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PROJECT
"SUPPORT TO THE REFORM OF THE JUDICIARY IN SERBIA IN THE LIGHT OF COUNCIL OF EUROPE STANDARDS"

FINAL REPORT

by

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List of abbreviations

ADR	Alternative Disputes Resolution
AVP	Case Automation System software
BES	Brankruptcy and Enforcement Strengthening
BIA	Intelligence Service
CCJE	Consultative Council of European Judges
CCPE	Consultative Council of European Prosecutors
CEPEJ	European Commission for the efficiency of Justice
CIS	Commonwealth of Independent States
CoE	Council of Europe
CoE PM	Council of Europe Project Manager
DEJD	Department for Enforcement of Judicial Decisions
EC	the Commission – European Commission
EU Delegation	Delegation of the European Union to Serbia
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
ECRI	European Commission against Racism and Intolerance
EU	European Union
HJC	High Judicial Council
ICT	Information and Communication Technology
IT	Information Technology
JAS	Judges Assiciation of Serbia
LAS	Legal Advice System
LMS	Legal Monitoring System
MDTF	Multi Donor Trust Fund
MoJ	Ministry of Justice
NGO	Non-Governmental Organisation
NIJ	National Institute of Justice
NJRS	National Judicial Reform Strategy
NSE	Council of Europe National Senior Expert
OSCE	Organisation for Security and Co-operation in Europe
PA	Council of Europe Project Assistant
PACE	Parliamentary Assembly of the Council of Europe
PACO	Programme against corruption and organised crime in South-eastern Europe
PC	Personal computer
PGO	General Prosecutors Office
PPS	Public Prosecution Service
RE/PC	Council of Europe Resident Expert/Project co-ordinator
SCJ	Supreme Court of Justice
SCM	Superior Council of Magistracy
SCP	Superior Council of Prosecutors
SIC	Strategy Implementation Commission
SPC	State Prosecutorial Council
ToR	Terms of Reference
USAID	United States Agency for International Development

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OVERVIEW

This report provides a review of the state of implementation of the 2006 National Judicial Reform Strategy (NJRS) in Serbia. The report addresses the extent to which the NJRS has or has not been implemented in Serbia, the obstacles preventing full implementation of the NJRS, and what is needed to reach this objective.

The report is divided into four chapters corresponding to the main principles of the NJRS. In each chapter the experts offer recommendations on ways to ensure implementation of the NJRS.[1]

The first chapter examines the independence requirements of the NJRS. The experts analyse the role of judicial self-governing bodies and of the Ministry of Justice in the administration of justice. The requirements of the NJRS are then presented. An overview of the function and mandate of the High Judicial Council is outlined before the experts assess its composition, working methods, capacity and budget. The experts address what other tasks need to be completed in order to fully implement the remaining requirements of the NJRS. A similar assessment is carried out for the State Prosecutorial Council. The experts subsequently offer their recommendations for self-governing structures, independent budget/policy and rule making authorities and administration, management and monitoring.

In the second chapter, the experts assess whether and how the transparency requirements of the NJRS were abided by in the course of the "election" procedure of judges and prosecutors recently carried out in Serbia. The experts also assess the accessibility of the courts' jurisprudence and examine the public image of the judiciary before providing an overview of the outstanding elements in the implementation of the NJRS. Recommendations are mainly offered with regard to improving the procedures of "election", access to court information and jurisprudence and the public image of the judiciary.

The third chapter deals with the accountability of the Serbian judiciary. It starts with a summary of the requirements of the NJRS, followed by an analysis of judicial productivity and performance, accountability and ethical standards, as well as a critical assessment of the institution of the disciplinary prosecutor. The remaining outstanding elements of the NJRS are listed. The experts offer their recommendations on judicial productivity and performance, methods of tackling the backlog of cases, improvements to be made regarding case management and delivering better information technology services to judicial staff.

The last chapter looks at the efficiency requirements of the NJRS. Factors such as an efficient legal system, improved access to justice, standardised education and training and the modernisation of the court network are explored. The experts offer their assessment of the efficiency of the Serbian judiciary at present and proceed to highlight which elements are missing in the implementation of the NJRS in that respect. They underline the need to improve the accessibility of justice by way of an adequate legal aid system complemented by mediation centres. The experts also formulate recommendations on how to improve the system for education and training and for modernising the court network.

In addition to the main body of the report, a road map indicating specific measures which would ensure a continued and sustainable reform of the judiciary in Serbia has drawn up (see Appendix II). The road map is based on the recommendations contained in the report and should be read in conjunction with it. The proposed measures are divided into three different

[1] Given the variety of subjects these recommendations address, it is not possible to summarise them within the scope of this executive summary. However, for easy reference, recommendations have been grouped together in each chapter of the report.

categories to reflect their degree of priority and urgency: short term, medium term and long term.

Some of the measures which are particularly important for the proper functioning of the justice system and for meeting the expectations of the Serbian public at large, should be implemented immediately and used as a platform for the successful implementation of further measures. Other measures may be pursued at a later stage as they appear to be less urgent or depend on the implementation of other measures.

I. INTRODUCTION

1. FOREWORD

Serbia has been a member state of the Council of Europe (CoE) since 2003, succeeding in 2006 to the State Union of Serbia and Montenegro. Over this period, Serbia has been steadily implementing the obligations and commitments entered into at the moment of its accession. It has actively co-operated with the CoE and has chaired the Committee of Ministers from May to November 2007.

In its Resolution 1661 (2009), the CoE Parliamentary Assembly (PACE) called upon the Serbian authorities to undertake a number of concrete actions in order to fulfil the country's remaining membership obligations and commitments. The Serbian authorities were recommended to intensify their efforts particularly with regard to enhancing the transparency and the efficiency of the judicial system[2]. Furthermore, PACE welcomed Serbia's ambition to pursue European integration and committed to support Serbia on its path.

