

## **REPORT FOR 2008 ON SERBIA'S PROGRESS IN THE PROCESS OF ACCEDING TO THE EUROPEAN UNION**

### **Legislative changes**

The Law on the Constitutional Court (*Official Gazette of the RS*, No. 109/2007) took effect on 6 December 2007. The Law regulates the organisation of the Constitutional Court, the procedure before the Constitutional Court and the legal effect of its decisions. After the adoption of the Law, ten Constitutional Court judges were elected and sworn in and took office on 12 December 2007, whereby the Constitutional Court was constituted, in accordance with Article 9 § 3 of the Constitutional Law for Enacting the Constitution of the Republic of Serbia. The first meeting of the Constitutional Court, at which the court's President was elected, was held on 26 December 2007, marking the start of the Constitutional Court's work.

In January 2008 the Ministry of Justice completed work on the Draft Law on the Protection of Personal Data, in accordance with the Council of Europe's Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data, and Directive No. 95/46 of the European Parliament. The Government of the Republic of Serbia adopted the Protection of Personal Data bill on 31 January 2008; it has been withdrawn from parliamentary procedure for revision. Given that one of the conditions for liberalisation of the visa regime is the signature and ratification of the Additional Protocol to the Council of Europe's Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data, the Ministry of Justice has revised the proposed law in compliance with the Protocol.

Early in 2008 work was finished on a set of judicial bills: the Law on the Regulation of Courts, the Law on Judges, the Law on the High Judicial Council, the Law on the Public Prosecution, the Law on the State Prosecutors' Council, the Law on the Seats and Territories of Courts and Public Prosecutions. Expert opinions were also received from the Council of Europe and the Venice Commission.

Work is in progress on drafting revisions of the Law on Civil Litigation intended to improve the efficiency of court proceedings and create better conditions for holding them within a reasonable time, as well as eliminate shortcomings in practice which appeared in the implementation of the 2004 Law on Civil Litigation.

We emphasise work on revising the following legislation is also under way: the Law on the Enforcement Procedure, the Criminal Code, the Criminal Procedure Code and the Law on the Execution of Criminal Sanctions.

The Ministry of Justice is working on a law on notaries public, as well as a law on the Judicial Academy.

### **International projects**

Within the PACO Serbia project 'Fighting against Economic Crime in Serbia', realised by the Ministry of Justice in co-operation with the Council of Europe and the European Commission (the project was concluded on 31 May 2008), the following round-table forums were organised:

1. An expertise of the Criminal Code's and Criminal Procedure Code's sections dealing with the fight against corruption, on 11 October 2007;
2. An expertise of the Criminal Code's and Criminal Procedure Code's sections dealing with the fight against money laundering, on 25 October 2007;
3. An expertise of the Criminal Code's and Criminal Procedure Code's sections dealing with the fight against high-technology crime, on 5 November 2007.

As part of the project, a brochure was published in March 2008 on international conventions dealing with the fight against terrorism; in May 2008 a manual was published on investigating criminal offences in the area of hi-tech crime.

Within the project named 'Creating an Effective and Sustainable System of Providing Free Legal Aid in the Republic of Serbia', realised by the Ministry of Justice in co-operation with UNDP, work is under way on drafting a Strategy of reforming the free legal aid system. The Strategy's aim is to lay the foundations for formulating an institutional and normative framework for a sustainable, efficient and accessible system of free legal aid in the Republic of Serbia.

#### Co-operation agreements

The Ministry of Justice concluded co-operation agreements with the following:

1. The Ministry of Justice of the Republic of Belarus, in Minsk, 5 Nov 2007;
2. The Ministry of Justice of the Russian Federation, in Moscow, 12 Dec 2007.

The Ministry of Justice has prepared co-operation agreements with:

1. the Ministry of Justice of the Republic of Hungary – text harmonised;
2. the Ministry of Justice of the Republic of Turkey – text harmonised.

The agreements cover harmonisation of regulations, modernisation of the judiciary, training and advanced training for employees of justice ministries, reforms of the sanctions-enforcement systems, as well as co-operation in fighting against organised crime, terrorism, trafficking in human beings, money laundering, corruption and other criminal offences which represent a major threat to society.

An administrative protocol between the Ministry of Justice of the Republic of Serbia and the Spanish Agency for International Developmental Co-operation on support for the establishment of the High Judicial Council, a new body in the Serbian judiciary which will look after the independence of the judiciary and guarantee an objective and efficient system of electing and training judges, was signed in Belgrade on 27 March 2008.

