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HIGH PROSECUTORIAL COUNCIL

DECISION

NO. 51, Date 19.03.2019

ON ADOPTION OF THE REGULATION ON “THE CRITERIA AND PROCEDURES FOR PROMOTION OF PROSECUTORS TO THE SPECIAL PROSECUTION OFFICE”

Pursuant to Article 148/dh, 149/a of the Constitution of the Republic of Albania, Articles 47, 48 and 163 of the Law no. 97/2016 “On the Status of Judges and Prosecutors in the Republic of Albania”, Article 189 of the Law no. 115/2016 “On the Governance Institutions of the Justice System”, and Articles 2, 7, 12 and 57 of the Law no. “On the Organization and Functioning of the Institutions for Combating Corruption and Organized Crime”, the High Prosecutorial Council

DECIDED:

Ministry of Justice,
Boulevard “Zogu I”
Tirana, Albania
Tel: +355 4 22 40 333
E-mail: info@euralius.eu
Web: www.euralius.eu



1. Adoption of the Regulation “On the criteria and procedures for promotion of prosecutors to the Special Prosecution Office against corruption and organized crime”, in accordance with the text attached to this decision.
2. This decision shall enter into force upon publication in the Official Journal.

CHAIRPERSON
GENT IBRAHIMI

REGULATION

ON ADOPTION OF THE REGULATION ON “THE CRITERIA AND PROCEDURES FOR PROMOTION OF PROSECUTORS TO THE SPECIAL PROSECUTION OFFICE”

CHAPTER I

GENERAL PROVISIONS

Article 1

Purpose

The purpose of this Regulation is to set the criteria and procedures for the promotion of prosecutors to the Special Prosecution Office against Corruption and Organized Crime (Special Prosecution Office) based in an objective, transparent and comprehensive process, with the intention of establishing the Special Prosecution Office able to exercise its functions in an effective, impartial and independent manner.

Article 2

Definitions

1. Expressions used in this Regulation have the following meaning:

- a) “Day” means a calendar day. If the last day is holiday, then the deadline shall be postponed for the following working day.
- b) "Council" means the High Prosecutorial Council.
- c) “Special Prosecutor” means a prosecutor in the Special Prosecution Office against Corruption and Organized Crime.

ç) “Promotion” means the move from:

- i. a position of the general jurisdiction prosecution offices, to a position to the Special Prosecution Office;
- ii. a position as prosecutor at the Special Prosecution Office, to the Position of the Chief Special Prosecutor;

d) “Committee” means the Ad Hoc Committee with five members for the evaluation of candidates for prosecutors at the Special Prosecution Office.

dh) “SPAK” means the Special Structure for Anti-Corruption and Organized Crime consisting of the Special Prosecution Office and the National Bureau of Investigation.

e) “Candidate” is the prosecutor who expresses the interest to fill a vacant position at the Special Prosecution Office or asks to be selected as its Chief Prosecutor.

ë) “High Qualification” shall mean the maximal evaluation given to the candidate in accordance to the scoring provided for in Article 8 of this regulation.

f) “Average qualification” shall mean the average evaluation given to the candidate in accordance to the scoring provided for in Article 8 of this regulation.

g) “Low qualification” shall mean the minimal evaluation given to the candidate in accordance to the scoring provided for in Article 8 of this regulation.

gj) “Vetting Institutions” means the Independent Qualification Commission and Appeals Chamber.

h) “Confirmed after vetting” shall be considered:

- i. the candidate that has been confirmed in office by the Independent Qualification Commission, its decision has not been appealed within the legal timeline; or
- ii. after an appeal, the candidate that was confirmed in office by the Appeals Chamber.

