resolving of pending issues such as: borders, return of refugees into Croatia, improvement of the status of the Serbian Community in Croatia, further intensification of cooperation regarding the missing persons, the return of cultural heritage etc. Serbia expresses readiness for the bilateral overcoming of problems relating to the complaints to the International Court of Justice in the Hague.

Demarcation

The impediments in the negotiations regarding the border were unblocked owing to the meeting of The Inter-state Diplomatic Commission for Identification – Determination Border Line and Making State Border Treaty that took place in April 2010 in Zagreb. The second meeting of the The Inter-state Diplomatic Commission took place in November 2010 in Belgrade. The attitudes of the two parties regarding the delimitation of the border on the river Danube starting with the border with Hungary to Backa Palanka are significantly different. Serbia is of the view that the border is situated in the middle of the fareway on the river Danube, whilst Croatia advocates a cadastral border deviating from the Danube flow. The attitude of Serbia is based on the Law on the Establishment and the Constitution of the Autonomous Province of Vojvodina of 1945, whereas according to the attitude of Croatia the border should traverse the international fareway of the river Danube for 18 times. As the Danube is an important international river, it is a common rule in the international practice that the border follows the line of the deepest points in the river's flow. In accordance with this principle, the demarcation between Serbia and Romania, Romania and Bulgaria and Hungary and Slovak Republic has been successfully performed Serbia is willing to overcome the problem as soon as possible and accomplish a direct agreement.

Bilateral agreements

There are 31 agreements and protocols in force.

Refugees

Serbia advocates an accelerated return of refugees into Croatia based on Sarajevo Declaration and the fulfilment of the conclusions reached at the International Conference on Refugees taking place on 25 March 2010 in Belgrade as well as resolving the issues relating to the occupancy rights, missing people, convalidation of years of service. The Presidents of Serbia and Croatia made an agreement on the principles according to which the permanent solutions relating to the issue of refugees could be accomplished.

Economic cooperation

As for the trade in goods for the year 2009 the export of Serbia amounted to EUR 199.27 million and import EUR 281.92 million. Croatian direct investments into Serbia amounts to over EUR 450 million, whereas the most significant Serbian investment in Croatia amounts to EUR 20 million. In the scope of intensive political dialogue, the importance of the increase in the volume of trade in goods and investments in accordance with the possibilities and the needs of both parties has been emphasized. The Ministries of Infrastructure of the Republic of Serbia, Republic of Croatia and Slovenia signed a Declaration on the Establishment of a Joint Railway Company of the Republic of Serbia, Republic of Croatia and Slovenia on 30 July 2010 in Belgrade.

Minorities

Based on the bilateral Agreement on the Protection of Minorities, Serbia and Croatia attain a successful cooperation owing to the regular and constructive actions of a Joint Intergovernmental Panel on the implementation of the Agreement on Minorities. The fourth session took place in June 2010 in Zagreb. Serbs are still not sufficiently represented in the local government, in the police forces etc. Serb National Council was established in June 2010 as an institution of the Serbian self-government. Serbia is expecting the same status to be provided to the Joint Council of the Srem-Vukovar County municipalities.

Succession

Serbia advocates the completion and intensification of arrangements on all issues contained in the Agreement on Succession Issues of the Former Socialist Federal Republic of Yugoslavia. The meeting of high representatives in the Standing Joint Committee for the implementation of the Succession Agreement took place in September 2009 in Belgrade. The meeting regarding the division of diplomatic and consular property took place in April 2010. In September 2010 the Government of the Republic of Serbia extended the validity of the Decree on the Protection of Property relating to the companies with headquarters in the SFRY until June 2011, with the possibility for the disputes to be resolved on a bilateral basis.

Multilateral cooperation

Serbia and Croatia cooperate in the scope of international organizations (Council of Europe, OSCE, UN etc.). Serbia at some time past supported the appointment of Croatia for the non-permanent membership in the UN SC. The cooperation also exists in the scope of regional organizations and bodies: Adriatic-Ionian Initiative (AII), Regional Cooperation Council

(RCC), Free Trade Central European Agreement (CEFTA), Disaster Preparedness and Prevention Initiative in the South-Eastern Europe (DPPI SEE), Migration, Asylum, Refugees Regional Initiative (MARRI), South Eastern Europe Cooperation Initiative (SECI), Council of Ministers of Culture of South East Europe, Energy Community, Regional Arms Control Verification and Implementation Assistance Center (RACVIAC), International Commission for the Protection of the Danube River (ICPDR), Sava River Commission, Regional School of Public Administration (RESPA).

REPUBLIC OF MACEDONIA

Bilateral relations

The Federal Republic of Yugoslavia (FRY) recognized the Republic of Macedonia under its constitutional name in 1996. The relations with Macedonia are satisfactory in spite of the fact that by signing and ratification of the Agreement on the physical demarcation of the Macedonia-Kosovo border in October 2009, the Agreement on the Regulation of Relations and Promotion of Cooperation between the Federal Republic of Yugoslavia and the Republic of Macedonia of 1996 was breached by Macedonia as well as the Treaty between the Federal Republic of Yugoslavia and the Republic of Macedonia Concerning the Delimitation and Description of the State Border of 2001. Political dialogue is intensive at all levels. The President of the Republic of Serbia Boris Tadic paid a working visit to Macedonia in June 2010, President of Macedonia G.Ivanov paid an official visit to Serbia in October 2010 and the President of the National Assembly of the Republic of Serbia S. Djukic- Dejanovic paid an official visit to Macedonia in July 2010. The working meeting of the Ministers of the Interior of the Republic of Serbia I.Dacic and the Republic of Macedonia G.Jankulovska was realized in March in Skopje. The Minister of Health of the Republic of Macedonia B.Osmani paid a visit to Serbia in March 2010. Political bilateral consultations of the Ministries of Foreign Affairs took place in Belgrade in May 2010. Presidents G. Ivanov and B.Tadic confirmed a joint commitment to the EU membership in November 2009.

Demarcation

Contrary to the Treaty between the Federal Republic of Yugoslavia and the Republic of Macedonia concerning the Demarcation and Description of the State Border (signed in 2001 and deposited to the UN), Macedonia performed a demarcation of the state border in the territory of Kosovo and Metohija including Pristina (a consequence of the fact that Macedonia has recognized a unilateral independence of Kosovo). The cooperation with Macedonia is intensive relating to the opening of local border crossings for areas on both sides of the border. The Agreement on the Regulation of Local Border Traffic Regime was signed in September 2010.

Bilateral agreements

Serbia has signed 29 agreements and protocols with the Republic of Macedonia that are currently in force.

Minorities

The status of Serbs living in Macedonia is satisfactory and the actions on its further improvement are underway. The Agreement on Minorities of 2005 regulates all aspects of the status of the Serbian minority living in the Republic of Macedonia as well as the Macedonian minority in the Republic of Serbia.

Economic cooperation

Economic cooperation is satisfactory. It is focused primarily on the trade in goods. Serbia is one of the most important foreign trade partners of the Republic of Macedonia. The export of the Republic of Serbia in 2009 amounted to EUR 306.39 million, whereas import amounted to EUR 166.75 million.

Succession

Serbia advocates the completion and intensification of arrangements on all issues contained in the Agreement on Succession issues of the Former Socialist Federal Republic of Yugoslavia. The meeting of high representatives of the Standing Joint Committee for the implementation of the Succession Agreement took place in September 2009 in Belgrade. The meeting regarding the division of diplomatic and consular property took place in April 2010. In September 2010 the Government of the Republic of Serbia extended the validity of the Decree on the Protection of Property relating to the companies with headquarters in the SFRY until June 2011, with the possibility for the disputes to be resolved on a bilateral basis.

Multilateral cooperation

Serbia and Macedonia cooperate in the scope of international organizations (Council of Europe, OSCE, UN etc.). The cooperation also exists in the scope of regional organizations and bodies: Central-European Initiative (CEI), South-East European Cooperation Process(SEECP), Adriatic-Ionian Initiative (AII), Regional Cooperation Council (RCC), Free Trade Central European Agreement (CEFTA), Disaster Preparedness and Prevention Initiative in the South-Eastern Europe (DPPISSE), Migration, Asylum, Refugees Regional Initiative (MARRI), South Eastern Europe Cooperation Initiative (SECI), Council of Ministers of Culture of South East Europe, Energy Community, Regional Arms Control Verification and Implementation Assistance Center (RACVIAC), Regional School of Public Administration (RESPA).

REPUBLIC OF ALBANIA

Bilateral relations

The conditions for the realization of bilateral visit of the Deputy Prime Minister and the Minister of the Foreign Affairs of Albania to the Republic of Serbia in March 2010 were created owing to several high-level bilateral meetings in 2008 and 2009, in the margins of international meetings. A joint commitment to the improvement in relations, renewal of dialogue at all levels and concretization of cooperation in the fields of mutual interest, inclusive of the European integrations, transport and the expansion of economic cooperation was expressed. The Agreement on the Cooperation in the Fight against Organized Crime, International Terrorism and Illegal Traffic in Drugs as well as the Protocol on the Cooperation of the Ministries of Foreign Affairs were signed. In that context, the Minister of Mining and

Energy P. Skundric paid a visit to Albania in May 2010, jointly with the General Manager of NIS (Petroleum Industry of Serbia) K. Kravcenko. The Minister of Health P. Vasilji paid a visit to Serbia in June 2010. On this occasion, a Memorandum of Understanding for the Cooperation between the two ministries was signed. Political consultations of the two Ministries of Foreign Affairs, the first consultations having this character, took place in Tirana in June 2010. Deputy Prime Minister, Vice Premier and the Minister of the Interior of the Republic of Serbia I. Dacic followed by the delegation of the Ministry of Interior participated in the Seventh Conference on the Safety of Borders in Tirana, in March 2010. Minister of Health T. Milosavljevic paid a visit to the Republic of Albania in August 2010.

Bilateral agreements

There are 55 bilateral agreements in force.

Economic cooperation

Economic cooperation is realized primarily in the field of trade, with Serbia having a surplus. A yearly export to Albania in 2009 amounted to EUR 37.2 million, and imports EUR 3.2 million. The establishment of the supermarket chain “Delta Maxi” in Albania presents a stimulus for the expansion of economic cooperation, as well as the regular presence of Serbian entrepreneurs and the representatives from the Serbian Chamber of Commerce at an international fair in Tirana.

Multilateral cooperation

Serbia and Albania cooperate in the scope of international organizations (Council of Europe, OSCE, UN etc.). The cooperation also exists in the scope of regional organizations and bodies: Central-European Initiative (CEI), South-East European Cooperation Process (SEECP), Adriatic-Ionian Initiative (AII), Regional Cooperation Council (RCC), Free Trade Central European Agreement (CEFTA), Disaster Preparedness and Prevention Initiative in the South-Eastern Europe (DPPISSE), Migration, Asylum, Refugees Regional Initiative (MARRI), South Eastern Europe Cooperation Initiative (SECI), Council of Ministers of Culture of South East Europe, Energy Community, Regional Arms Control Verification and Implementation Assistance Center (RACVIAC), Regional School of Public Administration (RESPA).

