

2009 REPORT ON SERBIA'S PROGRESS IN THE PROCESS OF ACCESSION TO THE EUROPEAN UNION

Legislative activities

In the period between October 2008 and May 2009 the Government of Republic of Serbia has adopted 24 draft laws in the area of judiciary, 21 of which were adopted by the National Assembly.

A package of anti-corruption laws, one of the preconditions for the visa liberalization process, was adopted at the National Assembly of the Republic of Serbia on 23rd October 2008: the Law on the Anti-Corruption Agency, the Law on Amendments and Additions to the Law on Financing of Political Parties, the Law on Seizure and Confiscation of the Proceeds from Crime and the Law on the Liability of Legal Entities for Criminal Offences.

In the area of personal data protection a significant progress has been made by adopting regulations that are in compliance with International and European standards, which regulate in detail all issues related to this area. The Law on Personal Data Protection and the Law on Confirmation of the Additional Protocol to the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data have passed the National Assembly of the Republic of Serbia on 23rd October 2008. We would like to stress that, at the time when the Law on Personal Data Protection was discussed in the National Assembly, the Government accepted a number of amendments the Ombudsman had submitted with regard to this proposed Law. The Law on Personal Data Protection stipulates that the Commissioner for Information of Public Importance and Personal Data Protection, as an autonomous and independent state authority, monitors the implementation of this Law.

Undoubtedly the greatest success of the Ministry of Justice in the previous period was a package of judicial laws adopted by the National Assembly of the Republic of Serbia on 22nd December 2008. The package of judicial laws comprises of the following: the Law on High Judicial Council, the Law on Judges, the Law on Organization of Courts, the Law on the State Prosecutorial Council, the Law on Public Prosecution, the Law on Seats and Territorial Jurisdictions of Courts and Public Prosecutor's Offices, the Law on Amendments and Additions to the Law on Misdemeanors. We would like to underline in particular that relevant professional associations, representatives of the Supreme Court of Serbia, representatives of the Republic Public Prosecutor's Office, other representatives of the judiciary, as well as eminent legal professionals were involved in the drafting judicial laws. Their opinions and views have been incorporated in these laws to a great extent.

Both, adoption of the Law on Mutual Legal Assistance in Criminal Matters as well as the ratification of the number of the Council of Europe Conventions on 18th March 2009 in Serbian National Assembly were of significant importance for visa liberalization process

and for further strengthening of the fight against organized crime. Namely, laws on ratification of the Council of Europe Conventions are as follows: the Law on Ratification of the Council of Europe Convention on Cyber Crime, the Law on Ratification of the Additional Protocol to the Convention on Cyber Crime concerning the criminalization of acts of a racist and xenophobic nature committed through computer systems, the Law on Ratification of the Council of Europe Convention on Action against Trafficking in Human Beings, the Law on Ratification of the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism, the Law on Ratification of the Council of Europe Convention on the Prevention of Terrorism and the Law on Ratification of the Council of Europe Protocol amending the European Convention on the Suppression of Terrorism.

The Draft Law on Amendments and Additions to the Law on Organization and Jurisdiction of State Authorities in Suppression of Organized Crime was adopted on 26th March 2009 by the Government of Republic of Serbia. After the adoption by the National Assembly, this Law will allow more efficient and effective fight against organized crime.

The Law on Amendments and Additions to the Criminal Procedural Code has been drafted. This Law will be passed for the purpose of harmonization with the provisions of the new Constitution of the Republic of Serbia.

Working version of the Law on Amendments and Additions to the Criminal Code has also been completed. The aim of adoption of the aforementioned Law is harmonization with International and European standards.

By the end of 2008, the Ministry of Justice has set up a Working Group responsible to develop Draft Law which shall provide detailed regulation on categorization and protection of classified data. Also, this Law will regulate, in detail, personal data protection, when classified data is concerned, as well as the right to the access to and inspection of such data. After finalization of the drafting procedure, public debate will be opened. Subsequently, the Draft Law will be passed to the Government for adoption.

Regional cooperation and bilateral relations

Ministry of Justice is aware of the importance of regional cooperation in judicial matters, especially related to fight against organized crime and corruption. Therefore it makes an effort to improve bilateral relations with the neighboring and EU countries, as well as to increase the level of engagement in regional initiatives. These efforts in last several months resulted in signing the Memorandums on cooperation with:

1. Ministry of Justice of the Republic of France - signed on 27th October 2008 in Paris
2. Ministry of Justice of the Republic of Srpska - signed on 7th April 2009 in Banja Luka
3. Ministry of Justice of the Republic of Slovakia - signed on 5th May 2009 in Bratislava

The Agreements encompass the areas of harmonisation of regulations, modernisation of judiciary, the improvement of skills and training of the Ministry of Justice staff, the reform of the system of the execution of sanctions, as well as cooperation in the fight against organised crime, corruption, money laundering, seizure of assets, human trafficking, terrorism and other high security related criminal offences.