- i) “Expert” shall mean any prosecutor that has a high degree of knowledge or experience, recognized by a public institution, related to the ethical and moral special criteria provided for in Article 9 of this regulation, for being engaged in teaching, legal drafting, participation in expert committees attached to national or international organizations, long-term trainings or publications in areas related to the scope of activity of the Special Prosecution Office provided for in criminal procedural law.
- j) “Special investigative techniques” are the lawful investigative techniques of investigation under the Criminal Procedure Code or other legal basis, which are not authorized to be used in all sorts of criminal offences such as simulated action, infiltration in criminal groups, controlled delivery, witness protection or other techniques such as search warrants in cases of investigation of corruption cases, obtaining foreign-located evidence through letters rogatory, obtaining computer evidence, use of technical forensic evidence such as DNA, use of forensic accounting, use of wire intercepts, obtaining and using information from foreign countries, computerized evidence, or cooperation resulting from collaborators of justice or negotiation in pleas of guilty, etc..
- k) “Legally and factually complex cases” are considered those cases in which the subject of investigation is a high level official, which have a high number of defendants or a high number of criminal offences, which bring serious consequences for the life and assets of the people and have big economic damage, which result in confiscation of assets of high value etc..
- l) “Proactive investigation” is any investigation of a criminal offence where the process of evidence collection is initiated when doubts of possible commission of a criminal offence have been raised, as well as investigations started by the prosecutor when there are no criminal reports or any investigation that is obviously more expanded than the original report.
- ll) “Successful investigation“ is any investigation that has been sent to the trial and where the defendant has been found guilty or the prosecutor shows that his/ her actions have been exhaustive regardless of the court decision.

m) "Successful request for confiscation" shall be considered any request of the prosecutor accepted by the court or, even if the request has not been accepted by the court, it is assessed that the actions of the prosecutor have been exhaustive and correct regardless of the court decision.

n) "Anti-mafia Law" is the law no. 10192 dated 3.12.2009 "On preventing and striking at organized crime, trafficking, corruption and other crimes through preventive measures against assets."

Article 3

General rules for promotion to special prosecutor

1. The Committee shall conduct an initial review of all applicants to determine if they meet the minimum conditions provided for in the law for promotion to Special Prosecutor.
2. The Committee shall propose to the Council the disqualification of the candidates who don't meet the legal conditions.
3. The Council shall disqualify any candidate that does not meet the legal conditions and shall publish the official list of candidates that continue the process of evaluation.
4. After the decision of the Council on the publication of the official list of candidates, the Council forwards to the vetting institutions the names of the candidates that haven't undergone the vetting process yet.
5. The Committee shall continue with the evaluation of the candidates. It shall request any documents pertinent for the evaluation from state institutions. The Council shall conduct the interviews with the candidates.
6. The Committee shall use the documents, motivation letters to make the respective proposals of evaluation of each candidate to be a Special Prosecutor, based on:
 - (i) previous professional evaluations; and
 - (ii) ethical and professional criteria as provided for in Article 7 of this Regulation.

7. In any case, for the final evaluation of the candidates, except the proposal of the Committee, the Council shall also take into account the personal and professional engagement of the candidate as an expert, and also the interview with the candidates;
8. In case that after the evaluation for the ethical- professional criteria, there are candidates with equal scores, the Council shall list the candidates based on the seniority as magistrates or lawyers.
9. The Committee shall, for each candidate and for each criterion provided for in Article 7, propose one of the levels of evaluation provided for in Article 8 of this Regulation.
10. The Council shall make the final evaluation and ranking of the candidates in accordance with Article 16. The evaluation and ranking of the candidates shall be made with majority vote of the Council.
11. The Council shall promote the candidates after they have successfully passed the reevaluation process.
12. The establishment of the Special Prosecution Office shall be announced by Council decision.
13. After the establishment of the Special Prosecution Office, the Council shall invite the prosecutors of this prosecution office to express their interest for the position of the Chief Special Prosecutor.
14. In case of a conflict between this article and the more specific articles regulating each step, the more specific article shall prevail.

CHAPTER II

LEGAL CONDITIONS AND CRITERIA OF EVALUATION

Article 4

Legal conditions for Promotion to Special Prosecutors

The legal criteria that the prosecutor applying for promotion at the Special Prosecution Office must fulfill:



1. Be a prosecutor for the Republic of Albania and not have a disciplinary measure in force.
2. Have exercised the function of a prosecutor for not less than 10 (ten) years, including experience as a seconded prosecutor;
3. Comply with the security conditions, provided for in Article 6 of the Law No. 95/2016 “On the Organization and Functioning of Institutions for Combatting Corruption and Organized Crime”, including having submitted valid consent forms for periodic control of their bank accounts and personal telecommunications signed by the candidate and their close family members.
4. Have passed the reevaluation process by a decision of final form.