Minorities

Serbian community in Albania has not been recognized as a minority. Serbia is interested in the regulation of the status of Serbs in Albania and their participation in the upcoming population census in 2011. It is ready for the concluding of the Agreement on the Protection of Minorities.

ROMANIA

Bilateral relations

Relations between Serbia and Romania are satisfactory and are mutually regarded as “a model of good neighbourly relations”. There is a high-level continuous political dialogue. The two

countries marked 130 years from the establishment of diplomatic relations in 2009. A trilateral cooperation amongst Serbia-Romania-Italy and Serbia-Romania-Hungary was established. There is a satisfactory parliamentary cooperation. Parliamentary friendship groups have been established in the Parliaments of both countries. A Joint Committee on National Minorities was established last year; the first meeting took place in November in Bucharest. Romania observes the territorial integrity and sovereignty of the Republic of Serbia. It has not recognized a unilaterally proclaimed independence by provisional institutions of the self-government in Kosovo. The President of the Republic of Serbia B. Tadic paid a visit to Romania in March 2009, whereas the President of Romania T.Basescu paid a working visit to Serbia (Kladovo) in August 2009; following the visit of the Minister of Foreign Affairs V.Jeremic to Bucharest in 2009, the Minister of Foreign Affairs of Romania T.Baconschi paid a visit to Serbia in June 2010. The Minister of the Interior I.Dacic visited Bucharest in July 2010. The Deputy Prime Minister B.Djelic participated in the Danube Summit in Bucharest in November 2010. Several bilateral meetings were realized last year at the ministerial level. Romania was visited by the Deputy Prime-Minister J.Krkobabic, Minister of Agriculture, Forestry and Water Management S.Dragin, Minister of Defence D.Sutanovac; trilateral meeting of the Ministers of the Interior of Serbia, Romania and Bulgaria took place in Vidin (Bulgaria).

Bilateral agreements

Serbia has signed 116 agreements with Romania that are currently in force.

Economic cooperation

Trade in goods is constantly on the rise, amounting to EUR 569 million in 2009, out of which the export to Romania amounted to EUR 259.4 million and import EUR 309.6 million. The meeting of the Joint Committee on Economic Cooperation took place in December 2010 in Bucharest. Investments of Romania into Serbia amount to EUR 50 million. Agreement has been reached regarding the better utilization of the river Danube and the port of Constanta for export and import of goods from Serbia.

Status of minorities

The status of the Serbian minority in Romania and the Romanian minority in Serbia is regulated in accordance with European standards. Serbian minority has deputies in the Romanian Parliament in accordance with the principle of positive discrimination of minorities. In accordance with the Agreement on the Protection of Minorities (signed in 2004), an Intergovernmental Committee on National Minorities was established; the first meeting took place on 23 November 2009 in Bucharest.

Multilateral cooperation

Serbia and Romania cooperate in the scope of international organizations (Council of Europe, OSCE, UN etc.). The cooperation also exists in the scope of regional organizations and bodies: Central-European Initiative (CEI), South-East European Cooperation Process (SEECP), Regional Cooperation Council (RCC), Free Trade Central European Agreement (CEFTA), Disaster Preparedness and Prevention Initiative in the South-Eastern Europe (DPPISEE), Migration, Asylum, Refugees Regional Initiative (MARRI), South Eastern

Europe Cooperation Initiative (SECI), International Commission for the Protection of the Danube River (ICPDR), Danube River Commission.

THE REPUBLIC OF HUNGARY

Bilateral relations

Relations between Serbia and Hungary are rather developed with intensive dialogue at high and the highest level. In addition to the bilateral, trilateral form of cooperation was also established. A trilateral meeting of the Ministers of Foreign Affairs of Serbia, Romania and Hungary took place in July 2009 in Temishvar. Trilateral meetings of the Ministers of Foreign Affairs of Serbia, Hungary and Greece, and the Ministers of Foreign Affairs of Serbia, Hungary and Croatia took place in March 2010 in Budapest, whereas the trilateral summit of the Presidents of Serbia, Hungary and Croatia took place in April 2010 in Pecuj. Parliamentary cooperation was developed between the two countries as well.

Following the constitution of the Government in Hungary, the meeting of the Ministers of Foreign Affairs V.Jeremic with the Minister of Foreign Affairs of Hungary J. Martonyi was realized in Budapest in May 2010. The Minister of Foreign Affairs J. Martonyi paid an official visit to the Republic of Serbia in June 2010, whereas the Minister of Foreign Affairs V.Jeremic paid a visit to Budapest in October 2010. The Prime Minister of the Republic of Hungary Viktor Orban paid a return visit to the Republic of Serbia in November 2010.

The Prime Minister of the Republic of Hungary Viktor Orban paid a visit to Subotica in August 2010. The former President of the Republic of Hungary paid a visit to Subotica in March 2010. At the beginning of 2010 the former President of Parliament and the Minister of Defence paid a visit to Serbia. There is a satisfactory parliamentary cooperation between the two countries partly owing to parliamentary friendship groups.

Bilateral agreements

Serbia has signed 118 agreements with the Republic of Hungary that are currently in force.

Economic relations

As for the trade volume, Hungary is one of the first ten most important trade partners of Serbia. Trade in goods amounted to EUR 535.6 million in 2009, out of which the export to Hungary amounted to EUR 152.4 million and import EUR 383.2 million. As for investments, Hungary holds the eleventh position on the list of foreign investors into Serbia (total investments of Hungary for the period 2001 – 2008 amount to USD 371 million).

Status of national minorities

A great importance is attached to this issue, which is considered in a bilateral dialogue in the positive context. National Council of Hungarian National Minority was established in September 2002 in Subotica.

Intergovernmental Joint Committee on Minorities of the Republic of Serbia and the Republic of Hungary was established based on the Agreement on the Protection of Minorities (2003). The third session of the Committee took place in May 2009 in Novi Sad. The Republic of Serbia greets the readiness of the Republic of Hungary to resolve the issue relating to the

representation of the national minorities in the Parliament of the Republic of Hungary, inclusive of the Serbian minority.

Multilateral cooperation

Serbia and Hungary cooperate in the scope of international organizations (Council of Europe, OSCE, UN etc.). The cooperation also exists in the scope of regional organizations and bodies: Central-European Initiative (CEI), South-East European Cooperation Process(SEECP), Regional Cooperation Council (RCC), Free Trade Central European Agreement (CEFTA), Disaster Preparedness and Prevention Initiative in the South-Eastern Europe (DPPISEE), Migration, Asylum, Refugees Regional Initiative (MARRI), South Eastern Europe Cooperation Initiative (SECI), International Commission for the Protection of the Danube River (ICPDR), Danube Cooperation Process, Subregional Cooperation in the scope of Euro-Region “Danube-Kris-Moris-Tisa” (DKMT).

REPUBLIC OF BULGARIA

Bilateral relations

Serbia and Bulgaria marked 130 years from the establishment of diplomatic relations in 2009. Bilateral cooperation is developed in several fields without being burdened with pending issues. Intensive political dialogue and parliamentary cooperation, with special regard to the parliamentary friendship groups established in both of the Parliaments, contribute to the successful bilateral relations. The President of the Republic B. Tadic paid a working visit to Bulgaria in August 2009. The President of the National Assembly of the Republic of Serbia S.Djukic- Dejanovic paid a working visit to Bulgaria in April 2010. The Prime Minister of Bulgaria B. Borisov paid a visit to Serbia in April 2010. The Minister of Foreign Affairs N. Mladenov paid a visit to Serbia in May 2010. A trilateral meeting of the Ministers of Foreign Affairs of Serbia, Bulgaria and Greece took place in Sofia in December 2010.

President of the Republic B. Tadic and Deputy Prime Minister and Minister of the Interior of the Republic of Serbia I.Dacic paid a visit to Bulgaria in 2009; trilateral meeting of the Ministers of the Interior of Serbia, Romania and Bulgaria took place in Vidin (Bulgaria).

Bilateral agreements

Serbia has signed 107 agreements with the Republic of Bulgaria that are currently in force.

Economic relations

Bulgaria is amongst the ten most important foreign trade partners of the Republic of Serbia. Economic relations are characterized by an increase in the trade in goods. As for the trade in goods for the year 2009 it amounted to EUR 330.9 million, out of which the export amounted to EUR 112.9 million and import EUR 218 million. Bulgarian investments into Serbia amount to up to EUR 44 million, whereas Serbian investments into Bulgaria amount to EUR 70 million.

Status of national minorities

The status of the Serbian minority in Bulgaria and the Bulgarian minority in Serbia is regulated in accordance with European standards.

Multilateral cooperation

Serbia and Bulgaria cooperate in the scope of international organizations (Council of Europe, OSCE, UN etc.). The cooperation also exists in the scope of regional organizations and bodies: Central-European Initiative (CEI), South-East European Cooperation Process(SEECP), Adriatic-Ionian Initiative (AII), Regional Cooperation Council (RCC), Free Trade Central European Agreement (CEFTA), Disaster Preparedness and Prevention Initiative in the South-Eastern Europe (DPPISSE), Migration, Asylum, Refugees Regional Initiative (MARRI), South Eastern Europe Cooperation Initiative (SECI), International Commission for the Protection of the Danube River (ICPDR).

152. How has the SFRY Succession Agreement been implemented? Are there any remaining difficulties? When and how has Serbia been included in the process?

I Introduction

Agreement on Succession Issues was signed in Vienna on 29 June 2001. Republic of Serbia ratified it on 1st July 2002 ("Official Gazette of the Federal Republic of Yugoslavia-International Treaties", no. 6/2002) and it entered into force in 2004 after it had been ratified by the Republic of Croatia as the last successor state which had done so.

The mentioned Agreement, with its main text, comprises 7 Annexes-A (movable and immovable property), B (diplomatic and consular properties), C (financial assets and liabilities), D (archives), E (pensions), F (other rights, interests and liabilities) and G (private property and acquired rights).

Under the Law on Ministries, the implementation of the Succession Agreement falls within the competence of the Ministry of Finance while the Ministry of Foreign Affairs is responsible for the implementation of Annex B.

II Past implementation and results

Annex B of the Agreement relates to 123 properties, with their total value amounting to US\$ 266,4 million. Under the Agreement, Republic of Serbia has the right, in respect of these properties, to share 39,5% in the overall value.

When this property is concerned, in 2001 five properties whose value amounted to US\$ 50,2 million, were distributed. However, within the overall property of this kind, under Article 1 of the Agreement, five properties were distributed on a partial and provisional basis: Bosnia and Herzegovina-London (diplomatic mission- US\$ 10,9 million); Croatia-Paris (diplomatic mission- US\$ 14,1 million); Macedonia-Paris (consulate general-US\$ 6,5 million); Slovenia-Washington (diplomatic mission- US\$ 7,3 million); Serbia-Paris (residence- US\$ 11,4 million).

Since ratification of the Agreement the implementation of Annex B of the Agreement concerned mostly the distribution of part of the property within the OECD region. This region comprises 67 properties, of the estimated value of US\$ 201 million (out of the total value of US\$ 266.4 million). At the end of 2006 and the beginning of 2007 the Resolution on the Distribution of 44 properties¹ in the OECD region was initialed. However, their actual handover has not yet taken place-since agreement should also be reached on the distribution of property in other regions and to proceed to the handover only after this has been done.