Since Serbia is in the middle of judiciary reform process, Ministry was engaged on promotion of judiciary reform in the region and in the EU countries trying to obtain support for its efforts to conduct systematic reform of judiciary, to fight corruption and organized crime, as well as to move forward in the process of European integration. In this period Ministry delegation conducted an official visit to Directorate-General for Justice, Freedom and Security of the European Commission, Council of Europe, Italy, Poland and Germany, and participated in various regional and transnational conferences.

Additionally, in order to strengthen regional cooperation in justice and home affairs Ministry of Justice, together with the Ministry of Interior, will organize regional Conference of Ministers of Justice and Interior on “Facing the organized crime challenges and serious crimes in Western Balkans” in September 2009.

International Projects

The overall objective of the Project of Assistance to the Implementation of the National Judicial Reform Strategy is to provide a broad support to the Judicial Reform Strategy of the Government of Serbia in accordance with its Constitution and the recently adopted legislative framework and to strengthen the Government’s efforts to develop independent judiciary in line with relevant international and European standards. This project is implemented by the European Consultants Organization (ECO3) Belgium, in consortia with the Centre for European Constitutional Law (CECL) Greece, DMI Associates (DMI) France, Court Administration (CA) Latvia, Office of the National Council of Justice (NCJ) Hungary and the East West Consulting (EWC) Belgium.

A Multi-Donor Trust Fund for Justice Sector Support (MDTF-JSS), with contributions from development partners and administered and executed by the World Bank, is envisaged as an effective instrument for coordination between the Ministry of Justice (MOJ), other justice sector institutions such as the courts and prosecutors, the EC, development partners and civil society to enable Serbian authorities to: (a) update the National Judicial Reform Strategy (NJRS); (b) develop an adequately resourced NJRS implementation plan with progress benchmarks; (c) strengthen the institutional capacity of the MOJ and the judiciary to implement, coordinate, monitor and evaluate judicial reforms and modernization; (d) track and report progress on judicial reforms and (e) incorporate NGO/civil society/academic/development partner participation in justice sector reform and modernization efforts. The over-arching objective of the MDTF-JSS is to facilitate Serbia’s justice sector in EU integration process, establish a justice sector performance framework and strengthen aid coordination in Serbia’s justice sector.

Fight against corruption

As we mentioned above, the package of anti-corruption laws has been adopted by the National Assembly of Republic of Serbia on 23rd October 2008.

In order to combat corruption in the most successful and efficient possible manner, the Law on Anti-corruption Agency envisages the establishing of the Anti-Corruption Agency as an autonomous and independent state authority. A key task of this body includes the implementation of the National Anti-Corruption Strategy and the supporting Action Plan.

According to the Law on Anti-corruption Agency, bodies of the Agency are Board and Director. Members of the Board were elected by the National Assembly of the Republic of Serbia on 18 March 2009. The Director of the Agency shall be elected through a public competition announced by the Board published in the "Official Gazette of the Republic of Serbia" and at least one public media with state-wide coverage within 2 months from the day of its constitution. The Board was constituted on the 15 April 2009. The Agency will be fully operational on 1 January 2010.

The Government of the Republic of Serbia is undertaking all possible steps to secure necessary placement capacities and technical conditions in order to provide efficient functioning of the Agency. For this purpose funds have been secured in the budget for 2009, with a portion of the financial resources which will be secured from IPA 2008 funds. Through the establishment of the Agency the Republic of Serbia will implement three of the pending thirteen GRECO recommendations of the Council of Europe.

It is important to emphasize that at its 38th plenary session held from 9 to 13 June 2008, GRECO adopted the Report of the Group of States against Corruption (GRECO) on the compliance of the Republic of Serbia for the Joint First and Second Evaluation Rounds.¹ GRECO gave a positive opinion about the efforts and work of Serbian government agencies in combating corruption, taking into account that Serbia took actions regarding all GRECO recommendations.

Serbia complied with twelve out of twenty-five recommendations. They pertain to public procurement, duration of the term of office of the public prosecutor, establishment of special units to combat corruption in prosecutors' offices, cooperation between the police and prosecutors' offices, training programmes for police officers and prosecutors, witness protection, seizure of property, Action Plan for the Implementation of the National Anti-Corruption Strategy and its implementation mechanism, introduction of Ombudsman at the central and local levels, accessibility of information of public importance, civil servant training in combating corruption and passage of the code of conduct in civil service.

