Mandate of the Special Rapporteur on the independence of judges and lawyers

Ref.: OL SRB 3/2026
(Please use this reference in your reply)

24 March 2026

Excellency,

I have the honour to address you in my capacity as Special Rapporteur on the independence of judges and lawyers, pursuant to Human Rights Council resolution 53/12.

In this connection, I would like to bring to the attention of your Excellency's Government information I have received concerning a series of amendments and newly adopted laws in the Republic of Serbia, including the Law on the High Prosecutorial Council, the Law on the Public Prosecutor's Office, the Law on the High Judicial Council, the Law on Judges, and amendments to legislation relating to cybercrime. Several provisions of these laws may not be in line with international human rights standards related to the independence of the judiciary and the right to a fair trial, including: the impartiality of the prosecution service, the separation of powers, and the ability of judges and prosecutors to perform their functions free from undue influence, pressure or interference.

I refer to your Excellency's Government's international human rights obligations, specifically those related to the independence of the judiciary and the right to a fair trial, protected in both the Universal Declaration of Human Rights (UDHR), and the International Covenant on Civil and Political Rights (ICCPR), which the Republic of Serbia acceded to on 12 March 2001.

In this communication, I do not intend to offer an exhaustive analysis of all sections of each law. Instead, I focus on those provisions that, as they stand, may infringe on the role of judges and prosecutors and as such are not compatible with international human rights law and applicable standards. The above-mentioned laws were adopted as part of a comprehensive reform of the justice system. I regret to learn that the legislative changes were adopted under expedited procedures, limiting the time available for parliamentary scrutiny and meaningful consultation with civil society.

It is timely to recall that I have written your Excellency's government last year with concerns about statements and pressure on the prosecution service from the holders of high public office, in the context of the investigation into the alleged use of what is believed to be a sonic weapon against on one of the largest peaceful protests in Belgrade (SRB 3/2025). I thank you for the reply provided, however my concerns persist in view of this reform.

At the outset, I would like to recall that article 14 of the ICCPR states that everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The Human Rights Committee has explained that the requirement of independence refers, in particular, to the procedure and qualifications for the appointment of judges, and guarantees relating to their security of tenure until a mandatory retirement age or the expiry of their term of office, where such

exist, the conditions governing promotion, transfer, suspension and cessation of their functions, and the actual independence of the judiciary from political interference by the executive branch and legislature.[1]

Moreover, international standards guarantee judicial operators certain protections concerning conditions of service, such as the principle of irremovability mentioned above and a certain degree of immunity, in order to safeguard their ability to exercise their legal functions independently. I recall that "(…) Judicial immunity stems from the principle of judicial independence and aims at shielding judges from any form of intimidation, hindrance, harassment or improper interference in the performance of their professional functions. Without a certain degree of immunity, prosecution or civil claims could be used as a retaliatory or coercive measure to erode independent and impartial decision-making by diverting the court's time and resources from the execution of regular duties."[2]

The provisions and amendments analyzed below touch upon these standards.

Structure of prosecutorial governance

International standards in this area emphasize that "prosecutors play a fundamental role in the administration of justice" and make clear that "the rules governing the performance of their important functions should (...) contribute to a fair and equitable criminal justice system and to the effective protection of citizens against crime."[3]

The recent reform kept provisions of the Law on the High Prosecutorial Council (article 7) which include the Minister of Justice as an *ex officio* member of a body exercising decisive powers over appointments, evaluation, discipline and budgetary matters concerning prosecutors (articles 17 and 20).

At the same time the reform proposed supplements the provision of article 31, item 4 of the Law on Public Prosecution, prescribing the competences of the Supreme Public Prosecutor's Office in relation to international cooperation relevant for the Public Prosecutor's Office. The proposed supplement introduced the obligation of the Supreme Public Prosecutor's Office to seek consent from the Ministry of Justice for the performance of such activities.

Additional provisions in the law allow for the involvement of the executive branch through the Minister of Justice as ex-officio member, in disciplinary procedures, including against the Supreme Public Prosecutor, (article 17 and 20); in the selection of members of disciplinary bodies; and in decisions on appeal of disciplinary procedures; determination of undue influence. Such arrangements may allow for political pressure that could be exerted over prosecutorial decision-making.