III Forthcoming activities

Following the meeting of the Standing Joint Committee, held in Belgrade on 17th and 18th September 2009, the Government of the Republic of Serbia has adopted a conclusion to undertake all necessary measures in order to create conditions so that the Joint Committee for Implementation of Annex B reaches its final decision, at its first meeting, on the distribution of the remaining diplomatic and consular property. The first part of the meeting of the Joint Committee was held on May 21st 2010 in Belgrade. The next meetings are to be scheduled.

IV Mechanism of Cooperation

For the purpose of implementing the Succession Agreement, the Government of the Republic of Serbia has taken a Decision on the establishment of the Coordination Body for the Implementation of the Succession Agreement (“Official Gazette of the Republic of Serbia”, nos. 51/06, 62/07 and 86/08).

Pursuant to para 2 of the said Decision, the Coordination Body reaches decisions in relation to the realization of the rights and obligations of the Republic of Serbia regarding the Succession Agreement and adopts platforms for negotiations on the implementation of the Agreement to be conducted by the authorized representatives of the Republic of Serbia. The Expert Group was also established by the same Decision and it performs professional duties in relation to the realization of rights and obligations of the Republic of Serbia under the Agreement.

Also, for the purpose of more efficient implementation of Annex B, the Inter-Departmental Working Group for the implementation of Annex B of the Succession Agreement (“Official Gazette of the Republic of Serbia”, nos. 79/2007 and 5/2010) was established by the Government’s Decision and is charged with preparing proposals to the Coordination Body of the Government and its Expert Group with regard to further distribution of diplomatic and consular property of the former SFRY, coordinating activities in relation to the handover of the property-legal documents and participating in the work and preparing documents for the work of the Joint Committee for the distribution of diplomatic and consular property of the former SFRY and performing duties in relation to the remaining legal and technical issues regarding the implementation of Annex B of the Succession Agreement.

With a view to successfully implementing the Agreement, the Standing Joint Committee was set up at the inter-state level comprising high representatives from each successor state. The Committee is also the forum for reviewing of issues that arise during its implementation. The

¹ from the mentioned 44 properties, Republic of Serbia was distributed 20 (consulates general in Sydney and Thessaloniki; residence in Canberra, Ottawa, Lisbon, Washington, Ankara and London; diplomatic mission in Prague, Helsinki, Athens, Rome, Budapest, Mexico, Berlin, two apartments in Trieste and allotment in Istanbul.)

High Representative of the Republic of Serbia at the Standing Joint Committee is professor Dr. Gaso Knezevic.

In the context of Annex B, a Joint Committee was established for the distribution of diplomatic and consular property of SFRY which held 13 meetings so far.

153. Have all pending issues following the dissolution of the State Union of Serbia and Montenegro been solved? Please provide details.

Following the dissolution of the State Union in 2006 Serbia and Montenegro have not resolved the issues of demarcation and dual citizenship.

The demarcation line between Serbia and Montenegro has not been defined yet. Serbia has initiated the settlement of the issue through the activities of the Trans-national Demarcation Committee, which should regulate the issues relating to the delimitation of the border, local border traffic and the opening of border crossings. Serbia has nominated its members for the Inter-State Diplomatic Commission and is ready for the beginning of negotiations.

Resolution of the dual citizenship issue is underway. Serbia advocates the completion of negotiations relating to the conclusion of the Agreement on the Dual Citizenship as soon as possible.

Please provide yourself with more details on the relations between Serbia and Montenegro in the answer 151 of the same chapter.

International obligations: obligations in relation to Council of Europe, the International Criminal Court

154. Please describe your obligations and commitments deriving from membership to the Council of Europe, the measures taken to date to honour these obligations and the envisaged actions for any pending obligations.

The Republic of Serbia (State Union of Serbia and Montenegro) assumed several obligations in relation to the Council of Europe relating to the harmonization of internal legal order with the standards of the Council of Europe in the domain of human rights, democracy and the rule of law. The monitoring of the Committee of Ministers and the Parliamentary Assembly of the Council of Europe was introduced so as to monitor the fulfilment of these obligations.

The obligations, *inter alia*, refer to the signing and the ratification of the Conventions of the Council of Europe in the domain of the protection of human rights and fundamental freedoms, prevention of torture, protection of the rights of minorities, the usage of regional and minority languages, local self-government, fight against crime and corruption etc.

In addition to this, obligations are related to the amendments to the legislation relating to the reform of judiciary, status of national minorities, public information, status of associations and non-governmental organizations, prosecuting war crimes and prevention of torture. They

also relate to the cooperation with the International Criminal Tribunal for the Former Yugoslavia, determining the destiny of the missing persons, information of the public about the crimes of Milosevic's regime, respecting the Resolution 1244, resolving the disputes regarding the future status of Kosovo in a peaceful way and renunciation of the use of force.

A significant progress has been made and almost all assumed obligations have been fulfilled in the last seven years following the reception to the Council of Europe. Serbia has become the contracting state for 73 Conventions and Protocols of the Council of Europe. The remaining 10 conventions the Republic of Serbia has signed are pending ratification. Numerous laws have been adopted and comprehensive legal and political reforms have been implemented or initiated- reform of judiciary, prohibition of discrimination, status of national minorities, non-governmental organizations, condemning the crime (Declaration Condemning the Crime in Srebrenica has been adopted, presenting a significant step relating to the activities aimed at facing the past, improvement of the cooperation in the region and with the EU) etc.

Due to the progress made in the fulfilment of obligations, the Committee of Ministers of the Council of Europe (CMCE) adopted a decision in June 2009 according to which the monitoring procedure of the Committee of Ministers of the Council of Europe relating to Serbia should be replaced with dialogue-based regular stocktaking of cooperation and progress in the fulfilment of statutory commitments and democratic processes.

In order to complete the monitoring process by the Parliamentary Assembly of the Council of Europe (PACE) and transfer to the post-monitoring dialogue phase, a special report (Roadmap) has been prepared on the progress and the fulfilment of obligations in the period starting with the last monitoring resolution of the Parliamentary Assembly of the Council of Europe (April 2009).

Outstanding commitments of Serbia, *inter alia*, relate to the full cooperation with the International Criminal Tribunal for the Former Yugoslavia, accession to a certain number of conventions of the Council of Europe, continuation of the reform of judiciary, fight against corruption, economic and organized crime, prosecuting war crimes and crimes against humanity before domestic courts, amendment of the Rules of Procedure of the National Assembly of the Republic of Serbia and provisions on the imperative mandate of deputies, greater tolerance for minorities and non-governmental organizations for the protection of human rights, i.e. journalists, inclusive of the efforts aimed at the achievement of the reconciliation in the region.

155. What steps have been taken to ratify and implement into domestic law the Rome Statute on the International Criminal Court? Are there any exceptions to the Rome Statute applied by Serbia including any bilateral immunity agreements granting exemptions from the jurisdiction of the International Criminal Court? Please provide examples.

The Law on Confirmation of the Rome Statute of the International Criminal Court entered into force in July 2001 (*Official Gazette of FRY- International Agreements*, number 8/01). The Law on Cooperation with the International Criminal Court entered into force on 11th

September 2009 (*Official Gazette of the RS*, number 72/2009). In November 2009 the Government has appointed the Representative and Deputy Representative of the Republic of Serbia in the Assembly of Member States of ICJ, as well as the legal advocate of the Republic of Serbia in the International Criminal Court.

There are no exceptions in relation to the immunities, which grant exceptions from the jurisdiction of the International Criminal Court.

156. Please provide an overview of your contribution to the implementation of peace agreements and to the promotion of reconciliation in the region.

Being guided by its strategic foreign trade priorities relating to the improvement of bilateral relations with its neighbours and the strengthening of cooperation and stability in the region, in the recent period Serbia has confirmed its constructive role relating to the reconciliation in the region. The President of the Republic of Serbia B.Tadic apologized for the crimes committed in Srebrenica. The National Assembly of the Republic of Serbia adopted a Declaration on Srebrenica Condemning the Crime and confirming the readiness of Serbia for the continuation of the reconciliation process amongst the peoples and the states of the region. Serbia, being the guarantor of the General Framework Agreement for Peace in Bosnia and Herzegovina (Dayton-Paris Agreement), observes the territorial integrity and sovereignty of Bosnia and Herzegovina.

Important progress was made in relations between Serbia and Croatia, which are described as crucial for the stability in the region and at a broader international level. The President of Serbia B.Tadic and the President of Croatia visited Paulin Dvor and Ovcara (Vukovar), places where Serbs and Croats had lost their lives in November 2010. They jointly paid homage to the victims confirming the readiness of both sides to give the priority in the cooperation to the joint future.

Serbia has made one more significant step towards the “relaxation” of its relations with Croatia by expressing readiness for mutual withdrawal of complaints before the International Court of Justice in The Hague and resolution of the issue in the out-of-court settlement, not excluding the proceedings against the perpetrators of war crimes. Serbia advocates resolving of all the issues through constructive dialogue and based on mutual understanding and partnership in its relations with Croatia and other neighbours.

The Republic of Serbia, being the legal successor, that is the state continuing the Federal Republic of Yugoslavia, that is Serbia and Montenegro, contributed significantly to the adoption and the amendment of the Agreement on Subregional Arms Control, confirming in a concrete manner the importance that is attributed to the regional, that is subregional cooperation in the area important and sensitive as this one. The Agreement was signed in Florence on 14 June 1996, in accordance with Article IV Annex 1-B of Dayton-Paris Framework Agreement for Peace in Bosnia and Herzegovina.

During the fourteen years of the implementation of the Agreement on Subregional Arms Control, the OSCE was directly involved in its negotiation and implementation jointly with the Parties to the Agreement, resulting in the limitation in the number of tanks, armored combat vehicles, artillery, combat aircraft and attack helicopters and simultaneous increase in

the transparency, trust and military stability in the region. The Republic of Serbia executed all commitments in due course decreasing the armament limited by the Agreement and having it in its possession by 3000 pieces. Over 300 inspections of arms control have been carried out in the Republic of Serbia and in the other Parties to the Agreement to date (Bosnia and Herzegovina, Republic of Croatia and Montenegro). The number of inspected facilities has been reduced from 160 (the number in the Yearly Information of the Federal Republic of Yugoslavia for 1996) to 37 facilities (reported in the Yearly Information of the Republic of Serbia for 2011). The number of reported inspecting points has been reduced from 100 to 28. In accordance with the Statements on the Voluntary Limitation in the Number of Military Persons, provided by the Parties on the 43rd meeting of the Subregional Consultative Committee on 3-4 November 2009 in Novi Sad, their number amounted to 44.000 members in the Republic of Croatia, 5.000 members in Montenegro, 16.000 members in Bosnia and Herzegovina and 119.605 in the Republic of Serbia on 31 December 2008.