¹ Upon the adoption of the Report by the Serbian Government on 17 June, the confidentiality label has been taken off and, following the authorisation by the Serbian Government, the Report was made public.

According to GRECO, thirteen recommendations were partly implemented and Serbia is expected to inform GRECO on the measures taken in order to comply with these recommendations fully by the end of 2009.

The Serbian National Parliament adopted a package of laws regulating justice system in full consideration of the GRECO recommendations addressing the matter (transparent election of judges and prosecutors, term of office of the special prosecutor for organized crime, etc). After adopting the laws which will amend the regulations governing criminal proceedings and organized crime, Serbia will be complied with eight out of thirteen remaining GRECO recommendations.

The Law on Seizure and Confiscation of the Proceeds from Crime aims to strengthen efficiency of government authorities in suppression and prevention of all forms of organized crime and corruption. This Law envisages establishment of the Directorate for Management of Seized and Confiscated Assets within the Ministry of Justice. The Ministry of Justice provided the premises for the Directorate as well as storage facilities for keeping confiscated assets. After appointing the Director of the Directorate and adoption of the Act on Organizational Structure of Directorate by the Government in February 2009, the Directorate became operational as of 1st March 2009.

In accordance with the National Anti-corruption Strategy, the Law on Amendments and Additions to the Law on Financing of Political Parties envisages transfer of jurisdiction from the Republic Electoral Commission, the Committee of the National Assembly of the Republic of Serbia competent for finance and Minister of Finance to the Anti-corruption Agency concerning the issues on financing of Political Parties.

The Law on the Liability of Legal Entities for Criminal Offences, which is in compliance with all International and European standards (United Nations and Council of Europe Conventions), regulates the conditions governing the liability of legal entities for criminal offences foreseen in the Criminal Code of Republic of Serbia and others Serbian pieces of legislations. A legal entity will be accountable for criminal offences which have been committed by a responsible person (natural person) within his/her competencies for the benefit of the legal person. The following penal sanctions can be imposed on legal person for the commission of criminal offences: fine, termination of the status of a legal entity, suspended sentence and security measures. Adoption of the Law on the Liability of Legal Entities for Criminal Offences was one of GRECO recommendations.

The judiciary and fundamental rights

Independence and impartiality of courts

Judicial laws, adopted by the National Assembly on 22nd December 2008, represent for the first time a comprehensive and a complete reforming enterprise because they organize the judicial network in an entirely new manner, with new institutions guaranteeing independence, and with a number of mechanisms which will enable improved efficiency

and the functioning of the system. The adoption of a comprehensive judicial law package is of exceptional significance for the judicial reform, in particular due to the establishment of new judicial institutions (Supreme Court of Cassation, Appellate Courts, Administrative Court). These new institutions will considerably contribute towards the improvement of efficiency and relieve the current court network from strain, together with the establishing of the High Court Council and the State Prosecutorial Council. The establishment of the Administrative Offices which will support the work of the High Judicial Council and the State Prosecutorial Council is of great importance for their adequate and successful performance with significantly extended jurisdiction under their competence than before. The new laws provide for the establishment of an independent judicial budget, including the development of clear and measurable criteria for election, promotion, disciplinary proceedings and dismissal of judges and prosecutors that will guide the High Court Council and the State Prosecutors Council when evaluating the performance of judges and prosecutors.

The judicial laws provide for a complete reorganization of the judicial network that will facilitate access to justice for the citizens of the Republic of Serbia in the same places where they have exercised such right so far, thus considerably contributing to a more efficient, impartial and objective proceedings. According to the new law, the existing 138 courts will be reorganized in 34 basic courts, each with its court unit. Also specialization within basic courts has been foreseen to contribute towards a significantly improved efficiency and quality of judgments. Jurisdiction and organization of courts will also change. The Supreme Court of Cassation will be the highest instance court in the Republic of Serbia. Courts of general jurisdiction include: basic courts, higher courts, appellate courts, whereas courts of special jurisdiction are commercial courts, the Higher Commercial Court, misdemeanor courts, the Higher Misdemeanor Court and the Administrative Court. Appellate courts, which will rule on appeals against decisions of basic and higher courts, as well as the administrative courts, are being introduced. For the first time both infrastructural and legislative preconditions have been provided in order to prevent the delays in the implementation of the law.