Serbia is a potential candidate to accession to the European Union (EU). A Stabilisation and Association agreement with the EU was ratified on 9 September 2008. The country's progress towards European integration is regularly monitored by the European Commission. In its "Conclusions on Serbia,"[3] the European Commission noted that, in 2009, a number of initiatives had been taken to consolidate democratic values and the rule of law, but that further reforms were needed to ensure that the new constitutional framework be implemented in line with European standards, particularly in the area of the judiciary. Like PACE, the European Commission expressed concerns as to the lack of transparency, the performance and efficiency of the judicial system.[4]

Other issues critical for EU integration are the fight against corruption, trafficking in human beings and organised crime, the improvement of the protection of human rights and national minorities, the full co-operation with the International Criminal Tribunal for the Former Yugoslavia, including the transfer and arrest of the two remaining fugitive indictees. Progress

[2] As regards particularly the rule of law, PACE recommended:

- to develop and implement the legislation on the organisation of courts of law, status of judges, status of the High Judicial Council, organisation of the Public Prosecutor's Office, status of Public Prosecutors and State Prosecutorial Council, in accordance with European standards, guaranteeing in particular that the judiciary and the prosecutors are immune from political influence;

- to increase the effectiveness and professionalism of judges and prosecutors, in particular, by reinforcing their initial and in-service training through the Academy of Jurisprudence;

- to enact specific measures to combat corruption within the judiciary, while preserving the fundamental guarantee of independence of judges;

- to implement in full the recommendations of the Council of Europe Group of States Against Corruption (GRECO);

- to work with the Council of Europe in the development and establishment of the Anti-Corruption Agency in order to intensify and streamline the implementation of different policies and measures to combat political and administrative corruption;

- to spare no effort to strengthen the legislation and policies aiming at preventing money laundering and counter terrorism financing, in line with the recommendations of MONEYVAL.

[3] Conclusions on Serbia – extract from the Communication from the Commission to the Council and the European Parliament "Enlargement Strategy and Main Challenges 2009-2010", COM (2009)533 final)

[4] The Commission noted that "there remain concerns about the way in which the reappointment procedure for all judges is being carried out and the risk that the lack of transparency could lead to the long-term politicisation of the judicial system. The backlog of court cases has not been reduced and court procedures need to be streamlined and an efficient court management system introduced".

was also to be made in the area of justice, freedom and security, as well as internal market and sectoral policies.

The international community is supporting the Serbian authorities in their reform agenda. Particularly with regard to the justice sector, a Multi-Donor Trust Fund for Justice Sector Support (MDTF-JSS), including Denmark, Spain, Netherlands, UK, Norway, Sweden, Slovenia and Switzerland) has been established and is jointly executed by the World Bank and the Ministry of Justice (MoJ) of Serbia. It focuses on different aspects of Serbia's EU accession process in the justice sector, institutional capacity-building and donor coordination.

2. THE PROJECT

The CoE has been implementing[5] a project entitled "Support of the Reform of the Judiciary in Serbia in the light of the Council of Europe Standards", funded by the World Bank through the MDTF-JSS. The project's objective is to improve the independency, transparency, efficiency and accessibility of the Serbian judicial system. This is to be pursued firstly by means of a comprehensive stock-taking of the reforms undertaken and the results produced; secondly, through identification of the legislative gaps and obstacles hindering the reform of the judiciary in Serbia in the light of European standards concerning the independence, efficiency, transparency and accessibility of justice. In addition, experts[6] have been given the task of formulating recommendations to the Serbian authorities on specific measures aimed at ensuring a continued sustainable reform of the judiciary in Serbia. A road map, including a rough time-table for the implementation of these recommendations, was also drawn up.

Several meetings and round tables were organised under the project. In particular, fact–finding missions took place on 8 and 9 February, 24 and 25 March and 8 and 9 April 2010. Thematic round tables with the participation of project stakeholders took place on 18 and 19 May 2010.

The following officials were met in Belgrade:

- the President of the High Judicial Council;
- the President and members of the State Prosecutorial Council;
- representatives of the Ministry of Justice;
- representatives of the World Bank in Belgrade;
- members of the EU Assessment mission;
- the President and a member of the Association of Judges;
- the President of the Association of Prosecutors;
- two judges who were involved in the drafting of evaluation criteria for judges;
- the President and six other judges of the Constitutional Court;
- the Direction of the Judicial Academy;
- representatives of the High Court, Belgrade;
- representatives of the Basic Prosecutor's Office, Belgrade;
- representatives of the Bar Associations of Serbia;
- representatives of the OSCE, Judiciary Reform Unit;
- the Director of "Partners for Democratic Change", Serbia.

[5]The CoE project team was composed of: Ms Clementina Barbaro (Head of Unit in the Legal and Human Rights Capacity Building Department of the CoE, Strasbourg, France), Ms Irina Kuzmenko and Mr Jesse Cox (Programme Advisers in the Legal and Human Rights Capacity Building Department of the CoE, Strasbourg, France), Mr Vladan Joksimovic (Legal/Human Rights Adviser, CoE Office in Belgrade), and Mr Aleksandar Stojanovic (Project Assistant, CoE Office in Belgrade).

[6] The experts involved in the project are referred to on the title page.

The project's activities provided the opportunity to discuss with Serbian authorities, as well as representatives from the donor community and civil society, different aspects of the justice reform process. This has allowed the experts to gain a better understanding of the progress which was made and remains to be made in this field, and has facilitated their task of drawing up the project final report.

The report was drawn up on the basis of the information available on 12 July 2010.[7]

3. THE REPORT PREPARED AS A RESULT OF THE PROJECT

The project's report is concerned with a review of the state of implementation of the 2006 National Judicial Reform Strategy (NJRS) in Serbia. The report addresses to what extent the NJRS has or has not been implemented in Serbia, what are the factual obstacles preventing full implementation of the NJRS and what is necessary to ensure its full implementation. To reflect the close relationship the report has with the requirements of the NJRS, it has been divided into four chapters that correspond to the main principles of the NJRS i.e. independence, transparency, accountability and efficiency. In each chapter the experts deliver recommendations on ways to address the implementation of the NJRS. In addition, a road map indicating the degree of priority of the project recommendations (short-, medium- and long-term) forms part of the report.

Contrary to what was originally foreseen in the Terms of Reference, the report does not assess the compatibility of the Serbian legal framework and case law with European standards regarding the independence, transparency, efficiency and accessibility of the judiciary. This was done deliberately, as during project implementation it appeared that an analysis of the factual (as opposed to legal) obstacles hampering the implementation of the NJRS would be more beneficial and necessary, in the light of the sensitive developments in the field of the Judiciary in Serbia – in particular the (re)-election process of judges and prosecutors.

The experts would also like to point out that even if the goals outlined by the NJRS were fully implemented, it would still be unlikely that the Serbian justice system were fully in line with European standards. This partly depends on the fact that the NJRS fails to address issues which are of key importance for the good functioning of the justice system, for instance the enforcement of judicial decisions, which is an essential requirement of the right to a fair trial set forth in the European Convention on Human Rights but remains a source of concern in Serbia[8]. The Serbian authorities should consider how to fill this and other gaps with European standards in the future.