#### **The fight against corruption**

In the sphere of combating corruption, in November 2007 the National Assembly of the Republic of Serbia adopted the following legislation:

- the Law on Ratification of the Civil Law Convention on Corruption (*Official Gazette of the RS – International Agreements*, No. 102/2007)
- the Law on Ratification of the Additional Protocol to the Criminal Law Convention on Corruption (*Official Gazette of the RS – International Agreements*, No. 102/2007)

Late in October 2007 expert opinions were received from the Council of Europe in connection with the Criminal Code and the Criminal Procedure Code in which an

analysis was made of the degree of harmonisation of the said codes with standards of the Council of Europe and other international organisations.

Work has been completed on the draft of the Law on the Anti-Corruption Agency, Law on the Confiscation of the Proceeds of Crime, and the Law on the Liability of Legal Persons for Criminal Offences.

The Ministry of Justice is working on revising the Action Plan for Implementing the National Anti-Corruption Strategy's section on activities and deadlines for fulfilling recommendations from the National Anti-Corruption Strategy.

The Republican Public Prosecution's Department for Fighting Against Corruption was founded in line with the Republican Public Prosecution's Plan and Programme of Work for 2008. The establishment of the Department for Fighting Against Corruption in the Republican Public Prosecution and Departments for Fighting Against Corruption in District Public Prosecutions in Belgrade, Kragujevac, Niš and Novi Sad is the result of organisational changes at the initiative of the prosecution for upgrading anti-corruption capacities influenced by recommendations of the Council of Europe for departmentalisation and specialisation in the public prosecution as well as the results of participation in the UNDP project Support for Institutional Development for Confrontation with Public Corruption. A list was defined of corruptive criminal offences which are the object of specialisation in the activity of public prosecutions. The department will deal with corruption offences and economic criminal offences linked with corruption which involve state officials, officials elected by parliament, as well as appointed and invested persons, criminal matters which are of interest to the general public, as well as cases involving close co-operation with relevant ministries which demand careful coordination with other public authorities.

### **Regional questions and international obligations**

#### **Domestic war crimes prosecutions**

The War Crimes Prosecution entered 2008 with a considerable number of its own cases in various procedural stages. The number of cases and persons involved in them is constantly growing, reaching in 2007 a number almost equal to the total recorded in the preceding three years. The Prosecution is participating actively in the exit phase of the International Criminal Tribunal for the Former Yugoslavia, which means that a certain number of cases prosecuted before the ICTY will be transferred to the War Crimes Prosecution. Active regional co-operation has also been developed, and cases have been transferred to the War Crimes Prosecution from Croatia, and transfers from other countries in the region are also possible.

### **The judiciary and fundamental rights**

#### **Independence and impartiality of courts**

Due to the expiry of the term of office of a large number of lay judges, the High Judicial Council has advertised for appointment of lay judges in courts of general jurisdiction and special courts in the Republic of Serbia. Applications were submitted by some 6,500 candidates, among whom the Minister of Justice, with the consent of the

presidents of courts, proposed to the High Judicial Council to appoint a total of 4,678 lay judges for the next period (*Official Gazette of the RS*, No. 33/08 dated 2 April 2008).

Also adopted in 2007 was a new Regulation on the Internal Organisation and Job Systematisation in the Special Department for Suppressing Organised Crime of the District Public Prosecution in Belgrade (Special Prosecution). The Regulation provides for a personnel upgrade – under Article 2 the Special Prosecutor will have 25 deputies. An increase has also been made in the number of systematised prosecutorial staff positions, also very important for ensuring normal operation of the prosecution.

For the purpose of harmonising with the Law on Public Officials, courts and public prosecutions are preparing new Regulations on internal organisation and job systematisation.

Pursuant to Article 5 of the Decree on Preparing Personnel Plans in Public Authorities (*Official Gazette of the RS*, No. 8/2006), the Ministry of Justice is working on preparing personnel plans for civil servants and appointed officials in the judiciary which will early in June 2008 be submitted to the Ministry of Finance for its approval. After consent is received, the judicial authorities will fill vacancies independently.

### **The efficiency and quality of the judiciary**

According to the Report on the Activities of the Supreme Court of Serbia for 2007, the total number of cases received in 2007 in courts of general jurisdiction (municipal and district courts and the Supreme Court of Serbia) was 1,579,522, with another 671,559 cases carried over from preceding years. The total number of pending cases is 2,251,081. From this number 1,552,505 cases were resolved in 2007, with 698,576 unresolved. In commercial courts, 121,141 cases were filed in 2007, and another 24,151 carried over from preceding years. The total number of pending cases is 145,292. From this number 122,231 cases were resolved in 2007, and 23,061 remained unresolved.

A comprehensive analysis is currently being conducted of the work and burden of the courts and public prosecutions on the basis of which a proposal for rationalisation of the network of courts and public prosecutions will be drafted. The process is exceptionally important for establishing a new modern and efficient judicial structure, which will in accordance with clear criteria and measurable evaluation of performance make it possible to speed up judicial proceedings and overcome the great problem of the Serbian judiciary – its huge case backlog, in spite of the large number of judges and prosecutors.