During the Sixth Review Conference for the implementation of the Agreement on the Subregional Arms Control taking place on 3-4 July 2008 in Vienna, the Parties expressed their readiness to continue “the process of development of new models of the successful implementation of the Agreement” having the assistance of the Office of the Personal Representative of the OSCE Chairman-in-Office for Article IV. The readiness actually implies the beginning of the new phase relating to the transfer of the ownership to the Parties. In accordance with the agreed Action Plan it has been planned that the Parties to the Agreement undertake all functions relating to the implementation of the Agreement until the middle of 2014 when the Office of the Personal Representative of the OSCE Chairman-in-Office for Article IV will be closed.

Non-governmental organizations from Serbia participate in the Initiative for Establishing Regional Commission for Defining Facts about War Crimes and Other Grave Violations of Human Rights in the Area of former Yugoslavia in the period from 1991-2001 (REKOM). The said initiative was launched in May 2008 by non-governmental organizations, associations of victims and family members of the victims as well as individuals from all countries inheriting the former SFRY. The initiative aims at establishing regional, trans-national, independent commission with a role of establishing facts on war crimes, contributing to the facing of countries and societies in the region with the defined facts, revealing the destiny of the missing persons, acknowledging injustices inflicted on the victims, realization of rights of the victims and prevention of the repeating of war crimes and other grave violations of human rights.

The REKOM initiative promotes the creation of climate of solidarity with the victims, establishing trust amongst the members of different communities and cooperation of individuals and organizations from different countries inheriting the former SFRY. In this respect, reconciliation presents a long-term goal. Activities carried out within the REKOM Initiative, as well as the findings of REKOM upon the establishment of the Commission ought to make a contribution to it.

Cooperation with International Criminal Tribunal for the former Yugoslavia (ICTY)*

* NB: in case of need for confidentiality, a specific channel of communication can be devised for transmission of replies on ICTY cooperation

- *General*

157. How the cooperation with ICTY is organised both at political and operational level? Is there a specific legal framework? What is the procedure followed when the government receives requests for assistance (RFAs) from the ICTY? Which is the ministry/body in charge?

The existing forms of cooperation between the Republic of Serbia and the International Criminal Tribunal for the former Yugoslavia (hereinafter: ICTY or the Tribunal) involve the following: locating the indicted persons who are still on the run; delivery of the indicted; provision of documentation; enabling access to the archives of state authorities; relieving persons from the obligation of secrecy so that they could testify in the proceedings before the Tribunal; delivery of summonses and other writs to the persons situated on the territory of the Republic of Serbia; protection of witnesses and members of their families; surveillance over the indicted persons temporarily released from prison and situated in the Serbian territory, correspondence and direct contacts with the President, Prosecutor's Office, Secretariat and trial chambers of the Tribunal. The cooperation with the Tribunal also involves responding to the requests of the indictees and their defence attorneys.

Regulations regulating the cooperation

With the aim of fulfilling its international obligations and establishing full cooperation with ICTY, the Republic of Serbia adopted a series of regulations, out of which the most important are the following:

- **The Agreement with ICTY Office of the Prosecutor on the Opening of Prosecutor's Office in Belgrade (1996).** The Agreement has provided the representatives of ICTY Office of the Prosecutor with wide authorization regarding the access to witnesses, collection of evidence and information and movement and communication in general on the territory of the Republic of Serbia. Specifically, among other competences, ICTY Office of the Prosecutor was provided with the following: a) unrestricted freedom of movement across the country for staff, property, equipment and means of transport; (b) access to all public documentary materials relevant for more efficient work of the Liaison Office; (c) the right to talk to the victims and witnesses, to collect evidence and other useful information, including the work on the locations outside the Liaison Office, the Liaison Office shall put in all possible efforts in order to talk to the persons who are willing to give information; (d) the right to organize their own arrangements for the transfer of all the data and information it has collected.

- **The Act on Cooperation of Serbia and Montenegro with the International Criminal Tribunal for the Persons Responsible for Grave Breaches of the Humanitarian Law Perpetrated on the Territory of the Former Yugoslavia from 1991** (*Official Journal of FRY*, No. 18/2002 and 16/2003). This law regulates various aspects of the cooperation of the Republic of Serbia with the Tribunal, and the Republic of Serbia has undertaken to respect and implement the decisions of the Tribunal and accepted that the provisions of Tribunal's Statute are generally accepted rules of the international law.

- **The Act on Measures Regarding the Property of the Persons Indicted for War Crimes before the International Criminal Tribunal for the Persons Responsible for Grave**

Breaches of the Humanitarian Law Perpetrated on the Territory of the Former Yugoslavia from 1991 (*Official Journal of SCG* 15/2006).

- **The Act on Organization and Competence of State Bodies in the War Crimes Proceedings** (*Official Gazette of RS* No. 67/2003, 135/2004, 61/2005, 101/2007 and 104/2009). The Law provides for the establishment of the Office of the War Crimes Prosecutor in the Republic of Serbia and War Crimes Chamber of the District Court in Belgrade (as of 1 January 2010 the War Crimes Department of the Higher Court in Belgrade) which began their work in 2003, and which are competent for the proceedings in the cases regarding crimes against humanity and the international humanitarian law perpetrated on the territory of the former Yugoslavia, and the cases regarding the crime of helping the offender upon the committed criminal act, with regard to the abovementioned crimes.

- **The Act on Witness Protection Programme in Criminal Proceedings** (*Official Gazette of RS*, No. 85/2005). The Law, which came into force on 1 January 2006, prescribes in detail the conditions and procedures for providing protection and help to the participants in criminal proceedings and persons close to them, who are facing threats to life, health, physical integrity, freedom or property due to the given statements or information relevant for providing evidence in criminal proceedings. The adoption and implementation of this Law are of great importance for the war crimes proceedings.

- **Acceptance of the Proposal of the Agreement on Practical Modalities of Access to Archives of State Authorities**, signed in March 2006. The Proposal of the Agreement was accepted in the form of letters exchange between the President of the National Council and the Chief Prosecutor of ICTY in March 2006, and its implementation began upon the Decision of the Council of Ministers. Upon reaching agreement on practical details of access, in May 2006 investigators of the ICTY Office of the Prosecutor started to access the archives of the Ministry of Interior. To date, the archives that have been opened are the archives of the Ministry of Defence, Presidency of Serbia, Government of the Republic of Serbia, Security Intelligence Agency, Ministry of Interior and all other competent state authorities which may be a relevant source of information for the investigators of ICTY. To date, the access to the archives of state authorities of the Republic of Serbia went on without any disturbance or problems.

Authorities Competent for the Cooperation

The authorities which are primarily competent for the cooperation with the Tribunal in Hague are the Team for the Implementation of Action Plan to Complete the Cooperation with ICTY (Action Team) and the National Council for the Cooperation with ICTY. The Action Team is in charge of locating the fugitives, whereas the National Council is in charge of other areas of cooperation. In addition to the mentioned bodies, there are other state authorities which also have an important role in the cooperation with the Tribunal. Specifically, the competent authorities for the cooperation of the Republic of Serbia with the Tribunal are the following:

- **The National Council for Cooperation with the International Criminal Tribunal for the Former Yugoslavia** was established upon the decision of the Government of the Federal Republic of Yugoslavia taken on 17 April 2002. The National Council consists of the President of the National Council, elected among ministers, and the remaining four members of the Council are the representatives of the Ministry of Defence, Ministry of Interior,

Ministry of Justice and Ministry of Foreign Affairs. The National Council cooperates with ICTY with regard to the status of the indicted citizens of the Republic of Serbia and exercise of their rights; the status of witnesses who are the citizens of the Republic of Serbia, access of the International Criminal Tribunal (the Office of the Prosecutor, defence attorneys and trial chambers) to the content of the archives of state authorities of the Republic of Serbia and other sources which may be relevant for the cooperation with the Tribunal. The National Council submits to the Government of the Republic of Serbia the proposals of decisions on relieving witnesses from the obligation of keeping military, official or state secrets and the decisions on the consideration and delivery of documents labeled confidential to the Office of the Prosecutor, attorneys of the indicted before the Tribunal and trial chambers of ICTY. In addition, upon the request of attorneys of the defendants who voluntarily surrendered to the Tribunal, the National Council submits to the Government of the Republic of Serbia proposals of guarantees of the State referring to temporary release of the defendants from prison and their residing in the Republic of Serbia in the period of time designated by the Tribunal.

- The Office of the National Council for the Cooperation with the International Criminal Tribunal for the Former Yugoslavia was established upon the Regulation of the Government of the Republic of Serbia adopted on 1 June 2007. The Office of the National Councils is a special service of the Government of the Republic of Serbia in charge of providing expert and administrative support to the work of the National Council.

- The Team for the Implementation of Action Plan – at the session held on 20 July 2006, the Government of the Republic of Serbia adopted the Action Plan to Complete the Cooperation with ICTY. Within the implementation of the adopted Plan, a team for the implementation of the Action Plan was formed, presided by the Prime Minister of the Republic of Serbia. Coordinator of the Team is a War Crimes Prosecutor, who is responsible for the coordination of operational activities. Appropriate services of the Ministry of Interior, Security Intelligence Agency and Military Security Agency are also involved in the work on the implementation of the Action Plan. Within the implementation of the Action Plan, there are operational actions carried out on a daily basis with the aim of locating and arresting the remaining persons indicted by the Hague Tribunal, and full cooperation and coordination with the representatives of the ICTY Office of the Prosecutor have been achieved for the purpose of daily information exchange. Meetings of the Team are held regularly and the representatives of ICTY Office of the Prosecutor also attend them.

- Office of the War Crimes Prosecutor of the Republic of Serbia and the War Crimes Department of the Higher Court in Belgrade (until 1 January 2010 the War Crimes Chamber of the District Court in Belgrade) were established in 2003, based on the Law on Organization and Competence of State Bodies in the War Crimes Proceedings (*Official Gazette of RS*, No. 67/2003, 135/2004, 61/2005, 101/2007 and 104/2009). **The Office of the War Crimes Prosecutor of the Republic of Serbia** is competent for the proceedings regarding the crimes against humanity and the international humanitarian law perpetrated on the territory of the former Yugoslavia, as well as the crimes of helping the offender upon the committed criminal act, with regard to the abovementioned crimes. **The Department of the Higher Court in Belgrade** is competent in first instance for the proceedings in cases of the mentioned crimes, whereas the decision-making in second instance is within the competence of the War Crimes Department of the Appellate Court in Belgrade. The work of the Department of Higher Court is managed by the President of the Department of Higher Court, who is elected to the position by the President of the Higher Court in Belgrade among judges

who work within the Department of Higher Court, for the period of four years; the work of the Department of the Appellate Court is managed by the President of the Appellate Court, who is elected to the position by the President of the Appellate Court in Belgrade, among judges who work within the Department of the Appellate Court, for the period of four years.

In addition to the mentioned state authorities, a very important role in the cooperation with the Tribunal is also given to the National Security Council, Ministry of Foreign Affairs, Ministry of Justice, Ministry of Defence, Ministry of Interior and Security Intelligence Agency.