The report is based on a "peer-to-peer" review, in particular an analysis carried out by CoE experts of the main problems and challenges in the field of judicial reform in Serbia, in the light of the information provided by the beneficiaries themselves during the project's activities. This is in line with the project methodology as set out in the project Terms of Reference but has its limitations, as the analysis relies upon subjective assessments/perceptions as opposed to hard facts. Quantitative data referred to in the project are estimations and they provide an interesting assessment but have not been statistically verified.

The experts do not go into detail on how their recommendations could or should be implemented. This is largely the result of the situation on the ground, and how various

[7] The experts were later informed of new developments concerning different subject matters dealt with by the report, but it was not possible to include the new information in this report due to time constraints.
[8] A 2007 survey revealed that the collection rate in monetary claims in Serbia is only 1.16 percent, compared with nearly 35 percent in other countries in the region, such as Macedonia, Bulgaria and Hungary.

localised factors play an important role in the way implementation could be best organised. On some occasions, the experts felt that going into great detail with regard to possible measures to be taken would interfere with the margin of appreciation and the freedom of means that the Serbian authorities are afforded. Therefore, it will be up to the Serbian authorities to decide the best way to implement the experts' recommendations, according to their knowledge of the current situation in Serbia.

4. REFORMS UNDERTAKEN IN THE FIELD OF JUSTICE SINCE 2006

The ongoing judicial reform, including the prosecutorial system reform, is one of the priorities in Serbia, which strives to respect the traditions of the country whilst incorporating European standards and considering recommendations made by the CoE Venice Commission. The reform is based on the Constitution of Serbia (2006), the National Judicial Reform Strategy (2006) and the later adopted Judicial Law Package.

The National Judicial Reform Strategy (NJRS) was adopted in April 2006 and was focused on the reform of the Serbian judicial system. It also addressed to a limited extent other parts of the justice system: the Ministry of Justice, the prosecutorial and penal systems, as well as independent judicial professions.

The core principles of the NJRS are:

- Independence
- Transparency
- Accountability
- Efficiency

Twelve fundamental reform goals (three under each core principle) were set out in the NJRS. Collectively and individually, these reform goals and their associated initiatives addressed the main challenges identified by the NJRS.

Several key laws were passed or amended in 2008 and 2009. New statutory legislation was adopted on the High Judicial Council, the Organisation of Courts, Judges, Public Prosecutors, the State Prosecutorial Council, Seats and Territorial Jurisdiction of Courts and the Public Prosecutors' Office.

Such legislative reform was necessary, as it is clear that within Serbian society, there still exists a level of public mistrust in the judicial and prosecutorial systems. As a result of a long history of abuse and malpractice within the judiciary in Serbia, as well as inappropriate political influence, the public image of the Serbian judicial and prosecutorial systems falls well below acceptable European standards. Societal demand for judicial reform has therefore been strong[9]. In many ways, the Serbian judicial and prosecutorial systems were poorly structured and operated inefficiently, making reform somewhat inevitable.

Judicial reform in Serbia is a complex task. The Ministry of Justice has put significant effort into, and worked intensively on, the implementation of the NJRS. A new organisational structure of the judiciary has been adopted and has entered into force. The human resources policy has been adapted accordingly. The procedural legislation has been partly reformed. The majority of the new solutions are in line with the National Judicial Reform Strategy.

[9]According to Minister Malovic and Ms Meserevic statement for media, the main goal of the reform would be "to regain the trust of the citizens in the judicial system of Serbia", see Blic, 20 September 2009.

However, some measures anticipated in Section IV (Judicial Reform Framework) of the National Judicial Reform Strategy have not been implemented yet. In other fields, some achievements must be regarded as partial only.

It has acknowledged that the proposed reforms are comprehensive, and as a result of the need to implement many of the reforms quickly, rather inevitably, some mistakes may have occurred. However, the Ministry of Justice has expressed its readiness to address the problems arising from the framework for implementation of the reform, even if its lack of human resources continues to hamper its ability to achieve every goal envisaged in the NJRS.

The experts believe that the problems which arose in the implementation of the National Judicial Reform Strategy might be overcome with common efforts of all parties involved, including the legislative, executive and judicial branches, but also the associations of judges and prosecutors. Therefore the implementation of the suggested measures, as well as the whole reform process, should be supervised by the Strategy Implementation Commission, which is composed of representatives of the aforementioned bodies. The experts are aware that this Commission has not been functional until now. The Commission's members must, as expediently as is possible in the circumstances, establish the requisite framework to ensure it operates effectively. If this proves to be impossible, other avenues must be explored to guarantee that it becomes operational. While the experts prefer not to go into detail as to the concrete measures to be taken by the Serbian authorities to this effect, since they fall within their margin of appreciation, they wish to mention that the donors' community may also have a role to play particularly with regard to the sharing of information and/or expertise on the implementation of other similar strategies in other countries.

During the meetings held with the many representatives of different institutions and bodies, the experts noticed that one problem faced would be to keep abreast of the important changes that have occurred and will continue to occur. The experts believe that the judicial system needs to have the opportunity to "digest" the recent and current changes. One may therefore consider avoiding the introduction of other important changes within coming years, unless they are crucial in ensuring the good functioning of the justice system and the society, under the rule of law. Judges, prosecutors and their institutions need time to adjust to new organisational systems, new working methods, new IT systems, etc. If there are too many changes in a too short period of time, the good functioning of the judiciary will be at risk and the necessary improvements hindered.

Another issue of concern is the capacity of key stakeholders in the field of justice, such as the MoJ, HJC and SPC. According to the experts, steps should be taken to strengthen the capacity of these institutions to enable them to perform their duties effectively. This includes; increasing their human resources, the allocation of an adequate budget and the strengthening of skills through capacity-building measures.

Although the initial idea of reform had been supported by the public and politicians alike, the implementation of the reform, particularly the general "election" of judges[10] caused controversy within Serbian society in general and within the judiciary. Whilst there is no doubt that the challenges to be met by the Serbian authorities to implement the reform are considerable, continued efforts should be made by them to identify solutions which would serve the ultimate goal of the reform – a better functioning judiciary - and would be in line with the general public's expectations and with the CoE standards, which Serbia is bound by.

[10] The Serbian legislation calls it "general election"; the judges' and prosecutors' associations, among others, call it "re-election"; to avoid any misunderstanding, the experts chose to use the term "(re-)election.."