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1 CCPR/C/GC/32, paragraph 19.
2 A/75/172, paragraphs 43 and 44.
3 Guidelines on the Role of Prosecutors, adopted at the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Havana (Cuba) from 27 August to 7 September 1990, UN Document A/CONF.144/28/Rev.1 p. 189 (1990), at: https://www.ohchr.org/en/instruments-mechanisms/instruments/guidelines-role-prosecutors, paragraph 5.

The participation of a member of the executive branch in prosecutorial governance risks undermining both the actual and perceived impartiality of the prosecution service, particularly where such a body exercises direct influence over prosecutors' careers. Furthermore, I recall that disciplinary grounds formulated in broad or vague terms may fail to meet the requirement of legal certainty and could be applied in a selective or arbitrary manner, thereby exposing prosecutors to pressure or retaliation.[4]

International standards provide that disciplinary proceedings against prosecutors must be conducted in full compliance with current international norms and standards. Guideline 21 of the **Guidelines on the Role of Prosecutors** states that "Disciplinary offences committed by prosecutors shall be provided for by law or regulations. Complaints against prosecutors alleging that they have acted clearly outside the scope of professional standards shall be dealt with promptly and impartially in accordance with the relevant procedure. Prosecutors shall have the right to a fair hearing. Decisions shall be subject to independent review." Guideline 22 states that "Disciplinary proceedings against prosecutors shall ensure an objective assessment and decision. They shall be determined in accordance with the law, the code of professional conduct and other established standards and ethics and in the light of the present Guidelines".[5]

I would like to point out that my predecessor, Special Rapporteur on the Independence of Judges and Lawyers, Gabriela Knaul, emphasized that "When assessing the independence and impartiality of prosecutors, it is important to examine both the structural independence of the prosecution service and its operational independence and impartiality, or functional independence. The lack of autonomy and functional independence can undermine the credibility of the prosecuting authority and undermine public confidence in the administration of justice".[6] For this reason, any involvement of the Executive must be carefully calibrated.

Hierarchical organization and case allocation within the prosecution service

Provisions of the Law on the Public Prosecutor's Office (articles 4, 14-17, 20-21, 23) appear to establish a strongly hierarchical model, granting extensive authority to senior prosecutors over subordinate prosecutors, including in individual cases and annual schedule of work. The unrestricted right of higher prosecutors to inspect any case file, combined with broad discretion to reassign or remove cases on grounds such as "efficiency" (article 17) or "other important reasons" (article 20) may weaken prosecutorial autonomy in individual decision-making. Provisions establish the obligation of the Supreme Public Prosecutor to report directly to Parliament (article 24), as well as the extensive supervisory role attributed to the Ministry of Justice (articles 42-49), which could contribute to the politicization of prosecutorial functions.

The reform further strengthened this hierarchical model by removing the Commission of the High Prosecutorial Council that considered objections against

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4 A/HRC/44/47/Add.1, para. 58 ; A/HRC/23/43/Add.1, para. 76.

5 Guidelines on the Role of Prosecutors, adopted at the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Havana (Cuba) from 27 August to 7 September 1990, UN Document A/CONF.144/28/Rev.1 p. 189 (1990), at: https://www.ohchr.org/en/instruments-mechanisms/instruments/guidelines-role-prosecutors, paragraphs 21 and 22.

6 A/HRC/20/19 paragraph 26

mandatory instructions for work and procedure in a particular case, on objections against decisions on substitution and against decisions on devolution. The amendments and supplements of the Law on Public Prosecutor's Offices proposed that the Higher Chief Public Prosecutor shall directly decide on these issues. The reform also allows for transfers and the extension of mandates for acting chief public prosecutors, reportedly allowing such positions to be held for up to three years (instead of one year).

I take the opportunity to recall that reports from this mandate have noted that while "policy guidelines and other general instructions for the prosecution service may be of importance to create consistency in the actions of the prosecution service"[7]; the Guidelines on the Role of Prosecutors state that States shall ensure that prosecutors are made aware of the ideals and ethical duties attributable to their public office[8]. My predecessor Gabriela Knaul also noted that prosecutors should also have "the right to request that instructions be issued in writing", and that these instructions should be "substantiated and open to scrutiny"; while recalling that the Standards of professional responsibility and statement of the essential duties and rights of prosecutors adopted by the International Association of Prosecutors, stress that the issue of instructions by non-prosecutorial authorities should be: "transparent, consistent with lawful authority and subject to established guidelines to safeguard the actuality and the perception of prosecutorial independence."[9]