Article 5

Performance Evaluation Criteria

The criteria for the evaluation of performance shall include the last two performance evaluations of the candidate.

Article 6

Levels of the performance evaluation criteria

The levels of evaluation for the criteria of performance, based on the last two performance evaluations of the candidate, as provided for in Article 5 are the following:

- a) five points for the candidates evaluated "Very good" in the last two performance evaluations;
- b) four points for candidates evaluated "Very Good" and "Good" in the last two performance evaluations;
- c) three points for candidates who are evaluated "good" in the last two performance evaluations;
- ç) two points for candidates that are evaluated "good" and "sufficient" in the last two performance evaluations;

d) one point for candidates that are evaluated “sufficient” in the last two performance evaluations;

Article 7

Special ethical and professional criteria for promotion as a Special Prosecutor

1. The special ethical and professional criteria for promotion as Special Prosecutor are:

- a) Skills demonstrated in: investigation including use of special investigation techniques and proactive approach in investigation; in prosecution, including the wording of indictment and representation in court; and in confiscation of proceeds of criminal offense and assets, according to the Criminal Procedure Code or under anti - mafia law; and
- b) Determination shown in overcoming difficulties, pressures and risks and special professional integrity including professional ethics, honesty, impartiality, security and confidentiality shown by the candidate.

Article 8

Evaluation levels for special ethical and professional criteria

1. The assessment levels for the ethical and professional criteria provided for in Article 7 shall be:

- a) "High Qualification", which shall be evaluated with 8 - 10 points;
- b) "Average qualification” which shall be evaluated with 4 -7 points;
- c) "Low qualification", which shall be evaluated with 1 - 3 points.

Article 9

Demonstrated skills in investigation, prosecution and confiscation

1. The candidate shall be rated with "High Qualification" for this criterion when one of the following facts has been verified.

- a) Has successfully investigated not less than five legally or factually complex criminal cases, including the use of advanced methods of investigation and proactive approach;
- b) Has been a lead prosecutor or sole prosecutor, and/or has represented prosecution at appeal level/ Supreme Court, in not less than five judicial proceedings for which decision of conviction have been issued for corruption, organized crime, money laundering or other complex criminal offenses;
- c) has been part of a group of prosecutors, at first instance or at appeal level, in not less than ten judicial proceedings in which a conviction decision has been issued for corruption, organized crime, money laundering or other complex criminal offenses;
- ç) has successfully sought the confiscation of assets that are the products of criminal offences, in not less than five instances and/or the value of the confiscated assets has been high or has successfully sought the forfeiture of assets using the anti-mafia law in not less than five instances and/or the value of the confiscated assets has been high.

2. The candidate shall be rated with "Average Qualification" for this criterion when one of the following facts has been verified. The candidate:

- a) Has successfully investigated not less than three legally or factually complex criminal cases including the usage of advanced methods of investigation and proactive approach;
- b) Has been a lead prosecutor or sole prosecutor, and/or has represented prosecution at appeal level/ Supreme Court, in less than five judicial proceedings for which decisions of conviction have been issued for corruption, organized crime, money laundering or other complex criminal offenses;
- c) has been part of a group of prosecutors, at first instance or at appeal level, in less than ten judicial proceedings in which a conviction decision has been issued for corruption, organized crime, money laundering or other complex criminal offenses;

ç) has successfully sought the forfeiture of assets that are products of criminal offences, in less than 5 instances and/or the value of the confiscated assets has been average or has successfully sought the forfeiture of assets using the anti-mafia law in less than 5 instances and/or the value of the confiscated assets has been average.

3. The candidate shall be rated with "Low Qualification" for this criterion when one of the following facts has been verified. The candidate:

a) Has successfully investigated at least one legally or factually complex criminal case including the use of advanced methods of investigation and proactive approach or has tried to investigate complex cases and use advanced investigation techniques but has been unsuccessful;

b) has not been part of judicial proceedings in which a conviction decision has been issued for corruption, organized crime, money laundering or other complex criminal offenses;

c) has at least in one instance helped another prosecutor, who has successfully sought the confiscation of the assets that are the products of criminal offences, and/or the value of confiscated assets has been low, or has at least in one instance, helped another prosecutor who has successfully sought the confiscation of assets using the anti-mafia law, and/or the value of the confiscated assets has been low.