5. EUROPEAN STANDARDS

The CoE's work in the legal field is making a substantial contribution to the development of a European legal area, harmonising and modernising the legal systems of its member States, on the basis of common standards drawn up within the Organisation. Its overall aim is to encourage the creation and development of democratic institutions and procedures at national, regional and local level, and to promote respect for the principle of the rule of law.

One of the CoE main areas of activity is the promotion of an efficient and independent judicial system, as reflected in numerous and specific instruments. For example, work is ongoing on the development of the independence and impartiality of judges and on practical measures for improving the quality and the efficiency of judicial organisation and measures. A wide range of binding and non-binding instruments such as Conventions, Recommendations and Resolutions have been drawn up to that effect. These instruments are aimed primarily at increasing the independence and impartiality of judges, setting up fair and effective legal aid and advice systems, reducing the courts' excessive workloads and reducing judicial delays.

A summary of the CoE standards relevant to the project is included in the report (see Appendix I). Those who are not already familiar with CoE instruments may find it useful to begin their reading with this summary.

II. INDEPENDENCE

1. BACKGROUND

In Europe, judicial self-governing bodies (so-called Judicial Councils) are in charge of ensuring and safeguarding the independence of the judicial system and of individual judges themselves. The effectiveness and trust in such institutions depend on the composition, the criteria of appointment of its members, the powers allocated to them, the transparency of their decision-making processes and their actual functioning.

It is recommended that judges who sit on a Judicial Council be elected by their peers following methods guaranteeing the widest possible representation of the judiciary. In addition, a Judicial Council should have adequate means to operate independently and autonomously as well as having the power and capacity to negotiate and organise its own budget effectively. It should also be properly consulted within the framework of the adoption of the budget for the judiciary (including funding for the courts) by the Parliament.

In Serbia, two self-governing bodies in charge of all of the issues concerning the status of judges, and of prosecutors, were recently established: the High Judicial Council (hereinafter 'HJC') and the State Prosecutorial Council (hereinafter 'SPC'). These institutions were given powers and attributes which previously belonged to the Ministry of Justice (hereinafter 'MoJ').

The tasks of the MoJ in the field of the Judiciary remain the following[11]:

- Legal drafting
- Budgetary allocations (until the end of 2010)
- Implementation of laws and other regulations related to the organisation and work of the courts, especially
- Collecting statistical and other data and monitoring the work of courts
- Approving the Act on Internal Organisation and Job Classification
- Providing material, spatial and other conditions for the functioning of courts
- Regulating and developing of a judicial information system and legal database
- Supervising and processing of cases within the prescribed deadlines and acting on complaints and petitions
- Supervising the financial and material operations of the courts
- Appointing and dismissing permanent court interpreters
- Filing requests for the dismissal of judges or prosecutors addressed to the competent Council

[11] According to the provisions of the Law on Organisation of Courts.

All other powers and attributes in the field of organisation, management and supervision of courts and prosecution services have been transferred to the HJC and the SPC.

2. REQUIREMENTS OF THE NATIONAL JUDICIAL REFORM STRATEGY

2.1. INDEPENDENT COURT SYSTEM

Under the NJRS, the first core principle – ensuring the independence of the judiciary – is articulated in three sub-principles: Self-Governing Structure, Independent Budget Authority and Independent Policy and Rule Making Authority.

The first principle identifies the High Judicial Council (HJC) as the self-governing body for the judiciary. Such a body is the guarantor of the autonomy and independence of courts and judges, and is the management and oversight body for the court system. The HJC has a decisive role in the process of judicial selection, promotion, discipline, material status and removal from office. It is also responsible for human resources, organisation and oversight, budget, performance measurement, policy and rule-making and operation of courts, and strategic planning. The HJC is to be supported by an Administrative Office which will implement activities within the scope of its competence.

According to the timetable of the NJRS, the HJC's short-term goals (2006-2007) were as follows:

- Composition, mandate, organisation and operating procedures established by law
- Administrative Office under the HJC established by law; plan developed for structure and staffing

Medium-term goals (2008-2009) were as follows:

- New members elected for the HJC; additional by-laws and operating rules prepared and adopted
- Basic Administrative Office services set up and to begin functioning

Long-term goals (2000-2011) are as follows:

- The HJC shall assume full oversight for all activities under its authority
- Its Administrative Office shall be fully operational

Achieving independence of the judiciary requires the introduction of an independent court budget, but only after the creation of the infrastructure and capacities for adequate planning and effective financial management within the judiciary occurs.

Short-term goals in this field (2006-2007) were as follows:

- A plan was to be developed and adopted for the transitional budget process supported by the HJC

- An Administrative office and necessary amendments to laws were to be prepared

The medium-term goal (2008-2009) was the assumption of authority over the administrative office and the process of the preparation of the judicial budget by the HJC.

The long-term goal of the HJC is to assume full authority for the preparation of the budget. Additionally, the administrative office shall be ready to implement this new budget.

Finally, the judicial system should be able to exercise independent policy and rule-making authority through the HJC. With the requisite level of authority transferred from the Ministry of Justice, the HJC will supervise the implementation of administrative policies from the courts rules of procedure, and further improve the effectiveness of case management and court performance, jointly with court presidents and with the participation of the Ministry of Justice in accordance with the law. From short- to long-term objectives, the HJC was to be established as a rule making body for the judiciary and a legal framework was to be developed. The HJC was then to take full responsibility as a policy and rule making authority.

2.2. HIGH JUDICIAL COUNCIL

2.2.1 Background

The HJC is an independent and autonomous body that provides and guarantees the independence and autonomy of courts and judges.

The HJC's mandate is broader than the former Council's. In particular, the HJC is mandated to;

- Elect judges to permanent functions
- Decide on the cessation of their functions
- Propose candidates to the post of judge of the Constitutional Court
- Decide on the judges' and other Council members' immunity
- Decide on the transfer of judges
- Evaluate judges' objections to decisions of dismissal
- Compensate for illegal and incorrect judges' performance
- Formulate a Code of Ethics
- Propose the scope and structure of the budget necessary for the courts' functioning
- Supervise the courts' spending (this function has been postponed to 1 January 2011[12] and in the meantime has been left under the jurisdiction of the Ministry of Justice)
- Issue opinions on any change to the existing or draft laws regarding a judge's position, the organisation of courts or any procedure relevant to the performance of a judge's function

[12] Article 95 Law on Organisation of Courts.