The High Judicial Council ensures and guarantees the autonomy of courts and judges. Independence and autonomy of the High Judicial Council is reflected, in particular, in the fact that this body will independently manage its funds, in accordance with the law, which are secured for its operation in the budget of the Republic of Serbia. Additionally, the High Judicial Council formulates criteria for election of judges, it elects and dismisses judges, decides on promotion, accountability, material position of judges, termination of judicial duty, proposes to the National Assembly candidates to be elected for the first time, proposes to the National Assembly election and release from office of the Supreme Court of Cassation President and court presidents, etc. Judges alone will elect the High Judicial Council members among themselves. We would like to highlight that the first composition of the High Judicial Council was elected on 30th March 2009 by the High Judiciary Council as the most relevant judicial body. The permanent composition of the High Judicial Council, in respect of elective members, will be elected by the entire judiciary at general elections within their own system according to the rules stipulated by law.

The laws regulate the status of judges, their independence, autonomy and impartiality in compliance with the European standards. Issues related to the manner of the appointment of judges and their dismissal, have also been regulated, including those regarding permanent tenure of office, the right to association and the obligation of judges to work professionally and with due diligence in order to complete cases within a reasonable period of time. As we have already set out, evaluation of judge's performance, which will be conducted by judges alone, represents a significant novelty. The evaluation mark assigned represents the basis for promotion, dismissal or referral to mandatory forms of professional training. The second significant novelty includes the provisions relating to disciplinary liability of judges. The law specifies in a precise manner disciplinary offences and disciplinary sanctions, including competent authorities which will conduct disciplinary proceedings, and the disciplinary proceeding itself. Disciplinary proceeding will be under the competence of the High Judicial Council, in accordance with the new law.

Legislative solutions are in accordance with solutions of the Constitution of the Republic of Serbia and the Constitutional Law on the Implementation of the Constitution, elaborating them further. Consequently, transitional and final provisions of this Law provide for a general election of judges to judicial institutions. Having in mind the current situation in Serbia, the general election is undoubtedly the only solution for the renewal of judiciary in terms of human resources, which is necessary indeed. In addition, in the purely legal and technical sense, the general election is based also upon the fact that the new laws will form a completely new network of courts, including the courts that have not existed so far, such as the Supreme Court of Cassation, appellate and administrative courts, as well as that election of judges is regulated in a completely new manner. Bearing in mind that the High Judicial Council will be exclusively competent for the general election, there is no fear of political influence by the Parliament. The general election will be based upon objective, professional foundations and criteria in order to prevent the considerable influence exerted by political and executive power so far, as stipulated by these laws. The criteria will be based upon objective assessment of each judge's output in the preceding period, whereas the High Judicial Council will, as an additional factor, take into account also the merit of a judge in the performance of its judicial duties.

In accordance with the law, the High Judicial Council has developed the Criteria and Standards for Election of Judges and Court Presidents with the support of the Project of Assistance to the Implementation of the National Judicial Reform Strategy, funded by the European Commission. As part of this project, a working group was established in December 2008 to draft clear and objective criteria for the appointment and election of judges and court presidents, in order to provide firm guarantees for the independence of judiciary. This working group consists of ten prominent members, led by H.E. Zoran Ivošević, emeritus Supreme Court Judge, Professor of the Law School, Union University, founder and the first President of the Judges' Association of Serbia. The working group consists mainly of judges who are also members of the Judges' Association of Serbia, but also representatives of the Serbian Bar Association, Ministry of Justice and academia.

The working group has been meeting regularly to discuss and develop the proposed criteria. As a result, the text of the Criteria and Standards for the Election of Judges and Court Presidents was finalized in February 2009. These documents have been shared with the Ministry of Justice and other relevant stakeholders, such as the Supreme Court of Serbia and the Judges' Association of Serbia.

Legal basis for the development of these Criteria is in the recently adopted Law on Judges and the Law on High Judicial Council. Article 45 of the Law on Judges, beside general requirements and those related to professional experience, stipulates that other requirements for election are qualification, competence and worthiness of candidates. In compliance with this provision, the High Judicial Council develops the criteria and standards for the assessment of candidates' qualification, competence and worthiness, and this is the legal basis for the present Criteria. Article 69 of the Law on Judges provides that, among judges from the court of the same or higher instance, a person with clear managerial and organizational skills is eligible for the position of the president of the court, based on the criteria set out by the High Judicial Council. Also, the legal basis for the Criteria is also in article 13 of the Law on High Judicial Council, which determines the competence of the High Judicial Council.

As stated above, the criteria for election of judge are: qualification, competence and worthiness. Qualification implies theoretical and practical knowledge necessary for performing the function of a judge. Competence implies skills which enable efficient application of specific legal knowledge in solving judicial cases. Worthiness implies ethic qualities a judge should possess and behavior in accordance with those qualities.

