

THE APPEAL OF THE PROFESSIONAL TO THE POLITICAL AND GENERAL PUBLIC

Although welcoming the efforts of the authorities to overcome some of the major failures in the accomplishment of the reform of the judiciary in Serbia, members of the legal profession call to the attention that those efforts still contain legally unacceptable deficiencies in the bills amending the laws on judiciary, which the Parliament of Serbia adopted on December 29th 2010, as follows:

- Legislator wants to turn by its own will individual statements of will of hundreds of persons, which contain a same legal remedy filed before the Constitutional Court, into another, so far non-existent remedy filed before the highest institution of judicial administration.

This is contrary to the very idea of law, and to the elementary legal security, as well as to the idea of the separation of powers. That is a negation of a legally valid will of the individuals by the retroactive unconstitutional collective will of the legislator. That is the omnipotence of the legislator, i.e. the arbitrariness, the opposition to the very possibility of establishing of Serbia as a modern rule of law *Rechtsstaat*. It is a denial of basic individual rights - including the right to an effective legal remedy - and a denial of the basic principles - including the prohibition of retroactivity which endangers the legal security.

- Such amendments to the laws on judiciary are again being adopted in a hurry, without debate, in the fast-track procedure, right before the New Year and Christmas holidays (as it was the case in 2008 and 2009) and enter into force unconstitutionally - only a day following their publication.
- The right to vote of non-reappointed judges (more than 800) and prosecutors (around 200) in the elections for the High Judicial Council and State Prosecutorial Council is precluded, although the final decision on their status has not been rendered yet. Unreasonably short deadlines are set for the elections of the members of the High Judicial Council and State Prosecutorial Council and a new procedure for their election is envisaged which can not give legitimacy to the dramatically shaken reputation of these bodies.

Nevertheless, the legal way to eliminate these and other immense failures in the reform of the judiciary in Serbia does exist. And, it is the legal way which is undisputedly modern and civilized in its manner:

- The Constitutional Court should, acting upon the motions of the authorized applicants from December 2009, adjudicate on the constitutionality of the Constitutional Law which interrupts the permanent tenure of judicial office,
- High Judicial Council and State Prosecutorial Council should assign judges and prosecutors according to new reformed network of courts and prosecution seats, and
- Dishonored, unprofessional and unqualified individuals should be removed by a reasoned decision.

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