Procedure of Acting upon Requests

Requests for assistance submitted by the Prosecutor's Office, trial chambers and Secretariat of the Tribunal are delivered to the Republic of Serbia through the Ministry of Foreign Affairs, whereas the requests of the indictees and their defence attorneys are delivered through the Office of the National Council for the Cooperation with ICTY. The Ministry of Foreign Affairs and the Office of the National Council deliver these requests to the competent authorities whose assistance is expected. Through the state authorities which have forwarded the requests, the responses are delivered to the National Council for Cooperation with ICTY, which either takes the appropriate decisions autonomously or proposes that the Government take the appropriate decisions when necessary. Afterwards, the responses to the requests are delivered to trial chambers, Office of the Prosecutor and Secretariat of the Tribunal, and to the attorneys of the defendants. All responses are delivered through the Ministry of Foreign Affairs, except for the responses to the attorneys of the defendants, which are delivered through the Office of the National Council.

158. How much time is needed as an average to respond positively to a RFA? How many RFAs were answered positively in 2008-2010? How many since June 2010? Of these RFAs, how many summonses for witnesses? How many RFAs are still to be answered? What issues are they related to? Are there delays in answering them and if so, for what reasons? Are specific problems regarding the following encountered:

- i) banking and financial information;**
- ii) military documents, including archives and regular reports covering certain periods;**
- iii) any statistical data**

Generally, the time limit envisaged for answering the RFAs of the Tribunal and defence attorney teams is 30 days, and the Republic of Serbia respects the mentioned time limit. In certain situations, ICTY Office of the Prosecutor and defence teams demand that RFAs be answered within shorter time limit than the one mentioned, referring to the urgency of the proceedings.

In the period from 1 January 2008 to 31 December 2010, ICTY Office of the Prosecutor submitted the total of 305 RFAs to the authorities of the Republic of Serbia. The answers to 302 requests were given, whereas the remaining three requests, which have been submitted recently, are still in the process of realization. In addition, in the period from 1 June 2010 to 31 December 2010, ICTY Office of the Prosecutor submitted 61 RFAs to the authorities of the Republic of Serbia. The Republic of Serbia has provided full answers to 58 requests,

whereas the abovementioned three requests, which have been submitted recently, are still in the process of realization.

Again, out of the total of 455 RFAs submitted by the defence attorneys of the persons indicted before the ICTY, addressed to the authorities of the Republic of Serbia in the period from 1 January 2008 to 31 December 2010, to date the answers were given to virtually all requests, whereas the remaining ones, submitted recently, are in the process of realization. In the period from 1 June 2010 to 31 December 2010, the total of 72 requests for assistance of the defence teams of the indicted before the ICTY were submitted to the authorities of the Republic of Serbia.

In order to provide certain persons, who have in various ways obtained the information representing a state, official or military secret, with the possibility to appear as witnesses before the Tribunal and testify in certain proceedings, the Government of the Republic of Serbia has to come to certain conclusions. Namely, the Government of the Republic of Serbia comes to the conclusions upon which these persons are relieved from the obligation of keeping a state, official or military secret by specifically stated themes for the needs of testifying before ICTY, which prevents their possible prosecution before judicial authorities of the Republic of Serbia for criminal acts of *revealing a state secret, revealing an official secret or revealing a military secret*. From the establishment of the National Council for the Cooperation with ICTY to date, more than 600 persons have been relieved from the obligation of keeping a state, official or military secret, which enabled them to give their statements as witnesses in the proceedings before the Tribunal. It is important to mention that every person for whom ICTY Office of the Prosecutor or defence teams requested the relief from the obligation of secrecy was relieved and was thus able to testify in the proceedings before ICTY.

In addition, in the period from the beginning of 2008 to date, the Republic of Serbia has acted upon five received warrants from the ICTY for enforced bringing of witnesses due to their disrespect for ICTY, upon 102 requests for the delivery of summonses and upon 31 binding warrants for the witnesses in the proceedings before ICTY.

At present, there are no RFAs which have not been answered within the envisaged time limit.

159. How many cases have been transferred from ICTY to Serbia and could you specify how many of these cases were still in the investigative phase, how many were ready for prosecution and how many were ready for court hearings. In which stage of the proceedings are these cases now?

ICTY transferred three cases which were in the investigative phase to the domestic judicial authorities (cases *Zvornik, Scorpions and Ovčara*).

So far, there have been three separate proceedings before a domestic court against nine persons indicted for crimes against Bosniaks in the municipality of Zvornik in 1992. In the first proceedings against four indicted persons, by a verdict pronounced on 29 May 2008, which became valid on 8 April 2009, three persons were found guilty and sentenced to the

total of 24 years of imprisonment, whereas one of the indicted was acquitted. In the second proceedings against two indictees, by a first instance verdict pronounced on 22 November 2010, the two indictees were found guilty and sentenced to the total of 21 years of imprisonment. The third proceedings against three indictees who are prosecuted as direct perpetrators is currently ongoing.

Two proceedings were completed before a domestic court against six persons indicted for the murder of six Bosniaks in Trnovo in July 1995 (case *Scorpions*), and four indictees were found guilty and were sentenced to the total of 53 years of imprisonment.

Three proceedings were completed before the domestic judicial authorities against 20 persons indicted for crimes against Croatian prisoners on the farm *Ovčara* near Vukovar on 20 November 1991, and 15 indictees were found guilty and were sentenced to the total of 207 years of imprisonment.

According to the rule 11 *bis* of the Rules of Procedure and Evidence, the Tribunal transferred one case within its jurisdiction to the judicial authorities of the Republic of Serbia – the proceedings against Vladimir Kovačević, indicted for shelling of Dubrovnik. The proceedings against Kovačević were suspended because the accused was unfit to stand trial due to his mental condition, with the possibility of the continuation of the proceedings against him, should his health improve. In this respect, health of the mentioned person is continually monitored, and the Office of the Prosecutor of the Tribunal is informed on everything in detail. It should be pointed out that at the proposal of the Office of the War Crimes Prosecutor given on 12 March 2010, an order was issued on 30 April 2010 to designate neuropsychiatric expert evaluation of the accused, which was carried out on 26 July 2010 by the commission of experts from Neuropsychiatric Clinic of the Military Medical Academy. The opinion of the mentioned commission is that Vladimir Kovačević is unfit to participate in the criminal proceedings.

This confirms once again that the War Crimes Department of the Higher Court in Belgrade and the Office of the War Crimes Prosecutor of the Republic of Serbia show professionalism and technical capability to process the mentioned cases in accordance with internationally recognized standards. It should also be mentioned that a direct cooperation has been established between ICTY, War Crimes Department of the Higher Court in Belgrade and Office of War Crimes Prosecutor in other cases which are currently processed before domestic judicial authorities, whereas ICTY Office of the Prosecutor signed an agreement with the Office of War Crimes Prosecutor on direct access to the archives of the Tribunal's Office of the Prosecutor.

160. Do you have legislation and mechanisms to protect witnesses?

The Act on Organization and Competences of State Bodies in the War Crimes Proceedings (*Official Gazette of RS*, No. 67/2003, 135/2004, 61/2005, 101/2007 and 104/2009) provides for very important procedural innovations, such as the possibility of hearing witnesses and victims through video conference or international criminal legal aid, in case it is not possible to ensure their presence. This possibility has been used on several occasions in the work of the War Crimes Department of the Higher Court in Belgrade to date.

The possibility of using a new institute in the domestic criminal law at trials has been created – the institute of cooperating witness. It is stipulated that in the war crimes and organized crime proceedings, the status of a cooperating witness may be given, at the proposal of the Public Prosecutor, to the person who is indicted or against whom the proceedings are taken for some of the mentioned crimes, under the condition that there are mitigating circumstances based on which the person may be remitted from punishment or his/her punishment may be mitigated and in case that the importance of person's statement for detecting, providing evidence or preventing other crimes of a criminal organization proves more relevant than harmful consequences of the crime the person has perpetrated.

In addition, the measures of protection of a witness or damaged party designated by the Tribunal shall remain in force, and representatives of the Tribunal have the right to participate in all phases of the proceedings before a domestic court.

Prior to the adoption of special laws on witness protection in the region, certain non-governmental organizations had had a very important role in this area, as they had cooperated with police and judicial authorities with regard to the protection of certain witnesses and ensuring their presence at trials. In Serbia, this area has been regulated by the Act on Witness Protection Programme in Criminal Proceedings (*Official Gazette of RS*, No. 85/2005), which deals with the issue of specific measures of protection and protection programme functioning, and by the provisions of the Criminal Procedure Code (*Official Journal of FRY*, No. 70/2001 and 68/2002 and *Official Gazette of RS*, No. 58/2004, 85/2005, 115/2005, 85/2005-other law, 49/2007, 20/2009-other law, 72/2009 and 76/2010) related to the procedural protection of witnesses.

The Act on Witness Protection Programme in Criminal Proceedings came into force on 1 January 2006. The law prescribes in detail the conditions and procedures for providing protection and aid to the participants in criminal proceedings and persons close to them, who are facing threats to life, health, physical integrity, freedom or property due to the given statements or information relevant for providing evidence in criminal proceedings. Measures of witness protection in criminal proceedings (implemented by the Protection Unit, a specialized organizational unit within the Ministry of Interior): 1) physical protection of persons and their property; 2) change of residence or transfer to another institution; 3) concealment of identity and information on property and 4) change of identity. The law stipulates that the international cooperation in the implementation of witness protection programme shall be realized on the basis of an international treaty or reciprocity.

In addition to the provisions of the Act on Witness Protection Programme in Criminal Proceedings, the relevant provisions for this area are the ones of the Criminal Procedure Code, related to the procedural witness protection. Whenever circumstances indicate that a witness or persons close to him/her could be facing a threat to life, body, health, freedom or property of a larger size due to a public testimony, especially with regard to criminal offences of organized crime, corruption and other extremely serious crimes, it is stipulated that a court may adopt a decision granting the witness measures of special protection. Measures of special protection of witnesses involve examination of witnesses under the conditions and in the manner which ensure the concealment of their identity and measures of physical protection of witnesses in the course of the proceedings.

The Court adopts the decision on measures of special protection of a witness *ex officio* or upon the request of parties or witnesses themselves, which involve the following: a code which will be used instead of witness's name, order to delete from the records the name and other data which could indicate the identity of the witness, manner in which the examination is to be conducted and measures that are to be taken to prevent disclosure of identity, permanent or temporary residence of the witness and persons close to him/her.

Examination of a protected witness may be carried out in one or several of the following manners: exclusion of the publicity of the main trial, concealment of witness's appearance and testifying in a special room with the change of voice and appearance of the witness through technical devices for voice and image transmission.

The court is obliged to warn all persons present during the examination of the protected witness not to disclose the information on the witness, persons close to him/her, their permanent and temporary residence, transfer, bringing in, protection and place and manner of examination of the protected witness, as disclosure of these information shall be treated as a criminal offence.

161. What judicial cooperation and extradition mechanisms exist with the other countries which belonged to the former Yugoslavia?

- *Fugitives*

In the war crimes proceedings perpetrated in the former Yugoslavia, the issue of jurisdiction is especially relevant, because in most cases regarding war crimes, perpetrators, witnesses, crime scenes and places where investigations or trials are carried out are situated in at least two or three presently different states, which have mostly originated from the former SFRY.