Pursuant to powers defined in Articles 52, 66 and 71 of the Law on the Organisation of Courts and the priorities and objectives defined in the National Judicial Reform Strategy, previously planned controls were carried out in courts of general jurisdiction and public prosecutions. A special priority of monitoring the duration of proceedings has been determined with the aim of enhancing the independence of courts and achieving better efficiency of their work. The plan of supervision for 2007 and 2008 focuses on monitoring the development and realisation of backlog-clearance programmes by the presidents of courts of general jurisdiction. In the 1 January – 31 December 2007 period, controls were conducted in 40 courts of general jurisdiction and 24 public prosecutions.

In the 1 January – 28 May 2008 period, controls were conducted in 13 courts of general jurisdiction and eight public prosecutions.

## **Training**

In 2007, the Judicial Training Centre organised a total of 183 educative events (seminars, lectures, workshops) for judges, prosecutors, professional associates and trainees; there were a total of 6,253 participants. Activities began on 12 January in 2007 in Kragujevac with a criminal-law seminar entitled 'Law on Juvenile Perpetrators of Criminal Offences and the Criminal-Law Protection of Minors', and ended in Novi Sad on 21 December 2007 with a human-rights seminar entitled 'European Convention on Human Rights'. The programme was financed from budget funds received from the Ministry of Justice, the EAR and the Council of Europe. Compared with 2007, funding from the Ministry of Justice for the Judicial Training Centre for 2008 has been increased by 30%.

## **Infrastructure and equipment**

The Ministry of Justice has provided necessary space and material and technical requirements for the beginning of work of a new judicial network, in the particular the Supreme Court of Cassation, the Administrative Court and courts of appeal, the High Judicial Council and State Prosecutors' Council, beginning from 1 January 2009.

In the September 2007 – May 2008 period, considerable investments were made in capital works and procurement of equipment to help improve the conditions in which the judiciary is operating, including the following:

- Reconstruction of plumbing installations in the building housing the District and Municipal Court in Jagodina. Value of project: 5,000,000 dinars.
- Reconstruction of plumbing installations in the building housing the Municipal Court in Leskovac. Value: 7,500,000 dinars.
- Work is in progress on total reconstruction of the building of the Municipal Court in Jagodina. Value of works: 12,000,000 dinars.
- Work is in the final stage on an additional floor on the Municipal Court building in Preševo for the needs of the Prosecution. Value of works: 12,000,000 dinars.
- Also in the concluding phase is work on the reconstruction of the building in Nemanjina Street No. 9 in Belgrade for the Appellate Court in Belgrade.

Numerous smaller-scale refurbishing, reconstruction and other building works have been performed (worth up to 1,000,000 dinars each) to help improve accommodation and working conditions; a considerable number of computers, air conditioners, pieces of office furniture and other equipment have been purchased for the same purpose.

Two buildings were bought to house judicial authorities:

- the 'Valjevska Banka' building in Valjevo was purchased to house the District and Municipal Prosecutors in Valjevo, and
- the 'Beobanka' building at Zelenci Venac No. 18, Belgrade, was bought to house minor offences authorities in Belgrade.

Considerable effort was also invested in improving security in the judiciary: 60 metal-detector gates were purchased to control court entrances, as were three x-ray machines and 80 hand-held metal detectors.

### **Information Technology**

In the September 2007 – May 2008 period the IT Sector of the Ministry of Justice performed work on harmonising judicial reform plans and programmes with IT plans, as well as with the Strategy of Information Society Development in the Republic of Serbia. An analysis was made of all existing IT equipment in the judiciary as well as of their needs (with the help of electronic data-collection, processing and analysis of entries, procedures for procuring IT equipment, etc.). Work continued on realising and harmonising plans, programmes and projects for introducing and upgrading IT technology in the judiciary of the Republic of Serbia through donor and budget projects. Under way is the realisation of several projects in order to lay the foundations of ICT development in the judiciary and initiate processes of harmonising IT standards with EU standards (harmonisation with e-Europe and the action plan – INFORMATICS SOCIETY FOR ALL), so that new technologies can easily be built into existing systems without jeopardising the integrity of the entire system and without need to implement changes in the entire work process.

Within the USAID project for reforming the administrations of commercial courts (CCASA) work has been completed on introducing an automated case-management system in the two biggest commercial courts in Serbia – Belgrade and Novi Sad - and a new free Internet service has been activated for the general public and persons involved in proceedings entitled DOCKET, with a list of documentation, which makes it possible to directly search through all cases by case type and number, the judge or name of party, as well as to inspect all case files in the two courts. This has made possible not just to save time for the parties and increase the transparency of the courts' work, but also increase the efficiency of the commercial courts, as the general public and court staff will waste less time for searching and providing information about the status of cases. Activities are under way on obtaining equipment and software to expand the automated case-management system and introducing the DOCKET in the remaining 14 commercial courts in Serbia as well as in the Higher Commercial Court.