- Establish sub-statutory acts on criteria, measures and procedures for the evaluation of judges' performances, i.e. courts presidents,[13] on the composition and working methods for the Commission for evaluation of the court presidents,[14] on criteria and measures for the evaluation of capacities, professional abilities and worthiness of candidates for the election of judges[15]

- Decide on objections made by judges on the evaluation of their work by department councils and evaluate the performance of the court presidents, through its Commission[16]

- Decide on objections made by court presidents about the evaluation of their performances[17]

- Determine the composition, duration and cessation of the mandate for members of the disciplinary bodies

- Dominate members of these bodies and to regulate their working methods and decision-making processes

- Decide on legal remedies during a disciplinary procedure

- Submit an annual report to the Parliament of Serbia and inform the public about its activities in an appropriate manner (e.g. publishing its decisions in the "Official Gazette of the Republic of Serbia"[18])

Certain activities of the judicial administration have remained within the competence of the Ministry of Justice. These are;

- Activities related to the administration of the judiciary

- The passing of the judiciary's agenda and the supervision of its conduct[19]

- The courts' security[20]

- Proposals for the amount and structure of budgetary funding, its distribution to courts and the supervision of its spending[21]

Some of these activities however, e.g. establishing an estimated number of court personnel, as well as a number of judges after the constitution of the first convocation of the HJC, have been transferred from the jurisdiction of the former Council to the Ministry of Justice[22], contrary to the NJRS.

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[13] Article 32 (4), Law on Judges.
[14] Article 34 (3) Law on judges.
[15] Article 45 (6) Law on Judges.
[16] Article 34 (1) Law on Judges.
[17] Article 34 (2) Law on Judges.
[18] Article 18 Law on the High Judicial Council
[19] Articles 70, 74 paragraph 2 and 75 Law on Organisation of Courts.
[20] Article 79 Law on Organisation of Courts.
[21] Articles 83, 84, 86, 92, 93 paragraphs 2 and 5 and 95 Law on Organisation of Courts.
[22] Thus Article 9 of the former Law on Judges and Article 54 paragraph 3 of the former Law on Organisation of Courts regulated that the High Judicial Council establishes general measures to determine a number of judges, juror judges and court personnel. Contrary to that, the current Law on Organisation of Courts, with its Article 57, paragraph 3, regulates that measures to determine the minister in charge of justice determines a number of court personnel. Also, although the current Law on Judges (Article 10, paragraph 2) transfers the decision on number of judges and juror judges from the Parliament (Article 9 of the former Law on Judges) to the High Judicial Council, with transitional and final regulations set by the Law on Judges (Article 100 paragraph 1), the High Judicial Council's duty and authorisation to make a decision on a number of judges and juror judges 30 days from the date of the election of the first convocation of the High Judicial Council is limited with previously obtained agreement by a

The HJC is defined in the Constitution and is composed of eleven members with five year terms in office. There are three *ex officio* members: the President of the Supreme Court of Cassation (at the same time President of the Council), the Minister of Justice and the President of the Parliamentary (National Assembly) Committee for Judicial Affairs. The National Assembly appoints the eight remaining members, six of whom should be judges and two jurists (one university professor of law and one attorney-at-law). This was constituted on 6 April 2009, but the exact composition is not completed yet: the National Assembly still has to elect a member from the ranks of law professors; the Council has already asked the Assembly to decide on this issue twice.

At present the HJC is mainly dealing with drafting reasoned decisions for the Constitutional Court in the cases brought before this court by non (re-)elected judges.[23]

The medium-term goals envisaged by the NJRS foresaw that the HJC would assume authority for the preparation of the judiciary's budget, its Administrative office would prepare the integrated budget for the Ministry of Justice and its capacities were to be strengthened for further transfer of responsibilities. The NJRS underlined that achieving the independence of the judiciary implied that the judiciary took over independent authority of the budget. It foresaw that the HJC should be authorised to approve and distribute the budget for the judicial system working together with the state's Treasury and Finance Ministry, while final approval of the budget was to be given by the Parliament. The jurisdiction for formulating, approving and accounting of the budget would be gradually transferred from the MoJ to the HJC in order to secure the undisrupted transfer of authority. Mid-term changes mean that the HJC would take over jurisdiction for judges' salaries and material expenses by 2010, and the jurisdiction for the judiciary's budget by 2013.

The HJC is designated as the rule making body for the judiciary and must therefore assume specific competences. A plan was to be developed and a legal framework approved for the integration of the competences of the High Personnel Council and Supervisory Committee within the HJC. The HJC's mandate is broader than the former Council's. Although many of the newly specified duties are of most importance for the function of the Council itself, as an independent and autonomous body, as well as for the judiciary as a whole, its jurisdictions were mentioned without specific explanations. According to medium-term reforms, the HJC is supposed to assume full rule-making authority for the judiciary and should be fully empowered to decide in all matters related to court administration. The HJC has been performing its activities since its establishment in 2009.

Before the structural reform of the judiciary, the administration of the judicial system was not harmonised and was divided between several bodies[24] which consequently made accountability for measures which had or had not been taken confusing and unclear. Except for Article 15 of the Law on the High Judicial Council, which mentions the Council's permanent bodies,[25] the Law on the High Judicial Council does not provide for any other permanent bodies for the Council.

With the exception of Article 13 the Law on the HJC does not define further the jurisdiction of the Council.

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minister in charge of judiciary.

[23] On 28 May 2010, the Constitutional Court issued the first decision on the appeal of one - out of 837 - non (re-)elected judge; it quashed the HJC's decision and ordered the HJC to prepare a reasoned decision.

[24] High Judicial Council, Supreme Court, Republic Public Prosecutor, Minister of Justice, Supreme Court President, presidents of other courts, each of whom made its own acts.

[25] Commission for the evaluation of judges' and court presidents' performances, which acts as an appellate body in the process of evaluating judges' performances and as the original jurisdiction in the process of evaluating court presidents' performances, according to Art. 34 of the Law on Judges; Electoral Commission, whose composition, position, jurisdiction and duties are regulated under Art. 25-34 of the Law; disciplinary bodies, precisely defined in Art. 89-98 of the Law on Judges.

2.2.2. Experts' Assessment

2.2.2.1. Composition

The election of a representative of the professors of the Law School has not yet taken place and, therefore, an entire social group which should be represented in the HJC is excluded from its performance. This is apparent when deciding on vital issues related to judicial reform and is contrary to the provisions of Art. 153 of the Constitution.