It often happens that one of the states have initiated the proceedings, it possesses a large amount of evidence, witnesses are situated in the territory of the mentioned state, but the perpetrator is in another state, where he has fled in a large number of cases and subsequently obtained the nationality of the state for the purpose of avoiding prosecution in the state where the crime was committed and of which he/she is a national in a number of cases. The fact that some of the worst crimes go unpunished is a problem which is also caused by the abovementioned. This problem could be solved by extradition of the suspects. New constitutional and legal arrangements provide that Serbia shall no longer refuse to extradite the persons of Serbian nationality to other countries, provided that these obstacles cease to exist in the countries in the region (the principle of reciprocity). The problem of unpunishability due to fleeing to another country was partially solved by the Prosecutor's Office through the agreements with Croatia and Montenegro and good cooperation and mutual assistance of the countries in the region in prosecuting war crimes in these cases.

The work on improving international cooperation has led to signing of *Memorandum of Agreement on Realization and Advancement of Cooperation in the Fight Against All Forms of Serious Criminal Activities*, between the Republic Public Prosecutor's Offices and the War Crimes Prosecutor's Offices of the Republic of Serbia and the Prosecutor's Office of the Republic of Croatia (5 February 2005) and the Prosecutor's Office of Bosnia and Herzegovina (1 July 2005), signed by the competent Prosecutors of Serbia, Croatia and

Bosnia and Herzegovina. The next phase followed, when the *Agreement on Cooperation in the Prosecution of Perpetrators of War Crimes, Crimes Against Humanity, and Genocide* was signed between the War Crimes Prosecutor's Offices of the Republic of Serbia and the State Prosecutor's Offices of the Republic of Croatia (13 October 2006), *Agreement on Cooperation in the Prosecution of Perpetrators of War Crimes, Crimes Against Humanity, and Genocide* and *Agreement on Cooperation in the Prosecution of Perpetrators of Crimes Against Humanity and Other Rights Protected by International Law* with the Supreme State Prosecutor's Office of the Republic of Montenegro (31 October 2007). These agreements have ensured the exchange of evidence, documents and data which contribute to more efficient investigating, proving and punishing of all the perpetrators of war crimes.

As regards the extradition of the persons indicted and sentenced for crimes against humanity and other rights protected by international law, the Republic of Serbia has regulated the issue of extradition with the Republic of Montenegro by the Agreement between the Republics of Serbia and Montenegro on Extradition in 2009, and by the Agreement amending the mentioned agreement signed on 29 October 2010, which has been implemented since.

The Agreement amending the Agreement on Extradition provides that the extradition of a state's nationals shall be carried out in cases of criminal acts regarding organized crime, crimes against humanity and other rights protected by international law, corruption and money laundering for which both contracting states legally prescribe punishments of four year imprisonment or more, or measures involving apprehension, as well as in cases of other severe crimes, i.e. severe forms of crimes for which the punishments of at least five years of imprisonment or more are prescribed, or measures involving apprehension. As regards executing the sentence of imprisonment or measures involving apprehension, according to the mentioned agreement, the extradition shall be carried out in the cases of the mentioned crimes if the pronounced sentence of imprisonment or a measure involving apprehension, or a remaining part of it that should be executed, amounts to at least a year.

162. Please explain which institutions are operationally in charge of locating and arresting Ratko Mladic and Goran Hadzic?

The Team for the implementation of the Action Plan of the Government of the Republic of Serbia to Complete the Cooperation with ICTY (the Action Team) manages and coordinates numerous and various activities, i.e. investigation, which is carried out on the territory of the Republic of Serbia with the aim of locating and arresting Ratko Mladić and Goran Hadžić as soon as possible. The Action Team consists of the highest representatives of the executive and judicial powers of the Republic of Serbia and heads of security services of the Republic of Serbia.

In the field, the investigation is directly conducted by members of the Ministry of Interior of the Republic of Serbia (*within which a special organizational unit has been established under the name War Crimes Detection Service*), Security Intelligence Agencies and Military Security Agencies.

Apart from the members of the War Crimes Detection Service, investigation in the field also involves members of other organizational units within the Ministry of Interior of RS, among which are the following: competent police directorates with territorial jurisdiction, police stations and substations, Criminal Police Directorate, Directorate for Foreigners, Directorate of Traffic Police, National Criminal Technical Centre, national division of INTERPOL, Gendarmerie, Special Antiterrorist Unit and Counter Terrorist Unit.

In addition, field investigation also involves members of other state authorities of the Republic of Serbia, each within its own competence, among which are the following: Military Police Directorate of the Serbian Army General Staff, Tax Administration and Customs Administration of the Ministry of Finance of the RS, inspection services of the ministries of the RS and inspection services of cities and municipalities in the Republic of Serbia.

Representatives of the National Council for the Cooperation with ICTY are especially important for efficient investigation, together with the representatives of the Office of War Crimes Prosecutor.

The President and the Government of the Republic of Serbia express clear political will to complete the investigation as quickly as possible and to the effect they provide invaluable help and support to the security services which investigate in the field.

163. What steps have been taken to enforce the indictments against Ratko Mladic and Goran Hadzic?

- The Law on Cooperation with ICTY has been adopted
- In 2008, the Action Team of the Republic of Serbia to Complete Cooperation with ICTY issued an announcement on rewards for the information which would lead to locating and arresting Ratko Mladić (reward in the amount of 1 000 000.00 EUR) and Goran Hadžić (reward in the amount of 250 000.00 EUR). On 29 October 2010, the Government of the Republic of Serbia raised the sums for information which would lead to locating and arresting Ratko Mladić to 10 000 000.00 EUR, and to 1 000 000.00 EUR for information on Goran Hadžić.
- Arrest warrants for fugitives have been placed in the facilities of all state authorities and at border crossings of the Republic of Serbia.
- A new phone line has been opened (number 9191) available to the citizens 24h a day. This number may be dialled for the delivery of information on fugitives, with guaranteed secrecy of data on persons who deliver these information. All the information are checked by the competent state authorities.
- Over the past 12 months, on a number of occasions facilities have been searched in numerous locations for which there have been leads suggesting that they could be relevant for the apprehension of the indicted Ratko Mladić. In the course of these actions, a large amount

of material and potential evidence was seized, for which the Office of the Prosecutor of the Tribunal expressed interest.

- The mentioned searches were conducted in private houses, premises of companies and facilities of potential financiers of fugitives with the aim of cutting their network of supporters.
- Numerous pieces of information collected by the security services are checked on a daily basis
- The Office of the Prosecutor of the Tribunal is fully and timely informed on all the actions which have been taken, and representatives of the Office attend meetings of the Action Team
- At the session held on 29 October 2009, the Government of the Republic of Serbia adopted a conclusion by which it accepts the Information on the priority of delivery of the remaining two fugitive indictees and ordered that the state authorities determine as a priority to act upon all demands within their competence, made by the Team for the Implementation of Action Plan to Complete Cooperation with the Tribunal in order to intensify the search for the two fugitives indicted before the Tribunal
- The proceedings against ten persons accused of having aided Ratko Mladić hide (case *Mladić's "Harbourers"*) is currently ongoing before a competent court in Serbia. The accused have been acquitted by a first instance judgement, but it should be mentioned that the judgement is yet to become valid.
- The proceedings against six persons accused of having aided Stojan Župljanin hide is currently ongoing before a competent court.

164. What measures have been taken to follow-up on Brammertz' remarks/recommendations in his report to UNSC 18 June 2010 to invest further resources on the investigation on the whereabouts of Mladic and Hadzic and to expand the investigation and to follow-up on several different leads simultaneously?

Actions of the Government of the Republic of Serbia's Action Team for locating, arresting and transfer of the fugitives into the International Criminal Tribunal for the Former Yugoslavia are based on the recommendations of the ICTY's Chief Prosecutor and conclusions achieved at the Action Team's meetings, which are also attended by the representatives of the Tribunal.

During the last meeting between the ICTY's Prosecutor and members of the Action Team in Belgrade, which was organized in the wake of ICTY's Prosecutor's June Report, joint conclusions were reached in regard both to investing additional resources in the search and following multiple different leads simultaneously.

The Tribunal's Prosecutor is informed about all of the undertaken actions and is in position to have direct influence on them. He is also familiar with all the other elements and subjects that are participating, together with the Action Team, on this task.

The Government of the Republic of Serbia, following the decision of the Action Team, adopted on its session from 26 October 2010 the Decision to increase the value of the reward for information that would lead to locating and arresting of the two fugitives. The value of

reward for Ratko Mladić was raised from 1 000 000 to 10 000 000 EUR, whereas for Goran Hadžić the reward was raised from 250 000 EUR to 1 000 000 EUR.

In the period of November and December 2010, the following searches were undertaken in relation to the fugitives:

- On 2 November 2010, members of Gendarmerie searched ethno-village “Bajka” on Mountain Bukulja, near the City of Arandjelovac, following the order of the War Crimes Prosecutor. After the police search of three locations, conducted with the aim of locating Ratko Mladic, one individual was conveyed to police.
- On 8 December 2010, also following the order of the War Crimes Prosecutor, members of the of Republic of Serbia Ministry of Interior War Crimes Detection Service searched two locations where two houses of the fugitive Goran Hadzic’s close relatives are located. The aim of this action was search for proofs and leads that will indicate potential aides in his hiding and who could assist in locating and finding of Goran Hadzic.
- On 30 December 2010, following the order of the War crimes Prosecutor, members of the of Republic of Serbia Ministry of Interior War Crimes Detection Service conducted a search of the house belonging to the close friend to the ICTY’s indictee Goran Hadzic. The aim of this search was detection of proofs and leads that will indicate potential aides in his hiding and who could assist in locating and finding of Goran Hadzic.

Specifically, in regards to the implementation of recommendations of the Prosecutor Brammertz within the Ministry of Interior, technically oriented methods are to be intensified, such as surveillance over the electronic communication means and communication, surveillance over the movement of persons of interest in the search for fugitives and implementation of DNA analysis for the purpose of identification. In addition, a more comprehensive and efficient analytical processing of the collected data and documents is to be conducted, with the implementation of a specialized software for storage, processing and searching of documents.

On the other hand, Security Intelligence Agency is working on the implementation of a modified plan with the aim of expansion and concentration of the available operational capacities; improvement of mechanisms of multidisciplinary approach through the engagement of staff members of particular profiles; implementation of modified methodological and analytical approach in data processing and the consistent practical development of procedures of simultaneous and synchronized surveillance of operationally relevant indicators.

165. Is Serbia taking measures against persons/groups protecting or supporting fugitives? What are the measures in place to identify support network? Is there applicable legislation in this connection (aiding and abetting)?

- *Indictments*

As it has been mentioned above, the Act on Organization and Competence of State Bodies in the War Crimes Proceedings provides for the establishment of the Office of the War Crimes Prosecutor of the Republic of Serbia and the War Crimes Department of the Higher Court in Belgrade which are competent not only for the proceedings in cases regarding crimes against humanity and the international humanitarian law perpetrated on the territory of the former

Yugoslavia, but also in cases regarding the crime of aiding the offender upon the committed criminal act, with regard to the abovementioned crimes.