With regard to prosecutorial appointments, I would like to emphasize that the Guidelines on the Role of Prosecutors explicitly state that States must ensure that "prosecutors are able to perform their professional functions without intimidation, hindrance, harassment, improper interference or unjustified risk of civil, penal or other liability."[10]

The reform amended article 69 of the Law on the Public Prosecution, which regulates temporary assignment. To ensure the more efficient work of the Public Prosecutor's Office and better management of the human resources of the Public Prosecutor's Office, the possibility of the repeated temporary assignment of a public prosecutor to another public prosecutor's office for a period of three years was introduced. The decision on temporary assignment shall be adopted by the High Prosecutorial Council and not the Supreme Public Prosecutor. Furthermore, it is foreseen that prior to the adoption of the decision on assignment, a prior opinion of the Chief Public Prosecutor to which the public prosecutor is being assigned must be obtained. For appointments and prosecutorial career matters, the use of highly subjective concepts such as "worthiness", "dignity" and "reputation" (articles 83 and 84), may lack legal certainty to guide selection and appointment to the post.

I note the potential of large-scale reassignment of judges and prosecutors brought about by the reform, in particular, in view of article 5 of the final provisions on the *Law on the Seats and Jurisdictions of Courts and Public prosecutors' offices*, which abolished some courts and prosecution offices, and created new ones. The article

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7 A/HRC/20/19, paragraphs 72 and 74.

8 Guidelines on the Role of Prosecutors, paragraph 2,

9 A/HRC/20/19, paragraphs 72 and 74; Standards of professional responsibility and statement of the essential duties and rights of prosecutors adopted by the International Association of Prosecutors on the twenty third day of April 1999, at: https://www.icj.org/wp-content/uploads/2014/03/IAP-Standards-of-professional-responsibility-duties-rights-prosecutors-instruments-1999-eng.pdf.

10 Guidelines on the Role of Prosecutors, paragraph 4

provides that "Until the date of entry into force of this Law, the High Judicial Council shall, in accordance with the provisions of the Law on Judges, effect the permanent transfer of judges and lay judges to the courts established under this Law. Until the date of entry into force of this Law, the High Judicial Council shall appoint acting Presidents of the courts established under this Law". The faculty to execute these transfers appears too broad as stated.

I recall there that former mandate-holders have highlighted the need to address the risk of transfers of judges, portrayed as legitimate decisions taken by the hierarchical superiors with a view to rationalizing the organization or strengthening effectiveness, which affect conditions of service, and may really be meant as a disguised sanction. This practice may extend to the prosecution service. These transfers, sometimes under the threat of dismissal or the imposition of disciplinary sanctions, may prevent or deter actions on particular cases or possibly punish and marginalize a judge or prosecutor regarded as too independent or unsympathetic to the Government's interests[11]; and as such, should be approached with careful consideration and the appropriate due process safeguards.

I would like to take this opportunity to highlight that, in its report specifically on the work of prosecutors, then Special Rapporteur Gabriela Knaul explained that: "Prosecutors should enjoy reasonable conditions of service, including tenure, where appropriate, and adequate remuneration and pensions commensurate with the important role they play in the administration of justice [...], that they enjoy security of tenure, and that, "bearing in mind the importance of the role of prosecutors, their dismissal should be subject to strict criteria." Her report further indicates that an adequate framework should be established to deal with internal disciplinary matters and complaints against prosecutors, who in all cases should have the right to appeal—including before the courts—all decisions concerning their careers, including decisions taken in disciplinary proceedings[12].

I recall that this mandate has previously recommended a competitive public selection process (for instance an examination) as an objective way to ensure the appointment of qualified candidates to the prosecution service. Both selection and promotion processes should be transparent in order to avoid undue influence, favouritism or nepotism, or the appearance thereof. Recruitment bodies should be selected on the basis of competence and skills and should discharge their functions impartially and based on objective criteria[13].

Current legal provisions provide restrictions on prosecutors' public expression and participation in public debate (articles 54 and 71-72), may create legal uncertainty and have a chilling effect on prosecutors' legitimate exercise of freedom of expression in matters of public interest.[14].