The composition of the HJC does not in itself give rise to criticism. However, the legal regulation, according to the Serbia 2009 Progress Report of the EU Commission[26], stated that it:

"… contains major weaknesses. As an exception to the general rule, the members representing judges in the first composition of the new High Judicial Council were nominated by the previous High Judicial Council which was not bound by the proposals from the courts. This appointment procedure does not provide for sufficient participation by the judiciary and leaves room for political influence."

The President of the Council stressed that the initial composition of the HJC was suggested by the Council itself and that the suggestion was adopted by the National Assembly. The goal to complete the full composition of the HJC has not yet been achieved as the representative of law professors is still not elected. The goal relating to the composition and working methods of the Commission for Evaluation of work of court presidents[27] has not been achieved yet, despite the deadline for this measure expiring a year ago. It is important to emphasise that the list of candidates submitted to the National Assembly was proposed by the session of all the courts in Serbia, thus still according to the Council President's view, members of the judiciary who are directly influenced the constitution of the HJC.

2.2.2.2. Working methods and capacity

Much has been done, but the HJC appears to be fulfilling its functions only partly at this stage. Bearing in mind the lack of proper experience and the insufficient human resources, the HJC's ability to function properly without a clear strategic plan and without proper support from the government remains questionable.

The current situation shows that this goal has not been achieved yet. Members of the HJC have to understand the role of the HJC and be provided with the best practices of self-governing institutions in other countries. The HJC's operational capacities still do not match its expected role and must be improved.

According to the Rules of Procedure of the HJC, the institution sits behind closed doors. Neither members of the general public nor judges are allowed to participate in the meetings. The President of the current Council does not consider this as a lack of transparency. According to her, transparency is realised through press conferences, the issuance of public statements and announcements on the Council's website.

Regulations on the working methods and decision making process in disciplinary bodies have not been adopted yet either. A draft has already been prepared for these Regulations.

[26] Brussels, 14.10.2009 SEC(2009) 1339.
[27] Article 34 (3) Law on Judges.

The Ethics Code[28] and the setting up of the composition and activities of the permanent working groups[29] are still not complete.

It is also uncertain as to whether the transfer of personnel and materials needed to execute the jurisdiction established by the Law on High Judicial Council[30] has been achieved. The HJC has been allocated an adequate budget and the plan for the transferral of finance staff from the Ministry of Justice to the HJC is satisfactory. However, it is apparent that the HJC has not taken the necessary steps (hiring decisions, etc.).

This is of concern due to its importance relating to the capacity of the HJC's administrative office to perform its functions properly. The proposal of candidates to the position of courts president, to be elected in Parliament[31] has not been implemented. As a result, each court in Serbia, except for the Supreme Cassation Court, is still led by an "acting president". No clear explanation has been provided for the delay of the proposals and elections. This gap must be filled as soon as possible. The HJC should propose the names of candidates to the Parliament for election without delay.

The Council's Administrative office lacks the proper impetus and has to be improved. Human resources seem to be a real problem. The Council's Administrative office should be composed and funded adequately to perform its functions, as this will directly impact the efficient functioning of the HJC.

The establishment of a fully operational Administrative Office was an important reform task of the HJC. This institution needs to be further developed. Some efforts have been made, but it is uncertain this office will be fully operational in 2011. Basic administrative activities related to the judiciary are still very much linked to the Ministry of Justice, instead of the HJC's Administrative office.

2.2.2.3. Budgetary Matters

Articles 82–86 of the Law on Organisation of Courts deal with courts' funds. The HJC proposes the amount and structure of the budgetary funds necessary for current expenses, having previously obtained the opinion from the Ministry of Justice and distributes these funds to the courts.[32] The supervision of the budgetary funds spending determined for the courts' activities is conducted by the HJC, the Ministry of Justice and the Ministry of Finance.[33]

Contrary to the NJRS and international standards (*inter alia* Opinion No. 2 (2001), Opinion No. 10 (2007) of the CCJE), supervision of the financial and material activities of the HJC (where it relates to the budgetary funds mentioned in Art. 83 of the Law on the Organisation of Courts) is conducted by the Ministry of Justice judiciary and the Ministry of Finance.[34] Such statutory regulation does not fully correspond to the spirit of independence of the judiciary.

After the implementation of the new network of courts and prosecutorial seats[35], there is no public report on the financial costs of the new network or about the functioning of the judiciary at all.

[28] Article 13 Law on the High Judicial Council.
[29] Article 15 Law on the High Judicial Council.
[30] Article 58 Law on the High Judicial Council.
[31] Article 102 (4) Law on Judges.
[32] Article 83 Law on Organisation of Courts.
[33] Article 83 (1) Law on Organisation of Courts.
[34] Article 84 Law on Organisation of Courts.
[35] Law on the Seats and Territorial Jurisdiction of Courts and Public Prosecutor's Office.

The HJC is supposed to assume full authority for the judiciary's budget on 1st January 2011 and its Administrative office must be ready to support and implement the new budget process (long-term reform 2010-2011).

Art. 95 of the Law on Organisation of Courts, and narrow Council's jurisdiction are delayed until 1st January 2011 and still entrusted to the Ministry of Justice. Therefore, it is unlikely that the HJC will assume authority for the preparation of the judiciary's budget and that its Administrative office prepares the integrated budget for the Ministry of Justice. Serious doubts were raised during the round table discussions with the experts in May 2010 as to the successful implementation of this NJRS's goal.

2.2.2.4. Other tasks to be completed

The HJC should participate in establishing training programmes for judges[36]. The legal framework and the governing bodies of the Judicial Academy have already been established. The HJC's participation is now dependant on the strengthening of the HJC's capacities.

Certain gaps in the implementation of the medium-term reform of the NJRS still exist.
Criteria, measures and proceedings for the evaluation of the activities of the judges and court presidents[37] have not been adopted yet. A group of experts is dealing with this issue, with a last meeting held in April 2010.

The judiciary does not seem to have a lot of confidence in the current HJC. It is considered to be responsible for the huge backlog of cases, the poor functioning of the judicial system's new structure and procedural shortcomings.[38] It will not be an easy task for the HJC to gain the necessary confidence required to lead, as the self-governing institution of the judiciary.