The Criteria distinguishes five categories: 1) first election of a judge with a three-year mandate, 2) election for permanent function of already appointed judges, 3) election of judges for permanent function following expiration of a three-year mandate, 4) election of judges in promotion, and 5) election of court presidents.

1) First election of a judge with a three-year mandate

Candidates qualification for the first election with a three-year mandate, are assessed on the basis of their theoretical and practical knowledge. Theoretical knowledge is assessed depending on: average grade during studies, duration and conditions of studies, academic and expert titles, published scientific and professional papers, other circumstances of importance for successful performance of a judicial function. Practical knowledge is assessed on the basis of a state after passing the Bar exam, depending whether it has been obtained in court or outside of it.

Magistrates were not a part of judicial authorities. Now they have become, but for them, the first-time election regulations apply. However, evaluation of their theoretical and practical knowledge should be adapted to the conditions and organization of their previous work.

Candidates' competence is reflected in skills, skillfulness, practice and other capacities to efficiently and operatively apply legal knowledge in solving court cases. It is conditioned with: good knowledge of material and proceedings codes, awareness of necessity to examine cases, skillfulness, identification and establishment of relevant facts, capacity for analytic and synthetic opinion, rational reasoning, clear expression, exemplary literacy, diligence, self-control, sense for cooperation with colleagues and cultured behavior. Mode to evaluate competence is separately arranged for judicial assistants, barrister apprentices and candidates who have worked outside of judiciary.

Candidates' worthiness is determined by ethic qualities and ethic behavior of a candidate. Ethic qualities are: honesty, conscientiousness, equity, dignity, persistence and exemplarity. Ethic behavior is related to the reputation of the court, social responsibility of bearers of judicial authority, independence, impartiality, reliability and dignity of judges, as well as judges' responsibility for internal organization of courts and positive image of judiciary in public.

2) Election for permanent function of already appointed judges

Already appointed judges are elected on the basis of previous regulations. They were given a permanent mandate by the National Assembly, in accordance with the previous constitution. Since current Constitution, in article 147 paragraph 3, stipulates that the High Judicial Council entrusts permanent mandate, already appointed judges must also go through the post-constitutional electoral procedure in order to obtain a permanent mandate from the authorized body.

Since already appointed judges have been performing judicial function, a presumption that they fulfill criteria and standards of this sub legal act should be applied for them if applying for the same type of court, that is, of the same level. But, the presumption can be overturned if there are reasons for doubt that a candidate does not fulfill them because, during previous mandate, he/she has not manifested qualification, competence and worthiness for performing judicial function. This sub legal act cites what forms the reasons for doubt in qualification, competence and worthiness of a candidate, and also designates bodies the High Judicial Council acquires data of importance for overturning the presumption.

3) Election of judges for permanent function following expiration of a three-year mandate

Upon expiration of a three-year mandate, a first-time elected judge is necessarily elected for a permanent function if graded with "exceptionally successful performance of judicial function" for each year of that mandate; he/she can not be elected for a permanent function if graded with "does not satisfy" for the each year of that mandate; he/she can be elected for a permanent function if graded with "exceptional performance of judicial function" and "successful performance of judicial function" during the mandate; if graded with "successful performance of judicial function" during each year of the mandate, if his/her grades have improved during the each year of the mandate.

4) Election of judges in promotion

Profession of a judge is a career-oriented, and this implies a *promotion* from lower to higher court of the same or other type. Standards for qualification and competence of the candidate for working activities in higher court are crucial for promotion, but additional measures are also to be taken into a consideration. Both are strictly determined with this sub legal act. Worthiness of a candidate is implied, since that criterion is equally necessary for working activities in every court. Rules on promotion are also applied to magistrates, that is, judges at magistrate courts.

5) Election of court presidents

Judge of the same or higher level court can be elected president of the court. Besides qualification, competence and worthiness for performing judicial function, he/she must also have a capacity to manage and organize activities of the court. These Criteria determine significance of this capacity and standards to establish it. Opinions that must be obtained before their election from certain bodies also have an important role.

We would like to stress that all of these Criteria have been sent to Venice Commission on 19th March 2009 in order to obtain their expert opinion prior to adoption.

When it comes to laws regarding the organization and operation of public prosecutor's offices, public prosecutors and deputy public prosecutors agree and point out that the new laws "rectify the Constitution" as well as that Ministry of Justice accepted 90 percent of their suggestions during the drafting of the law.

The following novelties are very important and will have a significant impact on the autonomy and accountability of public prosecutors work:

According to the new proposal, the State Prosecutorial Council will take part in the election of public prosecutors, assess whether or not they can be promoted, conduct disciplinary proceedings as well as the proceeding to establish reasons for the termination of their duty. These laws will introduce evaluation of performance of public prosecutorial office holders serving as a base for promotion, dismissal, establishment of disciplinary liability and attendance of mandatory forms of training.