International standards, however, provide that, like other citizens, prosecutors are entitled to freedom of expression. In particular the Guidelines on the Role of Prosecutors establish that, "Prosecutors like other citizens are entitled to freedom of

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11 A/75/172, paragraphs 68 and 69.
12 A/HRC/20/19 paragraphs 66, 67 and 70
13 A/HRC/20/19, paragraph 62.
14 ICCPR art. 19; Guidelines on the Role of Prosecutors, paragraphs. 8, 22.

expression, belief, association and assembly. In particular, they shall have the right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights and to join or form local, national or international organizations and attend their meetings, without suffering professional disadvantage by reason of their lawful action or their membership in a lawful organization. In exercising these rights, prosecutors shall always conduct themselves in accordance with the law and the recognized standards and ethics of their profession."[15]

Judicial councils and political influence over judicial careers

With regard to the Law on the High Judicial Council, provisions grant Parliament a decisive role in the appointment of Council members (article 7), including mechanisms whereby a commission chaired by the President of the National Assembly may intervene if parliamentary elections fail (articles 43-51). Such provisions may expose the Council to political influence and undermine its ability to function as an independent guarantor of judicial independence. If an anti-deadlock mechanism is necessary, one should be chosen that would protect against politicization. The reform also allows for the possibility of reappointing court presidents for additional terms, departing from the current system of a single five-year mandate; as well as providing for the transfer of judges as mentioned above.

I recall that international standards provide that any appointment procedure must guarantee judicial independence, both institutional and individual. The Basic Principles on the Independence of the Judiciary stipulate that "(…) Any method of judicial selection shall safeguard against judicial appointments for improper motives."[16] Further, they note that "Persons selected for judicial office shall be individuals of integrity and ability with appropriate training or qualifications in law."[17] This mandate has repeatedly emphasized that a candidate's integrity, legal training and qualifications are crucial elements in the appointment of judges,[18] and has underlined the importance of "prioritizing non-political appointment procedures, strictly linked to professional quality and merit, and commitment to the values of the rule of law and the standards outlined in the Basic Principles on the Independence of the Judiciary."[19]

I take this opportunity to recall that judicial councils are key to "strengthening judicial independence, since by transferring administrative functions to a judicial council independent of the executive branch, external interference in the administration of justice is limited"[20]; and as such, should be safeguarded from undue influence and political pressure. Taking note of the broad powers provided to Parliament in the appointment of Council members, I recall that international standards provide that States must take specific measures to protect judges from any form of political influence in their decision-making, including by adopting clear procedures and objective criteria

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15 Guidelines on the Role of Prosecutors, paragraph 8

16 Basic Principles on the Independence of the Judiciary adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985, principle 10; A/75/172 (17 July 2020), para. 71.

17 Basic Principles on the Independence of the Judiciary, Principle 10.

18 A/HRC/44/47/ADD.2 (2 June 2020), para. 104, A/HRC/11/41 (24 March 2009), para. 27.

19 A/HRC/50/36/ADD.1 (11 May 2022), para. 112.

20 A/HRC/38/38, para 33.

for appointments, suspension and dismissal.[21]

Disciplinary regimes and pressure on judges

Several provisions of the Law on Judges raise questions regarding disciplinary liability and professional pressure (articles 7, 28, 31-33 and 96-105). Broad and subjective standards related to "dignity", "reputation" or "unworthy behaviour", coupled with wide discretion granted to ethics or disciplinary bodies, may be used in a selective manner and risk undermining legal certainty.

Furthermore, the possibility for the State to seek recourse against judges for compensation paid for damages "caused by a judge through unlawful or improper work" (article 7), as well as extensive reporting obligations concerning judicial delays (article 28), may contribute to a climate of pressure incompatible with the principle that judges must decide cases free from fear of personal or professional consequences. I recall that previous mandate-holders found that "(…) not all disciplinary measures adopted against them can be regarded as necessary in a democratic society to maintain public trust in the judiciary or the public prosecution. In some cases, these sanctions appear to be an expedient to punish the individual judge or prosecutor for the opinions expressed or the action taken in the exercise of his or her duties. In some circumstances, the severity of the sanction also has a chilling effect on other members of the judiciary or public prosecution, who may be discouraged from expressing critical views out of fear of being subjected to punitive measures".[22] In addition, allowing any person to file complaints against judges (article 101) without adequate filtering mechanisms, may increase the risk of harassment through vexatious or retaliatory complaints, particularly in polarized contexts.