Comparable experiences from states which have similar self-governing judicial bodies (Bulgaria, France, Italy, Lithuania, Poland, Portugal, Romania, and Spain) indicate that it is justified to have other permanent bodies within the Council to manage certain functions.[39] The wide mandate allocated to the HJC allows for the possibility to transfer judges for a certain mandate on functions within the Council's services[40] and the prospect of taking over the jurisdiction from the Ministry of Justice, as foreseen by the NJRS.

In relation to the short-term goals set by the NJRS a plan was to be developed and adopted for the transitional budgetary process supported by the HJC and the Administrative Office and the necessary amendments to laws had to be prepared. The experts were not provided with information showing that this goal has been successfully implemented.

2.3. STATE PROSECUTORIAL COUNCIL

2.3.1. Background

The SPC's role is to guarantee the independence and autonomy of the public prosecution service.

[36] In accordance with Article 13 of the Law on the High Judicial Council.
[37] Article 32 (4) Law on Judges.
[38] The general (re-)election of judges (secrecy, absence of contradictory procedure, secret and discriminatory eliminatory criteria, non measurable and non comparable standards, etc).
[39] For analysis and reports, budget, on judicial administration, on training, on IT, international relations, judiciary organisation and modernisation, publishing, cooperation with the Ministry of Justice, relations with the media, etc.
[40] Article 21 Law on Judges.

The SPC is composed of eleven members. Seven of them must be elected public prosecutors and deputy public prosecutors. The Minister of Justice, the President of the Parliamentary Committee for Judicial Affairs, one professor of law and one representative of the Bar association must be the other members of the SPC, which is presided over by the Republic Public Prosecutor.

The SPC is still in transition, but the regulatory framework is largely in place. The staff budget has been allocated, but the key issue is hiring the staff and subsequently capacity building capacity. The SPC is still not fully composed. The prosecutors who are currently members were not directly elected by their peers and the position for an attorney-at-law is vacant.

Following discussions with the Association of Prosecutors the SPC, is now opening and initiating a procedure to establish permanent composition.

2.3.2. Experts' Assessment

Article 5 of the SPC's Rules of Procedure provides that the institution sits behind closed doors. The SPC representatives do not consider it as a lack of transparency. The decision not to provide publicity for the proceedings is based on the protection of sensitive data. Prosecutors handle such data on a daily basis and must avoid granting access to such classified information to third parties.

The President of the SPC has stated that the Council fully acknowledges the need for transparency and is open to democratic control of its work provided for by the Law on Access to Information of Public Importance and carried out by the Commissioner for Public Information, the Ombudsman (including for the matters related to the general “election”).

2.4. INTERACTION BETWEEN STATE PROSECUTORIAL COUNCIL, HIGH JUDICIAL COUNCIL AND THE MINISTRY OF JUSTICE

2.4.1. Budgetary Matters

From the 1st January 2011, important budget competences will be transferred from the Ministry of Justice (MoJ) to the HJC and the SPC. The NJRS stated that the MoJ is less well placed to define and allocate their budget and for this reason, a transfer of competences has been decided by law. Some preparatory measures have already been taken[41] but the major change will occur in the coming months with the transfer of budget competences from the MoJ to the HJC and SPC.

There will be a new budget procedure and new rules, with a new calendar for the preparation and the implementation of the budget. In this new framework, expenses will have to be explained and justified. More powers will be given to the HJC and SPC, which will become accountable for the use of public funds.

The main objectives[42] will be achieved only if decision makers (i.e. members of the HJC and SPC) are able to function in accordance with the prescribed law (i.e. to define a strategy in budget matters and to monitor its implementation).

[41] Implementation of the new budget procedure calendar, split at the local level of the existing common accountancy service in two different units, one depending from the courts, the other from the prosecution service, etc.
[42] Reinforcement of the independence of the judiciary; guarantee of the transparency and the efficiency of the system.

Training courses for the members of the HJC and SPC will need to be provided for those who will have a specialisation or specific competences in budgetary matters.

The transfer of budget competences must be carefully prepared. From the 1st January 2011, the main actors in the budget procedure will be the HJC and the SPC.[43] At present competent personnel in budget matters are still employed within the MoJ. Consequently, the HJC and the SPC will soon have to make efforts to recruit personnel.

2.4.2. Working methods and capacity

Before launching a recruitment procedure for the HJC and SPC staff, a general policy must be adopted concerning the general conditions of work of the newly recruited staff in order to avoid any instability in the hiring process. These new staff will have to be recruited, in sufficient numbers (in order to be able to fulfil the duties provided by the law) and as soon as possible (in order to be integrated in good conditions in new administrative structures which will have to be created within the two superior Councils). These staff members will also have to be trained before 2011, in order to be able to correctly apply the new provisions of the law and to be fully in phase with its new philosophy.

It is important to create a framework of work between the Ministry of Justice and the two superior Councils. The uncertainty of the timeframe for implementation and the conditions of the transfer of competences is of concern. For this reason, it is suggested to create steering committees both at the horizontal level (heads of the MoJ, heads of the HJC and SPC and other responsible persons if necessary) as well as at the vertical level (Presidents and representatives of courts/prosecutors at first instance and at second instance, HJC, SPC and other representatives if necessary), both for the preparation of the transfer of competences and for ensuring the implementation and the follow up of the transfer.

The HJC and SPC will have to reorganise their internal administration for implementing the new procedure, as currently there is uncertainty on this issue. Personnel have not yet been recruited by the two superior Councils. Thus, a strategic question still needs to be answered: will the two superior Councils have a common or a separate administrative department for dealing with the new budget powers provided by the law?

This issue has to be studied. Indeed, a sharing of personnel would have advantages for the two superior Councils and would probably have a lower cost for the overall budget of the judicial system. The worst scenario would be a situation where these decision makers would give up their competences and leave others, to decide on their behalf about strategy and monitoring.

[43] The Ministry of Justice (which will keep competences concerning real estate, IT and safety of courts/prosecution services).

2.5. ADMINISTRATION, MANAGEMENT AND MONITORING

As a result of the restructuring of the court network, bigger courts have been established at the level of basic, higher and appeal courts.

The restructuring entails that the functioning of courts as specific organisational units will become more complex, not only with regard to the management of trials but also to the functioning of the services necessary for the work of courts. For this reason, the Ministry of Justice and the President of the Supreme Court of Cassation have agreed on the introduction of a new professional figure of "Court Manager".

The Court Manager will be introduced as an administrative manager of the court and will be responsible for non-judicial staff, court resources, and processes involving the administrative/technical organisation of the work of the court. The introduction of the role will relieve the Court President and judges of certain duties, including the Court President's duties involving finances. This will enable the Court President and the other judges to dedicate themselves more thoroughly to their judicial functions.