Security services put in maximum efforts in order to identify the persons who participate in networks of support to Ratko Mladić and Goran Hadžić, with the aim of locating the two fugitives.

For efficient investigation and imposing sanctions on persons aiding Ratko Mladić and Goran Hadžić, the existence of a number of legal regulations is very important, the provisions of which are to define the procedures in practice; some of these regulations are the Law on Cooperation of the Republic of Serbia with ICTY, Criminal Code, Criminal Procedure Code and the laws regulating the work of security services.

Pre-criminal proceedings are ongoing against five persons (case Nebojša Pavković and others), who are believed to have aided the indicted Ratko Mladić in the course of his hiding and avoiding arrest.

On 14 December 2010, the Office of the War Crimes Prosecutor issued the indictment against six persons on the basis of substantiated suspicion that they have participated in hiding the indicted Stojan Župljanin, who was arrested in the Republic of Serbia on 11 June 2008 and transferred to the Tribunal on 21 June 2008. Pre-criminal proceedings are ongoing against the persons suspected of aiding the mentioned person hide in other locations in Serbia (different from the ones mentioned in the indictment).

In the course of 2006, 10 persons were accused of hiding and aiding the indicted Ratko Mladić. On 10 December 2010, they were all acquitted, as the court decided that their guilt was not proven and as regards some of the crimes, limitations on criminal prosecution came into force. The case Mladić's "Harbourers" was transferred from general jurisdiction to the jurisdiction of the Office of the War Crimes Prosecutor, which expanded the ongoing investigation.

166. How many indictments were issued by ICTY for Serbian citizens and how many indictees were transferred to ICTY by the government (please provide date of indictment and transfer)?

Before the International Criminal Tribunal for the Former Yugoslavia proceedings have been initiated against 161 persons, 109 of whom are of Serbian nationality.

In accordance with the available data 57 accused are citizens of the Republic of Serbia.

The Tribunal demanded that the Republic of Serbia deliver 46 indictees, out of whom 43 persons were delivered to the Tribunal, one indictee (Vlajko Stojiljković) had passed away prior to his transfer and two are still on the run. Out of the mentioned number, 12 indictees were arrested in the Republic of Serbia, four indictees were arrested outside the territory of the Republic of Serbia, within cooperation of domestic security services and foreign security services, whereas 27 indictees voluntarily surrendered to the Tribunal.

Among the persons transferred to the Tribunal, there were two former presidents of the State, a former Prime Minister and Vice Prime Minister, three former chiefs of the General Staff of the Yugoslav Army, a former head of the State Security Service and a number of soldiers and police generals.

To date, 12 indictees have been arrested in the Republic of Serbia and these are:

1. Dražen Erdemović, a soldier in the 10th Sabotage Detachment of the Bosnian Serb army, who was involved in the crimes on the territory of Srebrenica and Žepa in July 1995. The indictment against Dražen Erdemović was confirmed on 29 May 1996, and he was arrested in the Republic of Serbia on 2 March 1996 upon which he was transferred to the Tribunal on 30 March 1996. By the judgement rendered on 5 March 1998, Dražen Erdemović was sentenced to 5 years' imprisonment, and as of 2000 he was granted early release.

2. Milomir Stakić, from 30 April 1992 to 30 September 1992 he served as the President of the Municipal Crisis Staff and President of the Municipal National Defence Council in Prijedor, Bosnia and Herzegovina. ICTY Office of the Prosecutor issued the indictment against Milomir Stakić on 13 March 1997, which was made public on 23 March 2001 when he was arrested in the Republic of Serbia and transferred to the Tribunal. By the judgement rendered on 22 March 2006, Milomir Stakić was sentenced to 40 years' imprisonment.

3. Slobodan Milošević, the President of Serbia from 26 December 1990 and the President of the Federal Republic of Yugoslavia from 15 July 1997 to 6 October 2000. The indictment against Slobodan Milošević for crimes committed in Kosovo and Metohija was issued on 24 May 1999. After he was transferred to the Tribunal by the authorities of the Republic of Serbia on 29 June 2001, he was also indicted for crimes in Croatia, on 8 October 2001 and crimes in Bosnia and Herzegovina, on 22 November 2001. The trial began on 12 February 2002, and the accused passed away in the Tribunal's Detention Unit on 11 March 2006, upon which the proceedings against him were formally terminated on 14 March 2006.

4. Predrag Banović, a guard at the Keraterm camp, which was formed by the forces of Bosnian Serbs towards the middle of 1992 in Prijedor, Bosnia and Herzegovina. ICTY Office of the Prosecutor issued the indictment against Predrag Banović on 21 July 1995, and the indictee was arrested in the Republic of Serbia on 8 November 2001, upon which he was transferred to the Tribunal on 9 November 2001. By the judgement rendered on 28 October 2003, he was sentenced to 8 years' imprisonment, and he was granted early release as of 9 September 2008.

5. Nenad Banović, against whom ICTY Office of the Prosecutor issued the indictment on 21 July 1995, was arrested in the Republic of Serbia on 8 November 2001, upon which he was transferred to the Tribunal on 9 November 2001. On 27 March 2002, Prosecutor's Office of the Tribunal submitted a request for withdrawal of the indictment against Nenad Banović, which was approved on 10 April 2002 and immediate release of Banović was ordered.

6. Ranko Češić, a member of the Bosnian Serb Territorial Defence in Grčica, the municipality of Brčko, Bosnia and Herzegovina. ICTY Office of the Prosecutor issued the indictment against Ranko Češić on 21 July 1995, and the indictee was arrested in the Republic of Serbia on 25 May 2002, upon which he was transferred to the Tribunal on 17 June 2002.

By the judgement rendered on 11 March 2004, Ranko Češić was sentenced to 18 years' imprisonment.

7. Franko Simatović was according to the indictment primarily involved in counter intelligence work in the State Security Service, and then moved into the newly formed Intelligence Administration of the State Security Service, where he served as the Commander of the Special Operations Unit. ICTY Office of the Prosecutor issued the indictment against Franko Simatović on 1 May 2003, and the indictee was arrested in the Republic of Serbia on 13 March 2003, upon which he was transferred to the Tribunal on 30 May 2003. The proceedings against him are currently ongoing.

8. Jovica Stanišić, Chief of the State Security Service of the Ministry of Interior of the Republic of Serbia. ICTY Office of the Prosecutor issued the indictment against Jovica Stanišić on 1 May 2003, and the indictee was arrested in the Republic of Serbia on 13 March 2003, upon which he was transferred to the Tribunal on 11 June 2003. The proceedings against him are currently ongoing.

9. Veselin Šljivančanin, Major in the Yugoslav People's Army; a security officer of the 1st Guards Motorized Brigade and Southern Operational Unit, in charge of the battalion of military police subject to 1st Guards Motorized Brigade during the armed conflicts on the territory of Vukovar, Croatia. ICTY Office of the Prosecutor issued the indictment against Veselin Šljivančanin on 7 November 1995, and the indictee was arrested on 13 June 2003, upon which he was transferred to the Tribunal. By the judgement rendered on 5 May 2009, he was sentenced to 17 years' imprisonment, and the judgement review procedure is currently ongoing.

10. Vladimir Kovačević, from the end of 1991 Commander of the Third Battalion of Trebinje Brigade of the Yugoslav People's Army. ICTY Office of the Prosecutor issued the indictment against Vladimir Kovačević on 27 February 2001, which was made public on 2 October 2001. The indictee was arrested in the Republic of Serbia on 25 September 2003, upon which he was transferred to the Tribunal on 23 October 2003. According to the rule 11 *bis* of the Rules of Procedure and Evidence of the Tribunal, the case of Vladimir Kovačević was transferred to judicial authorities of the Republic of Serbia in April 2007.

11. Stojan Župljanin, the Chief of the Security Services Regional Centre in Banja Luka; a member of Crisis Staff of the Autonomous Region of Krajina and Internal Affairs Advisor to the President of Republika Srpska, indicted on 14 March 1999 and arrested in the Republic of Serbia on 11 June 2008, transferred to the Tribunal on 21 June 2008. The proceedings against him are currently ongoing.

12. Radovan Karadžić, Chairman of the National Security Council of the Serbian Republic of Bosnia and Herzegovina (later Republika Srpska); President of the three-member Presidency of Republika Srpska from its establishment on 12 May 1992 until 17 December 1992, and subsequently the President of Republika Srpska and Supreme Commander of its armed forces. ICTY Office of the Prosecutor issued the indictment against Radovan Karadžić on 25 July 1995, and the indictee was arrested in the Republic of Serbia on 21 July 2008, upon which he was transferred to the Tribunal on 30 July 2008. The proceedings against him are currently ongoing.

Within the cooperation of domestic and foreign security services, the following persons have been arrested:

1. Milan Lukić, leader of the paramilitary unit *White Eagles* or *Avengers* which was active on the territory of the municipality of Višegrad during the armed conflicts in Bosnia and Herzegovina, arrested in the Argentine on 8 August 2005. ICTY Office of the Prosecutor issued the indictment against Milan Lukić on 26 October 1998, and the indictee was sentenced to life imprisonment by a first-instance judgement on 20 July 2009. Appeal proceedings in the case are currently ongoing.

2. Dragan Zelenović, a military police officer in Foča, Bosnia and Herzegovina, arrested in Russia in August 2005 and transferred to the Tribunal on 10 June 2006. ICTY Office of the Prosecutor issued the indictment against Dragan Zelenović on 26 June 1996, and the indictee was sentenced to 15 years' imprisonment by a judgement rendered on 31 October 2007.

3. Zdravko Tolimir, Assistant Commander for Intelligence Security of the Main Staff of the Bosnian Serb Army, allegedly directly reported to the Commander of the Main Staff of the Bosnian Serb Army, arrested on 31 May 2007 in Bosnia and Herzegovina, upon which he was transferred to the Tribunal in 2007. ICTY Office of the Prosecutor issued the indictment against Zdravko Tolimir on 10 February 2005, and the proceedings against him are currently ongoing.

4. Vlastimir Đorđević, Assistant Minister of the Ministry of Internal Affairs and Chief of the Public Security Department in the period from 1 June 1997 to 30 January 2001, arrested in Montenegro on 17 June 2007 and transferred to the Tribunal on the same day. ICTY Office of the Prosecutor issued the indictment against Vlastimir Đorđević on 2 October 2003, and the proceedings against him are currently ongoing.

167. How many were voluntary surrenders?

There were 27 indictees who voluntarily surrendered to the ICTY, and they are:

1. Blagoje Simić, the President of the Municipal Board of the Serbian Democratic Party and President of the Serbian Crisis Staff, future War Presidency, in the municipality of Bosanski Šamac, Bosnia and Herzegovina. He voluntarily surrendered on 12 March 2001. By the judgement rendered on 28 November 2006, he was sentenced to 15 years' imprisonment.