The Basic Principles on the independence of the Judiciary provide that "A charge or complaint made against a judge in his/her judicial and professional capacity shall be processed expeditiously and fairly under an appropriate procedure. The judge shall have the right to a fair hearing. The examination of the matter at its initial stage shall be kept confidential, unless otherwise requested by the judge."[23] The Principles further note that "Judges shall be subject to suspension or removal only for reasons of incapacity or behaviour that renders them unfit to discharge their duties" (principle 18). "All disciplinary, suspension or removal proceedings shall be determined in accordance with established standards of judicial conduct" (principle 19). In addition, "Decisions in disciplinary, suspension or removal proceedings should be subject to an independent review. This principle may not apply to the decisions of the highest court and those of the legislature in impeachment or similar proceedings" (principle 20).

Furthermore, the standards indicate that disciplinary measures must be proportionate to the seriousness of the offence. I would like to take this opportunity to point out that a provision adopting this criterion can be found in the Universal Charter of the Judge of the International Association of Judges, which recommends that "disciplinary decisions should be reasoned and may be challenged before an

21 CCPR/C/GC/32, paragraph 19.
22 A/HRC/41/48 para. 91
23 Basic Principles on the Independence of the Judiciary, Principles 17-20.

independent body."[24]

Amendments to the Law on the Seats and Jurisdictions of Courts and Public prosecutors' offices

The amendments provided for the establishment of a new ordinary courts and prosecutor's offices in Belgrade, while shuttering others, may reshape territorial jurisdiction and the distribution of politically sensitive cases. The Third Basic Court in Belgrade and the Third Basic Public Prosecutor's Office in Belgrade, established under the Law on the Seats and Territorial Jurisdictions of Courts and Public Prosecutor's Offices, ceased to operate on the date of entry into force of this Law. Cases that had not been concluded before that date shall be assumed by the territorially competent courts and public prosecutor's offices established under this Law. These changes appear to disproportionately affect certain jurisdictions and may risk continuity in cases, in addition to the risks that the transfer of judges and prosecutors provided for in article 5 may bring and which are mentioned above.

The amendments also allowed for the reallocation of appointment authority for the Head of the High-Tech Crime Prosecution, transferring this competence from the Supreme Public Prosecutor to the Chief Public Prosecutor of the Higher Public Prosecutor's Office in Belgrade, despite the nationwide jurisdiction of the High-Tech Crime Prosecution. This measure risks concentrating sensitive prosecutorial powers in a single office and undermining functional independence in cases involving complex and politically sensitive crimes.

Amendments to the Law on Territory of the Courts also allowed the establishment of a Fourth Basic Court and corresponding prosecution office in Belgrade, particularly in relation to cases connected with the EXPO 2027 project[25]. Given the scale, financial value, and corruption risks associated with a project this size, this institutional restructuring may allow the new tribunal to function as a de facto special court.

In closing, I urge Your Excellency's government to consider bringing these new laws into line with international standards. I stand ready to engage in dialogue with Your Excellency's government on this very important matter and to provide any technical advice it may require in ensuring the proposal is fully compliant with international human rights obligations.

In a spirit of cooperation and dialogue, and in line with the mandate entrusted to me by the Human Rights Council, I would be grateful for any information and comments your Excellency's Government may wish to provide regarding the above-mentioned concerns. In particular, I respectfully invite clarification on the measures taken to ensure that the newly adopted laws comply with international standards on the independence of judges and prosecutors, including:

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[24] The Universal Charter of the Judge, article 7, at https://www.iaj-uim.org/iuw/wp-content/uploads/2018/06/IAJ-Booklet-Universal-Charter_5-languages.pdf.

[25] The EXPO 2027 Belgrade project is a 200+ hectare urban development in Surčin, scheduled for May 15 – August 15, 2027, under the theme "Play for Humanity". It features 230,000 sqm of exhibition, residential, and commercial space, including a new National Stadium, aimed at fostering sustainable economic growth and upgrading infrastructure with a 100% post-event utility plan.

1. Any further information on this reform.

2. Please provide information on the safeguards implemented to prevent executive or political influence in judicial and prosecutorial councils, and in judicial and prosecutorial careers in Serbia.

3. Please provide information on the measures taken to ensure that disciplinary grounds and procedures for both judges and prosecutors are clearly defined, objective and applied in a manner consistent with judicial and prosecutorial independence and impartiality standards.

4. Please provide information on the guarantees currently in place in Serbia to protect individual prosecutors and judges from undue hierarchical pressure in the handling of cases.

This communication, as a comment on pending or recently adopted legislation, regulations or policies, and any response received from your Excellency's Government will be made public via the communications reporting website after 48 hours. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

Please accept, Excellency, the assurances of my highest consideration.

Margaret Satterthwaite
Special Rapporteur on the independence of judges and lawyers