

Restoration of Confidence Necessary for the Democratic Functioning of the Serbian Judiciary

1. MEDEL has established a relationship of trust and solidarity with the associations of judges and prosecutors of Serbia. International Association expressed great concerns over the decision to proceed with re-election of Serbian judges and prosecutors in 2009 that led to the dismissal of one third of them. MEDEL conducted several audit missions over the decisions on dismissal.

2. The report, following the audit visit which was entrusted to two honorary judges members of MEDEL was intended to make the overall assessment of the review process. The audit in Serbia conducted by MEDEL is the second of its kind, after it had been previously conducted on the Portuguese judiciary (2010) and before the one currently implemented on the Turkish judiciary.

The audit report states the following facts:

- Based on the interpretation of the 2006 Constitution, it was decided to conduct a "general election" of judges and prosecutors;
- In December 2009, the High Judicial Council (HJC) and the State Prosecutorial Council (SPC) made the decision on (re)election; one third of judges and prosecutors were not reappointed;
- the decision was neither individual nor contained any reasoning;
- In May and December 2010, the Serbian Constitutional Court considered two appeals and noted that the decisions were delivered in violation of the right to a fair trial;
- the laws on judges and public prosecutors were amended on 29 December 2010 and prescribed the revision of decisions made in 2009;
- review procedures for judges was led by HJC, whose one member-judge was arrested and detained undoubtedly for the purpose of intimidation, while another resigned from the post claiming that he was subjected to pressure, four members of HJC, who were deciding in "general election" in 2009 were deciding in the review of the same decisions; while fifty decisions were adopted by the HJC in which judges were not in majority.
- treatment during the review seriously infringed basic principles of a fair trial: the principles of contradictory, of equality of arms, of impartiality and of publicity of hearings;
- From 20 July to 8 December 2011, HJC has considered 336 cases, of which 24 % was positively resolved; from 8 March to 30 May 2012, the HJC has considered 447 cases, of which 6 % was positively resolved. Summary, out of 837 judges, 139 successfully proved that their dismissal was groundless.

3. Even after the audit, the reasons for conducting a "general election" and the reasons why certain judges and prosecutors were dismissed remain unknown:

- It was not a lustration or vetting because information used for election was dated after 2006;
- Procedures are not dealing with corruption and a very small number of cases are ethical failures;
- Decisions made on the basis of statistics on the work of judges and prosecutors are unconvincing because the available data are incomplete and of poor quality: moreover quality of judges cannot be reduced to mere statistics;

4. This situation has led to major disruptions in the functioning of the entire judicial system:

- Many judges and prosecutors were elected in 2009 for a probationary period and fear of what will be the circumstances during their appointment to a permanent position;
- Judges and prosecutors re-appointed in 2009 are also in the evaluation process under the Act of 29 December 2010 and they are in fear of dismissal;
- the functions of court presidents are performed by judges as "acting court president" and are "vulnerable" because of this position;
- Fear prevails among judges and prosecutors; suspicion and mistrust are ubiquitous among the citizens. They submitted an increasing number of complaints to the anti-corruption bodies. The perception of corruption in the judiciary is getting stronger.

5. Audit report confirms the severe criticism of the Anti-Corruption Council and Ombudsman of Serbia, the Parliamentary Assembly of the Council of Europe, Venice Commission, Consultative Council of European Judges, the European Commission and EU Parliament. These criticisms are also referred to the decision to conduct a general election, the conditions under which these proceedings were conducted, and the conditions under which review of it was made.

This situation is obviously incompatible with the principles of the European Convention on Human Rights, to which Serbia acceded. This situation is not conducive to the development of international judicial cooperation based on respect for shared values and mutual trust. In addition, it is contrary to the efforts being made in building democracy in Serbia.

6. Therefore, it is now necessary to annul the reforms that started in 2009. If such a decision would not be made, non-reappointed judges and prosecutors will have to turn to the European Court of Human Rights. This process of abrogation of the reform would have to be supplemented by long-term goal to establish the trust necessary for the democratic functioning of the judiciary.

- In the short term, it is most desirable to make a decision on the abrogation of the 2009 reforms and to reinstate to the office dismissed judges and prosecutors;
- In the medium term, more general audit of the situation in the judiciary should be carried out with experts and civil society actors working together with the help, primarily of Consultative Council of European Judges and Prosecutors and, where appropriate, the European Commission for the Efficiency of Justice (CEPEJ); MEDEL could also join such an initiative;

- Such a revision in the long run could prepare the structural reform of judicial institutions and would result in recruitment of judges and prosecutors on the basis of public competition, the developing of the Judicial Academy to deal with the initial and in-service training as well as changing the system of election and competences of Judicial Councils.

7. MEDEL expresses its solidarity with the associations of judges and prosecutors of Serbia; will give them all support in order to build an independent judiciary, democratic in its recruitment system and in its practice, which will provide citizens with effective control of its functioning.

Members of MEDEL: Association Syndicale des Magistrats, ASM (Belgium); Magistratuur & Maatschappij (dto.); Association des juges chypriotes (Cyprus); Soudcovska Ceské Republiky (Czech Republic), Unie statnich zastupcu Ceske republiky (dto.); Syndicat de la Magistrature, s.m. (France); Neue Richtervereinigung, NRV (Germany); Bundesfachausschuss Richterinnen und Richter, Staatsanwältinnen und Staatsanwälte in der Vereinten Dienstleistungsgewerkschaft, ver.di (Germany); Eteria Elinon Dikastikon Litourgon Gia ti Demokratia ke tis Eleftheries (Greece); Magistratura democratica, MD (Italy); Movimento per la Giustizia (dto.); IUSTITIA (Poland); Stowarzyszenie Prokuratorów Rzeczypospolitej Polskiej, SPRP (dto.); Associação syndical dos Juizes Portugueses, ASJP (Portugal); Sindicato dos Magistrados do Ministério Público, SMMP (dto.); Uniunea Nationala a Judecatorilor din România (Romania); Društvo sudija Srbije, JAS (Serbia); Udruženje javnih tužilaca i zamenika javnih tužilaca Srbije, PAS (dto.); Jueces para la democracia, JpD (Spain); Union progresista de Fiscales, UpF (dto.); Yargıçlar ve Savcılar Birliği, Yarsav (Turkey)