

## Editorial

### *Collegial Expeditions into the Serbian Judiciary – on the history of how it evolved and particularities of this issue*

In the Spring of 2012, the *authors* received a sudden and fascinating call: In April, we were to carry out an *audit on the situation of the Serbian judiciary* for the European judicial organization MEDEL (*Magistrats Européens pour la Démocratie et les Libertés, European Association of Judges for Democracy and Freedom*). The background was primarily the firing, felt to be unjustified and unsatisfactory, of around one-third of the Serbian judges in 2009 which also affected colleagues of the Judges' Association of Serbia (JAS), a member organization of MEDEL, and included its chair, *Dragana Boljevic*. The background was also the beginning of the country's accession to the EU. This all took place in the run-up to the presidential and parliamentary elections with the later, well-known results.

We carried out the audit between April 8-15, and during our stay in *Belgrade* on April 13th, we also published a preliminary, both cautious and clear summary at a press conference which you can read below ("Déclaration de Belgrade"). In the aftermath, we wrote the report for the audit which was then presented at the end of June in *Belgrade*. The information sources for the report (in French, English, and German) are mentioned in more detail in the essay printed below "*On the Situation of the Judiciary in Serbia*" by *Hans-Ernst Böttcher* from Issue 112 (December 2012) of the independent journal *Betrifft JUSTIZ*.

A statement from MEDEL on June 30, 2012, on the publication of the audit report can also be found in this issue ("Restoration of Confidence Necessary for the Democratic Functioning of the Serbian Judiciary").

The working language during the audit was French. Communication with the Serbian discussion partners was made possible by our interpreter *Marijana Labus-Vuk*, who we would also like to thank here. In writing the original report in French, *Simone Gaboriau* was the native speaker in constant contact for exchanges of ideas via e-mail and wrote each of the first drafts. These were then commented on by *Hans-Ernst Böttcher* and edited by both until we gradually arrived at the final versions.

Due to the length of the report (nearly 70 pages), we have not reprinted it in this issue of *KritV/CritQ/RCrit*. Instead, you can find a current abridged version, namely the *update* from the beginning of November 2012 in French and English. This updated version served as the foundation for a discussion that the *authors* had on November 6, 2012, with the EU Commissioner responsible for EU expansion, *Stefan Füle*, in Brussels in which *Dragana Boljevic* and MEDEL chairman, Portuguese Federal Public Prosecutor *Antonio Cluny*, also participated.

Our mission continues to have possibilities for extension, as can be seen by the fact that on November 27-28, 2012, the Serbian Ministry of Justice held a conference in cooperation with the French embassy on the future of the judiciary. In addition to the Minister of Justice and the French ambassador, the EU representative participated in the

conference and, as external experts, the *authors* as well as the Austrian judicial colleague *Gerhard Reissner*. The *Recommendations of the Experts* ("*Recommandations des Experts*") have been reprinted in this issue.

Besides the aforementioned reports and documents, in this issue you will also find – as individually listed in the table of contents – the text "*Dans les Gorges des Balkans*," co-authored (as was the audit report and the update) by *Hans-Ernst Böttcher* and *Simone Gaboriau* and first published at the end of November 2012 in the journal "*J'essaime*" – an exclusively online publication of the French Judges' Union "Syndicat de la Magistrature" (it can be found on the union's website [www.syndicat-magistrature.org](http://www.syndicat-magistrature.org) under "*J'essaime*"). In turn, this co-authored text was created from an earlier version of the previously mentioned essay by *Hans-Ernst Böttcher* "*On the Situation of the Judiciary in Serbia*," which had been published under the title "*In den Schluchten des Balkans – Zur Situation der Justiz in Serbien*" (*In the gorges of the Balkans – on the situation of the judiciary in Serbia*) in the journal "*verdikt*" from the judges and state's attorneys in *ver.di*, issue 2.2012, at the end of October 2012. *Simone Gaboriau* had added to the text on the basis of the translation of the editors of "*J'essaime*" and also added explanations for the French readers so that we held it to be the right choice to consider this French version to be co-authored, as well. We would like to thank the editors of *Betrifft JUSTIZ, verdikt*, and *J'essaime* for their permission to reprint and the French colleagues and their linguistic assistants for their expert translation.

Because you, dear reader, now have an overview in the three languages based on the English and French versions of the updated audit report and the German and French versions of the more experience-oriented essay of the Serbian mission, we have refrained from also publishing *abstracts* in the respective "missing" languages.

To put it positively: We hope that with this *Serbian Issue of the KritV/CritQ/RCrit* you have an issue of the journal which does justice to the tri-lingual and European concept.

Let's cut to the core of the matter: In every single country of the (present and future) European Union and in the Union as a whole, the state (or, as we can say in German in such an ambiguous manner: *die Verfassung* (*the constitution*) of the democratic and social rule-of-law state depends in large part on the state of the judiciary. Our European and especially our Serbian colleagues had a good reason to doubt whether everything is in order in this regard in Serbia. In the process of Serbia's alignment with the European Union, our mission might have (and hopefully) helped in leading to the country, its judiciary, and also the European Union in this context again and truly devoting more attention to a qualitatively independent judiciary as opposed to – let's be honest enough to call it what it is – an in many aspects arbitrary "purging" of the judges under the pretense of a "new election."

Perhaps it is also not the worst result of such an excursion that the process of collective reflection on the Serbian judiciary sometimes led in the direction of our own judicial systems.

Since the founding of MEDEL in 1985 (of which the *authors* were a part), this has been an old and yet ever new discovery: from critical observation of *one* country's judiciary we can learn a lot for our own and, if one can say so, for the *judiciaries* of all countries.

And now the truly bitter core: In Serbia, what failed the most appears to have been the High Judicial Council (and the state prosecutors), as it seems to understand itself or at least acted as a governing organ as opposed to a self-administrating one. And that is an especially bitter realization in particular for those who – like the *authors* in France and Germany – stand up for a stronger implementation of self-administrating elements (“autonomy”) in the judiciary of their country (more on this: *Hans-Ernst Böttcher, Zur Situation der Justiz in Serbien*). But here, as well, the motto applies: Learn from mistakes!

You can also see it in this way: A self-confident, responsible Serbian judiciary and a critical civil society have, together with European organizations and institutions, managed to create a new awareness for a stand-off situation and – hopefully – a way out of this crisis can be found.

This also includes very significantly: Due to the decisions of the Serbian Constitutional Court in July and October 2012, all judges and state prosecutors who did not want to accept their "ejection" have been reinstated after three years of insecurity, intimidation and: the fight for their rights.

Lübeck/Paris, in January 2013

Hans-Ernst Böttcher and Simone Gaboriau