What is extremely essential for the stability and autonomy of this profession, which has been accepted by the Ministry of Justice at the request of the Association of Prosecutors and the Republic Public Prosecutor, is an important novelty reflected in the provision stipulating that public prosecutors who are not re-elected to their office will be elected deputy prosecutors without any delay. According to the Law currently in force, they remain jobless in such cases.

More order, and less opportunity for "misunderstandings" in the work of higher and lower instance prosecutors, will be in place through the institute of mandatory instruction developed in more detail. According to hierarchy, a higher instance prosecutor may issue

a verbal instruction to the subordinate prosecutor on how to proceed in a certain case, without any obligation to elaborate such a decision. However, according to the new Law on Public Prosecutor's Offices a higher instance prosecutor will have to provide reasons in writing as well as an explanation for such instruction. In addition, if a lower instance prosecutor finds that the instruction is not lawful and admissible she/he may file an objection to it.

The organization of prosecutor's offices follows the organization of courts. Namely, there are basic, higher and appellate public prosecutor's offices competent for proceeding before appropriate courts, whereas the Prosecutor's Office for War Crimes and the Prosecutor's Office for Organized Crime have been foreseen as public prosecutor's offices of special jurisdiction.

The State Prosecutorial Council is an autonomous authority ensuring and guaranteeing autonomy of public prosecutors and deputy public prosecutors, and all solutions relating to the independent budget and other competences follow the provisions of the Law on the High Judicial Council. In accordance with the judicial laws, the State Prosecutorial Council was established on 30th March 2009.

Rules of Procedure on Criteria and Standards for Evaluation of Qualification, Competence and Worthiness of Candidates for Bearers of Public Prosecutor's Function have also been developed with the support of the Project of Assistance to the Implementation of the National Judicial Reform Strategy, funded by the European Commission. Similarly to judges, a working group was established in December 2008 to draft clear and objective criteria for the appointment and election of prosecutors. This working group consisted of eight members, mainly from the rank of public prosecutors, but also members of academia and the Prosecutors' Association. Throughout February 2009 the draft text has been shared with the Ministry of Justice and other relevant stakeholders, such as the Republic Public Prosecution Office and the Prosecutors' Association.

Rules of Procedure on Criteria and Standards for Evaluation of Qualification, Competence and Worthiness of Candidates for Bearers of the Public Prosecutor's Function is a significant normative document, which establishes criteria for evaluation of qualification, competence and worthiness of candidates for Public Prosecutors and Deputy Public Prosecutors, as well as determines the process of evaluation by using the above mentioned criteria.

Having in mind that the Law on Public Prosecutors envisages precise deadlines for election of Public Prosecutors and Deputy Public Prosecutors and that all elections should be held by 1st December 2009, the Rules of Procedure use data which were kept in the Public Prosecutors Office as part of official record for three years as a basis for evaluation. In that way application of Rules of Procedure would become easier and some sort of "legal certainty", when it comes to candidates from the rank of public prosecutors, would be ensured, since their qualification and competence would be evaluated based on the data which were relevant for their work throughout the previous period.

Having in mind that nomination and election process will be based on qualification, competence and worthiness of candidates the Rules of Procedures are in compliance with the Recommendation of Committee of Ministers of Council of Europe (2000) 19 “The role of Public Prosecutors in criminal justice system”. This Recommendation advises that the procedure for the election and promotion of Public Prosecutors should be carried out according to “fair and impartial procedures (...) that are governed by known and objective criteria, such as competence and experience”.

Central category of the evaluation system is the criteria for the assessment of qualification, competence and worthiness of candidates for Public Prosecutors and Deputy Public Prosecutors.

Criteria for qualification and competence take into consideration all aspects of prosecutorial job: integrity, skills (general, personal, organizational) of Public Prosecutors and Deputy Public Prosecutors, as well as their engagement at work. These criteria are divided into two groups: quantitative and descriptive. Quantitative criteria are exact, measurable. Using quantitative criteria, Public Prosecutors’ performance will be determined according to the discrepancy from average results. In other words, Public Prosecutor or Deputy Public Prosecutor who had 21% more than average number of made decisions for that kind of Prosecution Office would be considered as successful; otherwise, those who had 51% less than average number of made decisions would be considered as unsuccessful and would be evaluated accordingly.

On the other hand, descriptive criteria are not easily measurable, thus in order to determine the eligibility according to these criteria, a more complex system of rules for evaluation of work of the Prosecutors and Deputies is established. These criteria requires from the Public Prosecutors who are preparing the assessment to elaborate their opinion on the fulfillment of the criteria, as well as to point out to the facts and documents which support their decision.

