

With respect to the HJC statement of 24 May 2011 that the Rules for the Enforcement of the Decision on Criteria and Standards of 23 May 2011 were harmonised at a meeting with the representatives of the JAS, OSCE, CoE and European Commission, the JAS issues the following

#### S T A T E M E N T:

The HJC allegation that the JAS endorsed the above Rules is untrue. The JAS is of the view that the final text is the worst HJC version to date.

Contrary to the proposals in the OSCE/JAS Guidelines, which were highly praised by the EU expert as applicable, measurable, fair and efficient, the Rules comprise a series of unacceptable shortcomings, including:

- \* HJC Rules discriminate against non re-appointed judges because they do not allow for the application of standards that applied during the re-appointment. It would be fair if every worthy non re-appointed judge with the same or better results than a re-appointed judge were automatically reinstated.

- \* HJC Rules introduce full arbitrariness, because they do not lay down when doubts arise that a judge does not fulfil the criteria, neither they lay down in what case such doubts are proven

- \* HJC Rules expand the criteria of unworthiness to the level at which ANY judge may be dismissed, in contravention of the Venice Commission Opinion and European standards.

- \* HJC Rules allow for introducing new reasons for dismissal, other than those listed in the decision on non re-election.

- \* HJC Rules allow HJC members, who had taken part in the rendering of the challenged decisions, to decide on the remedies against those decisions

The JAS again reiterates that both JAS critical objections and the OSCE representative's remarks were categorically dismissed without explanation by the HJC representatives. This is why the representatives of the JAS clearly reiterated a number of times at the meeting that the JAS would take a final position on the Rules only after it received the integral text of HJC Rules in the Serbian language.

To recall, participants in the meeting, which lasted 15 hours (from 9 am until half an hour after midnight) discussed only parts of the HJC Draft in English. Contrary to the previous agreement that Draft Guidelines formulated jointly by the OSCE and the JAS and which had been extremely highly praised by the EU, should also to have been discussed, but that was not the case.

As soon as it received the text of the Draft HJC Rules the following day, on 21 May, the JAS issued a public statement that it could not endorse the text because the HJC Rules do not provide guarantees that the shortcomings noted by the EU and the Constitutional Court decisions Saveljic and Tasic would be eliminated, and because they are not in accordance with the principles the HJC, the Justice Ministry, the EU and the JAS agreed on earlier.

The JAS suggests to the European Commission to have its expert conduct a final evaluation of the HJC Rules. His opinion should serve two purposes: it would establish the bona fides guidelines of acting of the HJC while review process, on the one hand and, and provide an objective assessment of the review process, on the other hand.

If this is not done, the European Commission will also share responsibility for the enforcement of the Rules which provide even greater room for arbitrariness and partiality, in contravention of the Opinion of the Venice Commission and European standards.