Within the EAR programme for IT support for selected courts in Serbia, the reception offices of municipal courts in Serbia were additionally equipped with IT equipment late in 2007 and early in 2008. In this way, the Ministry of Justice of the Republic of Serbia equipped 92 courts of general jurisdiction and two municipal court departments with IT equipment worth a total of 953,987.29 euros.

Within realisation of the 'Support for the Establishment of the High Judicial Council' project, as part of a donation of the Government of the Kingdom of Spain within a programme of support for strengthening institutions of the Republic of Serbia, in May 2008 an invitation for tenders was issued for the procurement of IT equipment worth a total of 47,000 euros.

Within the EAR programme of equipping district courts in Serbia with IT equipment, a procurement procedure was implemented by means of which in June 2008 district courts in Serbia will be additionally equipped with servers, PC computers and printers worth a total of 450,000 euros.

## **Prison conditions**

Seeing a need to rectify the impossibility of implementing certain provisions of the law, make up for the absence of regulations in connection with certain aspects of the enforcement of sanctions and to bring regulations up to date, the Administration for the Enforcement of Penitentiary Sanctions has prepared a Draft Law on Revisions of the Law on the Enforcement of Criminal Sanctions, expected to be adopted by the end of 2008.

A tendency exists to humanise penal practice and ease the retributive component of the penalty, especially in connection with lighter criminal offences. In the Republic of Serbia the enforcement of sanctions pronounced as an alternative to a custodial penalty is conducted by a Fiduciary Service within the Department for Treatment and Alternative Sanctions of the Administration for the Enforcement of Penitentiary Sanctions. When the service was established the organisational preconditions were created to enforce alternative sanctions in practice in an efficient way. In 2008 a network of fiduciaries in charge of enforcing these sanctions is to be established in Belgrade, and expanded to the entire Republic in 2009.

Relevant secondary legislation was adopted in February 2008: the Regulation on the Enforcement of the Penalty of Labour in the Public Interest, and the Regulation on the Enforcement of Conditional Convictions with Protective Supervision (*Official Gazette of the RS*, No. 20/2008).

A draft Law on Enforcement of Penitentiary Sanctions for Criminal Offences with an Element of Organised Crime has also been prepared.

The draft has also been completed of a regulation on the treatment, programme of procedure, classification and re-classification of convicted persons which provides equal treatment criteria in all custodial institutions as well as two-instance decision-making in this area.

Also completed has been the draft of a regulation on the training, advanced training and examinations of employees of the Administration for the Enforcement of Penitentiary Sanctions.

In 2007 equipment for productive activities was provided from international donor funds for institutions housing persons with special needs: the Correctional Institution for Juveniles in Valjevo, the Correctional Institution for Women and the Educational and Correctional Institution in Kruševac.

The security services of the District Prison in Belgrade, the Special Prison Hospital in Belgrade and the Correctional Centre in Požarevac – Zabela have received modern perimeter protection and video surveillance equipment.

The Staff Training Centre of the Administration for the Enforcement of Penitentiary Sanctions 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 the training and employment service, institution wardens and executive staff.

An OSCE-funded project involving elementary, secondary and vocational education for convicted persons in the Sremska Mitrovica Correctional Centre was realised in 2007; in 2008 the project is being financed by the Administration. In order to improve health care in custodial institutions, in accordance with the Law on the

Enforcement of Criminal Sanctions and the Regulation on the Job Systematisation in the Administration, the services of physicians and medical staff have been provided in all correctional institutions. Accommodation conditions have been improved and medical equipment obtained for the institutions' infirmaries. Training for health-care staff was organised in co-operation with the OSCE. A manual for convicted persons' health care has been developed, as have been a code of ethics of health-care professionals and leaflets for convicted persons on health care and protection from communicable diseases.

With the aim of improving material conditions in prisons, in 2007 and the first half of 2008 reconstruction work was performed on a number of high-security and medium-security prison wards, the psychiatric ward in the Special Prison Hospital and the Special Detention Unit for housing persons accused of criminal offences with an element of organised crime in accordance with international standards. A project conducted in co-operation with the OSCE for forming drug-free wards continued with the construction of a ward for housing persons dependent on psycho-active substances in the Correctional Centre in Sremska Mitrovica. A high-security prison to house up to 450 inmates is being built in Padinska Skela near Belgrade; completion is planned for August 2009. The preparatory stage has been completed of the construction of a new closed-type prison in Prokuplje with a capacity of 300 inmates.