4. The Committee shall review the procedural acts of the candidate for those cases and the respective court acts to determine whether the product of his/her work is legally complete, accurate in facts, well organized and well presented. The Committee evaluates in a special manner those features of the work of the candidates that are essential and relevant to the skills demonstrated in investigation, use of special techniques, prosecution, representation at the court and confiscation of the products of criminal offences in accordance to the Criminal Procedure Code and assets in accordance to anti-mafia law.

5. In order to better assess the abilities shown in accordance to this Article, the Committee shall also consider any other case investigated by the candidate during his/her career, which has drawn the attention of the public opinion.

Article 10

Integrity and Demonstrated Determination in Overcoming Difficulties, Pressures and Risks

1. The candidate shall present to the Committee situations/ instances when they have overcome significant difficulties or pressures during investigations or prosecution allowing the investigation or prosecution to go to trial. The candidate shall clearly explain the difficulties and the actions he/she took that contributed to the success of the investigation or prosecution.
2. The candidate shall present to the Committee situations/ instances when they have shown high level of professional ethics by remaining impartial, honest and keeping confidentiality of the investigative data, regardless of the significant difficulties that he/she has faced.
3. The Committee shall rate the candidates with “High Qualification, “Average Qualification” or “Low Qualification” base on the amount and quality of the situations/ instances that have put into test the candidate’s determination and integrity.
4. The Committee shall review the procedural acts of the candidate and the respective court acts, to evaluate his/her determination and integrity. The Committee shall evaluate in a special manner those features of the work of candidates that are essential and relevant to demonstrated determination in overcoming difficulties, pressures and risks.

CHAPTER III

PROCEDURE FOR EVALUATION

Article 11

Ad hoc Committee

1. An Ad Hoc Committee shall be established by the Council for the preliminary evaluation of the candidates for prosecutor at Special Prosecution Office.

2. The Ad Hoc Committee shall be composed of 5 members of the High Prosecutorial Council, of which 3 prosecutor members and 2 lay members. The members of the Career Development Committee shall be *ex officio* members of the ad hoc Committee. Members of the Ethics and Professional Activity Evaluation Commission shall be *ex officio* excluded from participating in the Ad hoc Committee. The other two members of the Ad hoc Committee, one of which is a prosecutor and the other a lay member, shall be elected by lot from the remaining members of the Council.
3. The Chairperson of the Council assigns the Chairperson of the Ad Hoc Committee.
4. The Chairperson of the Ad Hoc Committee presents to the Council the results of the preliminary evaluation of the candidates;
5. The activity of the Committee shall end with the completion of the process of establishment of the Special Prosecution Office.

Article 12

Initial Review

1. Within 7 days of entry into force of this Regulation the Committee shall review the fulfillment of the legal criteria for promotion.
2. The Chairperson of the Committee shall report the names of applicants not meeting the minimum conditions at the following Council meeting, which shall be held as soon as possible. The Council approves the list with the names of candidates that fulfill the legal criteria, alphabetically ordered.
3. The Committee verifies with the Independent Qualification Commission and the Appeals Chamber, the status of the reevaluation process for the candidate, in accordance to the Law No 84/2016 “On the transitional re-evaluation of judges and prosecutors in the Republic of Albania”
4. The Council shall forward to the Independent Qualification Commission for priority vetting, the names of the applicants that fulfill the legal conditions and haven’t undergone yet vetting, and shall forward to the Appeals Chamber, the names of the candidates for which in the framework of the reevaluation process, an appeal has been filed with this institution and asks to finalize the vetting procedures with priority.

Article 13

Evaluation Process by the Committee

1. After the Council determines the candidates who meet the minimum conditions under Article 4, the Committee shall evaluate them for the criteria provided for in Articles 5 to 7 of this Regulation according to the assessment levels provided for in Articles 6 and 8 of this Regulation.
2. The members of the committee shall review all the documents submitted by the candidates and the standards provided for in Articles 5-10. These standards shall include the application by the candidates, previous performance evaluations, previous work products, declarations of motivation or other attached documents.
3. The Committee approves the level of evaluation for each criterion of each candidate by a simple majority and proposes to the Council the evaluation level for each candidate, in accordance to Annex A of this Regulation. The minority member/members of the Committee may propose and reason to the Council a different level of evaluation.
3. The rapporteurs shall reason each part of the evaluation form and shall describe the facts in which the reasoning has been based. All documents supporting the proposal shall be attached.

