

The President of the European
Commission,
José Manuel Barroso,
200 rue de la Loi. B - 1049 Brussels

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bijlage(n) 2
onderwerp Situation of the judiciary in Serbia

Dear Sir,

As president of the Foundation “Judges for Judges” and referring to our letter of February 16th 2011 I bid your attention for the following.

My organisation is extremely concerned about the situation of the judiciary in Serbia. As known 837 judges were not re-appointed in December 2009 as the result of a so called “re-organisation” by the High Judicial Council (HJC). These – in fact dismissed – judges received the message of their dismissal without any substantiation.

After appeal by the bulk of the non-reappointed judges, the Constitutional Court (CC) decided on the first case: the HJC-decision was quashed.

In reaction to that judgement the HJC delivered 564 new decisions on the 14th of June 2010 notwithstanding the fact that appeals were still pending with the CC. These 564 decisions “replaced” so to say (that part of) the earlier decisions of December 2009.

On 21 December 2010 the Constitutional Court (CC) decided on a second case, the HJC-decision of December 2009 was again quashed.

After the publication of the critical EC Serbia 2010 Progress report (SEC (2010) 1330), new legislation was passed on the 29th of December 2010 as a result of which the cases of the dismissed members of the judiciary still pending in the Constitutional Court were transferred to the new HJC, and were considered as objections submitted to the HJC itself.

The HJC adopted rules for conducting the review-procedure concerning the non-reappointment decisions on May 23rd 2011 that differed substantially from the proposals done by both the Serbian Judges Association (JAS) and the OSCE. The JAS even speaks of ‘unacceptable shortcomings’¹.

Last July the HCJ started the review of the non re-appointment decisions on the basis of proposals done by 2 subcommissions of the same HCJ. The letter of JAS dated July 25th (see annex) clearly voices their concerns regarding the way the review procedure is conducted.

The Foundation “Judges for Judges” is deeply worried about the current situation of the judiciary in Serbia. In December 2009 one third of all appointed judges were fired. After twenty months the overwhelming majority of them has still not received a solid argumentation for that decision nor did they have an effective legal remedy against that decision.

The EC Serbia 2010 progress report called attention to the fact that because the non-reappointed judges were not heard during the procedure and did not receive adequate explanations for the decisions, the procedure might give room for political influence as a result of which the independence of the judiciary is put into question.

It is troublesome that the currently conducted review procedure that was just set up to overcome these serious flaws, is not even in accordance with the rules drafted therefore by the HJC itself.

The continuing situation of threatened independence of the Serbian judiciary is delicate, all the more if seen in the light of Serbia’s pending request to become a candidate-member of the EU.

It is beyond dispute that the extradition by Serbia of the war crime suspects Mladic and Hadžić to the International Criminal Tribunal for Former Yugoslavia should be considered – in terms of the Rule of Law – as a step in the right direction. Nevertheless it seems unacceptable that a country where the independence of the judiciary is under such high pressure, would be granted the status of candidate country.

We therefore urge your Commission to evaluate these developments concerning the Serbian judiciary in the coming months with the utmost care.

Sincerely,

G.J.W. van Oven,
President Judges for Judges

¹ See public statement of 26 May 2011: www.sudije.rs/en/actuals/public-statements/jas-statement

Annex:

- letter to Mr. Barroso by Mrs. Dragana Boljevic, President of the Judges' Association of Serbia of 25 July 2011
- letter to Mr. Barosso by Judges for Judges of 16 february 2011