2. Pavle Strugar, in October 1991 appointed the Commander of the Second Operational Group of the Yugoslav People's Army to conduct military campaign against the Dubrovnik region. He voluntarily surrendered on 21 October 2001. By the judgement rendered on 17 July 2008, he was sentenced to 7 years' and 6 months' imprisonment, and due to his deteriorating health, he was released on 20 February 2009.

3. Miodrag Jokić, Commander of the Ninth Military Naval Sector of the Yugoslav Navy. He voluntarily surrendered on 12 November 2001. By the judgement rendered on 30

August 2005, he was sentenced to 7 years' imprisonment. He was granted the early release on 1 September 2008.

4. Dragoljub Ojdanić, from 24 November 1998 the Chief of the General Staff of the Yugoslav Army, and from 15 February 2000 the Minister of Defence of the Federal Republic of Yugoslavia. He voluntarily surrendered on 25 April 2002. By a first-instance judgement rendered on 26 February 2009, he was sentenced to 15 years' imprisonment. The appeal proceedings in the case are currently ongoing.

5. Nikola Šainović, from February 1994 to November 2000 Deputy Prime Minister of the Federal Republic of Yugoslavia. He voluntarily surrendered on 2 May 2002. By a first-instance judgement rendered on 26 February 2009, he was sentenced to 22 years' imprisonment. The appeal proceedings in the case are currently ongoing.

6. Momčilo Gruban, voluntarily surrendered on 2 May 2002, and according to the rule 11 *bis* of the Rules of Procedure and Evidence, the Tribunal transferred his case to the judicial authorities of Bosnia and Herzegovina.

7. Milan Martić, from 4 January 1991 until August 1995 he held various leadership positions; he was the President, Minister of Defence, Minister of Internal Affairs in the so-called "Serbian Autonomous Region (SAO) of Krajina" and the so-called "Republic of Serbian Krajina" (RSK). He voluntarily surrendered on 15 May 2002. By the judgement rendered on 8 October 2008, he was sentenced to 35 years' imprisonment.

8. Mile Mrkšić, a Colonel in the Yugoslav People's Army and Commander of the First Guards Motorized Brigade and Southern Operational Unit during the armed conflicts on the territory of Vukovar, Croatia. He voluntarily surrendered on 15 May 2002. By the judgement rendered on 5 May 2009, he was sentenced to 20 years' imprisonment.

9. Milan Milutinović, the President of Serbia and a member of the Supreme Defence Council of the Federal Republic of Yugoslavia from 21 December 1997 to 29 December 2002. He voluntarily surrendered on 20 January 2003. By a judgement rendered on 26 February 2009, he was acquitted of all charges.

10. Vojislav Šešelj, as stated, founded the Serbian National Renewal party in June 1990, which was subsequently renamed the Serbian Chetnik Movement. He was elected President of the Serbian Radical Party on 23 February 1991. He voluntarily surrendered to the Tribunal on 24 February 2003. The proceedings against him are currently ongoing.

11. Miroslav Radić, a Captain in the Yugoslav People's Army, commanded an infantry unit of the first battalion in the First Guards Motorized Brigade during the armed conflicts on the territory of Vukovar, Croatia. He voluntarily surrendered on 21 April 2003. By a first-instance judgement rendered on 27 September 2007, he was acquitted of all charges, and on 31 October 2007 ICTY Office of the Prosecutor officially announced that it would not lodge appeal against the judgement.

12. Željko Mejakić, voluntarily surrendered on 4 July 2003, and according to the rule 11 *bis* of the Rules of Procedure and Evidence, the Tribunal transferred his case to the judicial authorities of Bosnia and Herzegovina.

13. Mitar Rašević, voluntarily surrendered on 15 August 2003, and according to the rule 11 *bis* of the Rules of Procedure and Evidence, the Tribunal transferred his case to the judicial authorities of Bosnia and Herzegovina.

14. Ljubiša Beara, Chief of Security of the Main Staff of the Bosnian Serb Army, allegedly reported to the indicted Zdravko Tolimir. He voluntarily surrendered on 9 October 2004. By a first-instance judgement rendered on 10 June 2010, he was sentenced to life imprisonment.

15. Dragomir Milošević, from around March 1993 served as Chief of Staff to Stanislav Galić, Commander of Sarajevo Romanija Corps of the Bosnian Serb Army. He voluntarily surrendered on 3 December 2004. By the judgement rendered on 12 November 2009, he was sentenced to 29 years' imprisonment.

16. Vladimir Lazarević, from 1998 Chief of Staff of the Priština Corps of the Yugoslav Army; from 25 December 1998 Commander of the Priština Corps, and from 28 December 1999 Chief of Staff of the Third Army of the Yugoslav forces. He voluntarily surrendered on 3 February 2005. By a first-instance judgement rendered on 26 February 2009, he was sentenced to 15 years' imprisonment. The appeal proceedings in the case are currently ongoing.

17. Milan Gvero, Assistant Commander for Morale, Legal and Religious Affairs of the Bosnian Serb Army Main Staff, allegedly directly reported to the Commander of the Main Staff, Ratko Mladić. He voluntarily surrendered on 24 February 2005. By a first-instance judgement rendered on 10 February 2010, he was sentenced to 5 years' imprisonment.

18. Radivoje Miletić, Chief of Operations and Training and Deputy Chief of the Main Staff of the Bosnian Serb Army. He voluntarily surrendered on 24 February 2005. By a first-instance judgement rendered on 10 June 2010, he was sentenced to 19 years' imprisonment.

19. Momčilo Perišić, from around 26 August 1993 to 24 November 1998 served as Chief of the General Staff of the Yugoslav Army. He voluntarily surrendered on 7 March 2005. The proceedings are currently ongoing.

20. Mićo Stanišić, as stated, from 1 April 1992 served as Minister of the newly founded Serbian Ministry of Internal Affairs in Bosnia and Herzegovina (MUP RS). He voluntarily surrendered on 11 March 2005. The proceedings are currently ongoing.

21. Gojko Janković, voluntarily surrendered on 14 March 2005. According to the rule 11 *bis* of the Rules of Procedure and Evidence of the Tribunal, his case was transferred to judicial authorities of Bosnia and Herzegovina. By the judgement of the Court of Bosnia and Herzegovina rendered on 19 November 2007, he was sentenced to 34 years' imprisonment.

22. Drago Nikolić, Chief of Security in the Zvornik Brigade of the Bosnian Serb Army. He voluntarily surrendered on 15 March 2005. By a first-instance judgement rendered on 10 June 2010, he was sentenced to 35 years' imprisonment.

23. Vinko Pandurević, Commander of the Zvornik Brigade of the Bosnian Serb Army Drina Corps. He voluntarily surrendered on 23 March 2005. By a first-instance judgement rendered on 10 June 2010, he was sentenced to 13 years' imprisonment.

24. Ljubomir Borovčanin, Deputy Commander of the Special Police Brigade of the Republika Srpska Ministry of Internal Affairs. He voluntarily surrendered on 1 April 2005. By the judgement rendered on 10 June 2010, he was sentenced to 17 years' imprisonment.

25. Sreten Lukić, from May 1998 Chief of the Ministry of Interior of the Republic of Serbia for Kosovo and Metohija, and from June 1999 Assistant Chief of the Public Security Department and Chief of Border Administration of the Border Police in the Ministry of Interior. He voluntarily surrendered on 4 April 2005. By a first-instance judgement rendered on 26 February 2009, he was sentenced to 22 years' imprisonment. The appeal proceedings in the case are currently ongoing.

26. Vujadin Popović, Assistant Commander of Security on the Staff of the Drina Corps of the Bosnian Serb Army. He voluntarily surrendered on 14 April 2005. By a first-instance judgement rendered on 10 June 2010, he was sentenced to life imprisonment.

27. Nebojša Pavković, from 25 December 1998 until the beginning of 2000 Commander of the Third Army of the Yugoslav Army; from February 2000 until 24 June 2002 Chief of the General Staff of the Yugoslav Army. He voluntarily surrendered on 25 April 2005. By a first-instance judgement rendered on 26 February 2009, he was sentenced to 22 years' imprisonment. The appeal proceedings in the case are currently ongoing.

168. Please describe these problems and explain what is being done to overcome them.

All the information given under the answers to questions 157-167 confirm that the cooperation between the Republic of Serbia and the Hague Tribunal has reached a very high level, and that such cooperation has continually lasted for a long period of time and Serbia is fully decided to maintain this level of cooperation in the future.

Namely, the cooperation with the Tribunal with regard to the delivery of documentation and access to the witnesses and archives of state authorities, which are within the competence of the National Council for Cooperation with ICTY, has continually lasted for a long period of time and has been maintained at a very high level without any problems. This has also been confirmed in the regular six-month reports of the Tribunal's officials to the UN Security Council in 2009 and 2010, which point out that with regard to the cooperation between the Republic of Serbia and the Tribunal in the abovementioned aspects, there are no requests for assistance which have not been answered. In the latest report of the Chief Prosecutor of ICTY, which is to be presented in the UN Security Council on 6 December 2010, it is stated

that responses of the Republic of Serbia to the requests of the Office of the Prosecutor regarding the access to documents and archives were all timely and appropriate; a large number of urgent requests were processed in a satisfactory manner and there are no requests which have not been answered at present. It is also mentioned that the National Council for Cooperation with ICTY has maintained successful and effective coordination of work of different government bodies with the aim of meeting the demands of the Prosecutor's Office, and Serbian authorities have continued with the activities which enable witnesses to show up before the Tribunal, including the delivery of summonses. According to the observations of the Chief Prosecutor, Serbian authorities appropriately responded to the requests regarding witness protection, where the aid of the Office of the War Crimes Prosecutor had key importance. In addition, in one of his recent statements, Chief Prosecutor of ICTY said that the cooperation in these aspects is "great". The National Council for Cooperation with ICTY and other competent state authorities will maintain the cooperation with the Tribunal at the present level in all areas within its competence in the future as well.

In addition to all mentioned aspects, there are two facts which especially confirm the existence of indisputable political will to cooperate with the Tribunal. Firstly, on 31 March 2010 the National Assembly of the Republic of Serbia adopted the Declaration Condemning the Crime in Srebrenica, which is an act of extreme importance not only for Serbia but for the entire region as well. This declaration has once again confirmed that the Republic of Serbia is decided to face the recent past, so the act explicitly states that the National Assembly of the Republic of Serbia shall provide full support to the work of state authorities in charge of prosecuting war crimes and to the successful completion of cooperation with the International Criminal Tribunal for the Former Yugoslavia, where special importance is placed on locating and arresting Ratko Mladić for the purpose of trial before ICTY. Secondly, on 11 July 2010 the President of the Republic of Serbia attended the ceremony marking 15 years from the crime in Srebrenica at the Potočari Memorial Centre, stating on the occasion that Serbia would not give up the search for war crimes perpetrators, especially Ratko Mladić, so that people could continue living together. In addition, on 4 November 2010, together with the President of the Republic of Croatia, the President of the Republic of Serbia visited the Ovčara memorial site near Vukovar and Paulin Dvor. For the crime in Ovčara, proceedings against members of the Yugoslav People's Army before the Tribunal and court in Belgrade were completed with valid judgments.