Article 14

Timelines of the Evaluation by the Committee

1. The Committee requests from the candidates to identify their work product and the cases that support their application, in accordance with the criteria listed in Articles 9. The candidates shall have a seven-day deadline to identify those documents and make them available to the Committee.
2. The Committee shall finalize the evaluation of candidates in accordance with the levels of evaluation provided for in Article 8 of this regulation, within 6 weeks from the first meeting provided for in Article

12, in accordance with the levels provided for in Article 8 of this Regulation, and shall send the final report to the Council.

3. The Council conducts the interviews with the candidates within 2 weeks of the submission of the report by the Committee. Interviews with candidates shall be audio and video recorded. The Council may request by public institutions additional information, which may be helpful for the process of evaluation.

4. The Council shall conduct the final evaluation and ranking of candidates no later than 1 week after the finalization of the interviewing of candidates.

Article 15

Reporting to the Council

When the Committee concludes its assessments, the Chairperson of the Committee shall notify the Chairperson of the Council, who shall convene the plenary session of the Council. The rapporteur shall make available to the members of the Council copies of written assessments and the supporting documents. During the open meeting, the Chairperson of the Committee presents the members with a summary of the evaluation results.

Article 16

Evaluation by the Council

1. The Council shall decide on the evaluation level for each candidate and for each criterion, based on the proposal of the Committee.

2. The Council may, by a majority vote of the present members, change the level of evaluation proposed by the Committee.

3. After deciding on the level of assessment for each candidate, each member of the Council shall give the scoring for each of the criteria, within the scoring margin set for that level in Article 8 of this Regulation by filling in the table in Annex B attached to this Regulation.

4. At the end of the scoring process, the candidates shall be ranked based in the amount of their points by filling in the table in Annex C of this Regulation.

CHAPTER IV

ESTABLISHING AND LEADING THE SPECIAL PROSECUTION OFFICE

Article 17

Establishing the Special Prosecution Office

1. The Council shall meet to establish the Special Prosecution Office as soon as the required number of candidates approved for promotion to Special Prosecutor, who have successfully passed vetting, is met.
2. The Council shall coordinate with the High Judicial Council to ensure the smooth establishment of the Specialized Court for Corruption and Organized Crime and the Special Prosecution Office.
3. After the Special Prosecution Office is established, when additional candidates who have been approved for promotion are confirmed after vetting, the Council shall meet as soon as possible.
4. If a candidate does not successfully pass vetting, they shall not be qualified for promotion to the Special Prosecution Office.
5. After the Special Prosecution Office is established, the Council may reopen a call for applicants if there is a necessity for more candidates.

Article 18

Election of Chief Special Prosecutor

1. Once the Special Prosecution Office is established, the Council extends a written request to the promoted prosecutors to submit their motivation for the position of Chief Special Prosecutors. Interested candidates shall submit their motivation within 5 days from the request of the Council, in accordance to

the standards provided for in Article 19. The letter of motivation for the position of Chief Special Prosecutor shouldn't be more than 5 pages, in Times New Roman, 12.

2. The election of the Chief Special Prosecutor shall be made by the Council at its nearest meeting.

Article 19

Evaluation Standard for Election of Chief Special Prosecutor

For the election of the Chief Special Prosecutor, the Council shall evaluate:

- a) Experience with leading sensitive corruption or organized crime cases;
- b) Experience and skill in organizing and leading an office;
- c) Experience in drafting and approving administrative regulations;
- ç) Experience with highly publicized cases or interaction with media;
- d) Skill in effectively leading people;
- dh) A credible vision or plan to build the Special Prosecution Office into a functional and effective institution.
- e) His/ her public image over his or her career as a prosecutor.

