

Statement

MEDEL and the Dutch Foundation Rechtters voor Rechtters/Judges for Judges were alarmed by the situation in Serbia where, within the context of the reform of the judiciary, more than 800 judges that had been appointed according to the Constitution of 1990 or that of 2006, have been recently submitted to a election procedure that led to their non reappointment, notwithstanding the permanent character of their tenure. By decision of the High Judicial Council (HCC) of December 25th 2009 the judges that were not reappointed were informed that their judgeship would be terminated as of 31 December 2009.

A similar procedure was followed with respect to the Public Prosecutors. They have been similarly submitted to a formal procedure of election carried out by the State Prosecutor Council (SPC). The result has been that more than 150 former prosecutors have lost their jobs.

On invitation of the Judges Association of Serbia and the Prosecutors Association of Serbia, we have had the opportunity to spend two days (4 – 6 February 2010) discussing these institutional events with several authorities, in Serbia.

The MEDEL/”Judges for Judges” representatives had meetings with:

- Mrs. Nata Mesarevic, president of the HCC;
- Mrs. Zagorka Dolovac, president of SPC and other members of SPC;
- Mrs. Vesna Rakic Vodinelic, Dean and Mr. Zoran Ivosevic, professor of the Union Law Faculty in Belgrade;
- vice deans Mr. Zika Bujuklic and Mrs. Emilija Vukadin and professors of the Law Faculty University of Belgrade - Mr. Goran Ilic and Mr. Tanasije Marinkovic;
- Mr. Sasa Jankovic, the Ombudsman;
- Mr. Rodoljub Sabic, Commissioner for Information of Public Importance and Personal Data Protection;
- Mr. Jovica Kosic, representative of Bar Associations of Serbia, Mr. Vojislav Nedic, president and Slobodan Soskic and Mileva Bogdanovic, members of Managing Board of Belgrade Bar Associations;
- Mrs. Ljiljana Smajlovic, president of the Association of Journalists of Serbia (UNS) and Mrs. Nadezda Gace, president of Independent Association of Journalists of Serbia (NUNS).

The principle of irremovability of judges, meaning that they should have guaranteed tenure until a mandatory retirement age or the expiry of a fixed term of office, is a fundamental principle of judicial independence enshrined in many international Acts.

The Consultative Council of European Judges (CCJE) in its Declaration on Serbia, during its 9th plenary meeting (12-14 November 2008) considered that it does not appear, at this stage, that Serbia has undergone an interruption of continuity of its legal and political framework by the adoption of the Constitution on 30 September 2006 and of the Constitutional law on Implementation of the Constitution on 10 November 2006, and further considered that art. 7 of this latter law, providing that the first election of judges shall take place not later than 90 days from the date of the establishment of the High Judicial Council, should be construed in conformity with the principle of irremovability of judges (guaranteed by the Serbian Constitution both before and after 2006) and expressed concern that the proposal of Law on Judges under examination by the Serbian National Assembly, which clearly calls for termination of judges who have tenure, may infringe judicial independence.

We recall that even within a context of reforms at the constitutional level and of the judiciary itself the European Commission for Democracy through Law (Venice Commission) - in its Opinion CDL-AD (2007)004 on the Constitution of Serbia has pointed out that *“the need for a re-appointment process with respect to all judges and prosecutors is not at all obvious.*

(...) In any case, such a process is acceptable only if there are sufficient guarantees for its fairness. In the opinion of the Venice Commission this requires in particular:

- *The procedure must be based on clear and transparent criteria and only past behaviour incompatible with the role of an independent judge may be a reason for not re-appointing a judge;*
- *The procedure has to be fair, carried out by an independent and impartial body and ensure a fair hearing for all concerned;*
- *There must be the possibility for an appeal to an independent court.*

Likewise the Venice Commission has underlined in its Opinion n° 528/09 of June 2009 on the draft criteria and standards for the election of judges and court presidents of Serbia, the importance that every judge who had permanent tenure should only see his or her tenure terminated by a reasoned decision which is appealable to a court of law.

Both HCC and SPC have stated that in the procedure of election they have applied the criteria of competence, qualification and worthiness.

But we must note with the deepest concern that the decisions taken both by the HCC and the SPC without a hearing do not contain any personalized individual reasoning and therefore justification.

An identical decision - preceded by the list of names of all 837 non-reappointed judges - was sent out to the judges that were not re-elected. No mention was made of appeal possibilities.

None of the non-reappointed prosecutors has received an individualised decision either.

The way these procedures were conducted lack therefore in transparency and leave open a lot of questions. How the criteria were applied on a case-by-case basis remains unclear.

This also jeopardizes the effective appeal possibilities for the concerned judges/prosecutors.

The Ombudsman of Serbia has expressed his concern about this situation and will consider possible remedies in the next few weeks.

We have been informed that more than nine hundred judges and prosecutors have filed an appeal at the Constitutional Court of Serbia. We are looking forward to its ruling, but it must be stressed that the colleagues from Serbia are ready to submit the case to the European Court of Human Rights if necessary.

Meanwhile, several messages have been sent to the relevant authorities of Serbia, to the European Union and the Council of Europe and to several European States, as well.

In the next few weeks we will consider what next steps our respective organisations could undertake.