The second significant feature of the criteria for the qualification and competence is the distinction between the general criteria which establish the rules for evaluation of Deputy Public Prosecutors, when they are assigned to particular cases, and the specific criteria for the evaluation of the work of Public Prosecutors, primarily from the standpoint of their capability to manage public prosecution.

The degree of achieved criteria for the evaluation of expertise and capabilities of the candidates will be established through standards and expressed through scores/grades. Standards represent the elements of the evaluation mosaic derived from the criteria. On the basis of fulfillment of the criteria and standards candidates can be evaluated as: does not satisfy, satisfies or satisfies the criteria for the advancement. In such a way the evaluation will fully determine the position of candidates in the electoral process. In particular, this type of evaluation encompasses all possible situations in which the candidates could find themselves throughout of the electoral process. The criteria can be fulfilled up to the degree to which it would enable the candidates: to stay in the public

prosecution, to meet the criteria in a way that would make the candidate eligible for recommendation for promotion or not to meet the criteria thus making the candidate unsuitable for election.

Worthiness is the set of moral characteristics that the Public Prosecutor or Deputy Public Prosecutor possesses which is connected to the performance of their professional function in public prosecution. The Rules of Procedure are based on the assumption that all candidates for Public Prosecutors and Deputy Public Prosecutors who are at the time of election in the function of public prosecution possess worthiness. However, the Rules of Procedure positions worthiness as a disputable assumption that could be brought under suspicion in cases in which the Public Prosecutor or Deputy Public Prosecutor is in the process for dismissal or some other proceedings for the establishment of liability for committed punishable act, as well as in the cases in which the State Prosecutorial Council, on the basis of their *ex officio* procedure, determines that the candidate does not meet the criteria of worthiness.

The Rules of Procedure establish a complex system of assessment of Public Prosecutors and Deputies, as well as a strict procedure for the application of those rules. A corpus of procedural provisions has been drafted in detail. These provisions stipulate the evaluation of work by the relevant subjects as well as procedures for appropriate legal and procedural control of the conducted evaluation. The opinion on the expertise and capabilities of the candidate who worked in the Prosecutors Office in the previous period consists of the opinion of the Public Prosecutor and the opinion of the Collegium of the Public Prosecution. By doing so, not only the necessary procedural and legal mechanism for the maximally objective evaluation, but also a democratic element, which in a broader sense represents a special form of action of the general procedural principle of debate – *audiatur et altera pars*, are introduced to the evaluation process. Besides, process of providing an opinion reflects the essence of internal relations in the public prosecution. Providing an opinion about the candidate by the Public Prosecutor, on one side, is a logical consequence of the hierarchy principle while, on the other side, providing an opinion by the Collegium of the Public Prosecution is a natural sequence, application of the general principles of Prosecutorial self-government stipulated in the Law on Public Prosecutors in the process of election and promotion of Prosecutors and Deputies.

These Rules of Procedure establish special criteria for determination of qualification and competence of candidates for the functions of Public Prosecutor and Deputy Public Prosecutor who has not previously worked in the public prosecution. This determination is performed in two manners: according to data and opinions acquired from the bodies in which the candidate has worked, and according to the results of the test of competence and qualification. This test will help in the process of objectification of data related to the competence of the candidate.

The State Prosecutorial Council, prior to its final evaluation of a candidate, can obtain other data relevant for the evaluation, as well as the data regarding the conditions in which a candidate worked in. This provision introduces possibility of obtaining additional

data when the State Prosecutorial Council assesses that data required by the Rules of Procedure are not sufficient for making the proper decision.

The criteria for prosecutors were sent to the Venice Commission on 19 March 2009 in order to obtain their expert opinion prior to adoption.

Efficiency and quality of judiciary

According to the Report on the Activities of the Supreme Court of Serbia for 2008, the total number of cases received in 2008 in courts of general jurisdiction (Municipal Courts, District Courts and the Supreme Court of Serbia) was 1,681,593 with another 716,106 cases carried over from preceding years. The total number of pending cases was 2,397,699. From this number 1,605,861 cases were resolved or about 67,02%, with 789,453 unresolved. In Commercial Courts, 132,818 cases were received in 2008, and another 17,007 carried over from preceding years. The total number of pending cases was 149,825. From this number 131,024 cases were resolved in 2008, and 18,801 remained unresolved in 2009.