Article 20

Election Procedure of Chief Special Prosecutor

1. The Council shall invite each Special Prosecutor, who has submitted a Chief Special Prosecutor Motivation Document, to address the Council for a short presentation to address each of the evaluation standards listed in Article 19.

2. The vote for the Chief Special Prosecutor shall be open and nominal.

3. Each Council member cannot vote for more than 1 candidate to be Chief Special Prosecutor.
4. The candidate who receives the majority of votes from the Council shall be elected Chief Special Prosecutor.
5. If two or more candidates receive a tie of votes, the Council conducts a second voting between the candidates with a tie of votes received.
6. If none of the initial Special Prosecutors has submitted this document, the Council assigns temporarily one of the prosecutors in the position of Chief Special Prosecutor.

CHAPTER V

FINAL PROVISIONS

Article 21

Conflict of interest

1. The Committee member shall recuse themselves from his/her duties in the process of evaluation, ranking and voting of the candidates, if she/he has any of the legal obstacles provided for in Law 44/2015 “Code of Administrative Procedures” and is under conflict of interest according the provisions of the Law no. 9367, dated 7.4.2005 “On prevention of Conflict of Interest in the exercise of public functions.”
2. In these cases, the functions of the recused Committee member shall be carried out by the substitute member.
3. If of recusal from a Committee member, a substitute member shall be selected by lot to participate in the evaluation of the candidate.

Article 22

Unofficial Communication during the Selection Process



1. Starting from the day of approval of this decision until the announcement of the results, no Council/ Committee member shall have unofficial communication with the candidate.

Article 23

Observers of the Evaluation and Procedure

Representatives of EURALIUS and OPDAT missions may be present during the interviews of candidates and other stages of the evaluation of candidates. Observers may ask questions during the interview after the committee members.

Article 24

Confidentiality and Protection of Data

1. The procedures covered by this Regulation shall be conducted in accordance with the applicable legislation on protection of personal data and classification documents.
2. Documents may be redacted from public view if they contain personal data of the candidate or data regarding persons other than the candidate.

Article 25

Entry into Force

This decision enters into force in the day of publication on the Official Gazette.

ANNEX A

Form No.1

No	Name and Surname of the Candidate	LEVELS OF EVALUATION FOR THE SKILLS' COMPONENTS	
		Prosecution, Investigation, Techniques, Representation, Confiscation	Determination and Integrity

		Low	Average	High	Low	Average	High
1							
2							
3							
4							
5							
6							
7							
8							
9							
10							
11							
12							
13							
14							
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16							
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24							
25							
26							
27							

AD HOC COMMITTEE

(_____)

PERFORMANCE EVALUATION

Form No 2

No.		Previews year	Last year	TOTAL
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	Name and Surname of the Candidate	Sufficient 0.5 points	Good 1.5 points	Very Good 2.5 points	Sufficient 0.5 points	Good 1.5 points	Very Good 2.5 points	
1								
2								
3								
4								
5								
6								
7								
8								
9								
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11								
12								
13								
14								
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25								
26								
27								

Ad Hoc Committee

ANNEX B

**INDIVIDUAL EVALUATION OF THE CANDIDATES FOR PROMOTION TO SPECIAL
PROSECUTORS BASED ON THE LEVELS OF EVALUATION**

FormNo.3

No	Name and Surname of the Candidate	LEVELS OF EVALUATION FOR THE SKILLS' COMPONENTS						TOTAL
		Prosecution, Investigation, Techniques, Representation, Confiscation			Determination and Integrity			
		Low 1-3	Average 4-7	High 8-10	Low 1-3	Average 4-7	High 8-10	
1								
2								
3								
4								
5								
6								
7								
8								
9								
10								
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19								
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22								
23								

24								
25								
26								
27								

HPC Member

ANNEX C

No	Name and Surname of the Candidate	SCORING EVALUATION BY THE MEMBERS OF THE COUNCIL											Performance Evaluation	TOTAL
1														
2														
3														
4														
5														
6														
7														
8														
9														
10														
11														
12														
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25														
26														
27														



**RANKING OF THE CANDIDATES FOR PROMOTION TO THE SPECIAL
PROSECUTION OFFICE**

Form No.5

No.	Name and Surname of the Candidate	Total score
1		
2		
3		
4		
5		
6		
7		
8		
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16		
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27		