In period between 1st October 2008 and 1st May 2009 Ministry of Justice conducted 10 monitoring sessions in Public Prosecutor's Offices, 13 in courts of general jurisdiction and 7 in misdemeanour courts. In this period the Ministry of Justice proceeded on complaints submitted by citizens in 1243 cases, out of which the largest number was related to the long duration of cases.

Training

Judicial Training Centre conducted 102 professional training events (seminars, lectures, workshops) in the period between October 2008 and April 2009. Those events were attended by prosecutors, judges, professional associates and trainees in the area of: Criminal law, Civil law, Commercial law (Training program for judges), Administrative law, Human rights and European legislation as well. The aforementioned trainings were financed from budget funds received from the Ministry of Justice. Some of these events were financed from donor resources.

Infrastructure and Equipment

Ministry of Justice has provided premises, material and technical requirements for the beginning of work of a new judicial network, in particular Supreme Court of Cassation, Administrative Court and Appellate courts, High Judicial Council and State Prosecutorial Council, as of 1 January 2010.

In order to further strengthen court infrastructure in Republic of Serbia, Ministry of Justice carried out the following activities:

- new specialized court-room in Belgrade District Prison has been built; first criminal proceeding was conducted on 23rd April 2009
- with respect to the improvement of security of IV Municipal Court in Belgrade, District Court in Zrenjanin and District Court in Smederevo, three hand-luggage scanners were procured

Information Technologies

Within the USAID project for reforming the administrations of Commercial Courts (CCASA), the automated case management (ACM) software performance was introduced in 16 Commercial Courts in Republic of Serbia. A new free of charge Internet service has been activated for citizens and participants in the proceedings, called DOKET – the listing of legal documents, which enables a direct search for all cases per type and number of cases, per judge relevant to a case or per name of a court user, as well as the looking into the listing of legal documents for each case within the ACM, i.e. according to the chronology of events within a case. The aim of this program is strengthening and modernization of court administration and creating a prosperous environment for foreign and domestic investments. Since December 2008, the Higher Commercial Court can monitor all 16 Commercial Courts in Republic of Serbia through the Internet.

Within the realisation of „Support to Establishment of High Judicial Council” Project, as part of a donation of the Government of the Kingdom of Spain and support for strengthening institutions of the Republic of Serbia, IT equipment in value of 47.000EUR was procured for court personnel in October 2008.

Prison Conditions

In line with a Penal Reform Strategy which was adopted in 2005, Prison Administration has continued with implementation of stated priorities.

Draft Law on Amendments and Additions to the Law on Enforcement of Penal Sanctions and Draft Law on Enforcement of Penalty of Imprisonment for Criminal Offence of Organized Crime will be sent to the Parliament for adoption by the end of May 2009. The Law on Amendments and Additions to the Law on Enforcement of Penal Sanctions has been drafted because of the need of harmonization with Constitution of Republic of Serbia and European standards and recommendations. Regarding Draft Law on Enforcement of Penalty of Imprisonment for Criminal Offences of Organized Crime, we would like to point out that Prison Administration in cooperation with OSCE Mission to Serbia organized public debate among jurists and professionals from penal system in December 2008. In accordance with proposed laws, a number of by-laws have been drafted.

In order to solve the problem of overcrowded prisons, Prison Administration undertakes comprehensive measures such as introduction of sanctions which are alternatives to Imprisonment and enlargement of existing prison capacities.

According to the Penal Reform Strategy, Probation Service was established within Prison Administration. In April 2009, Probation Service started with implementation of alternative sanctions on the territory of District Court in Belgrade. In cooperation with Council of Europe Office in Belgrade, OSCE Mission to Serbia and Judicial Training Center, trainings of judges and prosecutors in the area of alternative sanctions have been carried out. Prison administration has undertaken various activities with aim to raise the public awareness of necessity of enforcement of alternative sanctions in community.

When it comes to improvement of material conditions and enlargement of prison capacities, new accommodation facilities are being built. A high-security prison, which will have capacity to accommodate up to 450 inmates, is being built in Padinska Skela near Belgrade; completion is planned for the end of the year.

Reconstruction of the Psychiatric Department in the Special Prison Hospital in Belgrade has been finished; reconstruction of Pavilion I within the Prison in Sremska Mitrovica was completed in December 2008; reconstruction and enlargement of existing capacities of District Prison in Novi Pazar have been finished; one of the Pavilions within the Prison in Pozarevac-Zabela is renovated.

The Training Centre of Serbian Prison Administration realised a number of basic and specialised courses for trainees and other security service personnel, as well as seminars for staff of the re-education service, legal service staff, health-care workers, staff of Service for training and employment, Prison Governors and Heads of Services from the Penal Institutions. It is important to underline that aforementioned Training Centre organises courses for court guard as well.