Currently, the proposed role of "Court Manager" is performed by the Court Secretary. Tasks currently performed by Court Secretaries, apart from tasks related to reviewing of complaints, requests for refusal, and other issues, are close to administrative-managerial tasks.[44]

Article 51 of the Law on Organisation of the Courts defines the tasks of court administration, it provides:

"Court administration entails tasks that support the exercise of judicial power, in particular: organising the internal operation of the court; summoning and assigning lay judges; activities relating to standing expert witnesses and court interpreters; reviewing complaints and petitions; keeping statistics and drafting reports; enforcing penal and minor offences sanctions; financial and material business of the court and certificating documents for use abroad. Court administration is regulated in more detail by the Court Rules of Procedure."

The rights and obligations of the Court President are defined in Article 52 of the Law on the Organisation of the Courts, it provides:

"The court president represents the court, manages court administration and is responsible for a proper and timely court operation. The court president is required to ensure legality, order and accuracy in the court, order removal of irregularities and prevent procrastination in work, designate *ex officio* barristers in the alphabetical order from the list of barristers provided by a bar association, ensure safeguarding of independence of judges and the credibility of the court, and carry out other tasks set forth by law and the Court Rules of Procedure. A court has one and/or several deputy court presidents to act on behalf of the court president in absence of the latter or when prevented. The court president shall designate one deputy president to act on his/her behalf where a court has several deputies."

According to Article 101 of Court Rules of Procedure, each court is obliged to inform citizens and give basic legal information and primary legal advice[45] and to provide relevant materials

[44] Article 56 Law on Organisation of the Courts: "A court shall have a court secretary. The court secretary assists the court president in court administration and s/he is autonomous in performing tasks delegated to him/her by a decision of the court president, in compliance with the Court Rules of Procedure. A court secretary is appointed by the court president."

[45] Legal status of the person, possibilities for alternative dispute resolution, court procedure and phases of procedure, jurisdiction of the court, certain rules of the procedure, court fees, cost of the procedure, method and place of decision enforcement, right to free legal aid, right to have a barrister.

in a visible place within the court building. Certain information could be printed, publicised or delivered in the court building or on the Court's website.

According to Article 53 of the Law on Organisation of the Courts, the court president may delegate certain administrative tasks to the deputy court president or to presidents of departments. The court president may not delegate assignments relating to decision making on the employment rights of judges, the determining of the Annual Calendar of Tasks, the decision making on employment relations of court staff where so specified by law and on suspension of a judge or a lay judge from duty.

3. OUTSTANDING ELEMENTS IN THE IMPLEMENTATION OF THE NATIONAL JUDICIAL REFORM STRATEGY

The short-term reforms that had to be accomplished by 2006-2007 (composition, mandate, organisation and working procedures prescribed by the Law) have been achieved. Another short-term reform of establishing an Administrative Office under the HJC has been completed. The Administrative Office of the HJC is mentioned in the Law on the HJC (2008).

Much has been done to implement the medium-term reforms (2008-2009) of the NJRS. The majority of the members of the HJC were elected in March 2009. The HJC was constituted in April 2009 (with eight out of eleven members). Two other members of the HJC - one judge and one representative of the Bar - were elected later in 2009. Additional by-laws and operational rules had to be prepared and adopted. Despite some delay, an important and substantial work has been performed to draft and adopt sub-statutory legislation to implement the statutory provisions.[46]

The medium-term reforms also envisaged the creation and building of the basic services of the HJC's Administrative office. The Law on the HJC only briefly provides for the Administrative office,[47] whose activities were supposed to be performed by the Ministry in charge of the judiciary, in a way and in conformity with timelines established by Art. 58 of the same Law. The first secretary of the Administrative office was hired at the end of October 2009. He resigned from this position in December 2009. A new secretary was hired in April 2010.

The NJRS foresaw that the HJC would assume the full oversight for all activities under its authority during the long-term reform process (2010-2011).

As mentioned earlier, the transfer of budget competencies from the MoJ to the HJC and the SPC is under way and needs to be carefully followed up by the Serbian authorities.

As an independent policy and rule-making authority, the HJC has to be able to operate in accordance with the best comparative practice.

[46] Rules of procedure (Art. 18 of the Law on the High Judicial Council), nomination of acting court presidents (Art. 102 (1) Law on Judges), decision on the needed number of judges and jurors (Art. 100 (1) of the Law on the High Judicial Council), criteria and measures for the evaluation of competence, professional qualifications and worthiness of a candidate for election as a judge (Art. 45 (6) Law on Judges), transfer of archive from the Ministry of Justice to the HJC, election of the president of the Supreme Cassation Court (Art. 102 (5) Law on Judges), election of judges of the Supreme Cassation Court (Art. 100(2) Law on Judges), (re-)election of judges in Serbia.

[47] Articles 47 – 49 Law on the High Judicial Council.

4. RECOMMENDATIONS

4.1. SELF-GOVERNING STRUCTURES

Completing the electoral procedure for the permanent composition of the High Judicial Council (Art. 57 of the Law on the High Judicial Council, in relation with Art. 89 of the Law on Organisation of Courts and Art. 19 of the Law on the Seats and Territorial Jurisdiction of Courts and Public Prosecutor's Office) should be regarded as a short-term priority.

The High Judicial Council should take all necessary measures to adopt / implement the following statutory provisions:

- Criteria, measures and proceedings for the evaluation of activities of judges and court presidents
- Composition and working methods of the Commission for Evaluation of works of court presidents
- Regulation of working methods and decision-making procedures in disciplinary bodies
- Active participation of HJC in establishing programmes for the training of judges
- Composition and activities of the permanent working groups
- Transfer of clerks and administrative officials, rights, obligations, cases and archives necessary for the conduct of executing the transferred activities from the Ministry of Justice, in accordance with the jurisdiction established by the Law on the High Judicial Council, etc.

The High Judicial Council should, without any delay, propose to the National Assembly a list of candidates for the election of court presidents, as well as for the election of members to the High Judicial Council from the ranks of judges.

In order to make the work of the High Judicial Council more efficient and independent, other permanent bodies (Budgetary commission, Commission for analysis and reports, Commission on judicial administration, Commission on relations with the media etc.) could be established. The necessary steps should be taken, so that the High Judicial Council's bodies and administration are set up and able to assist the Council in its tasks.

Efforts should be made in order to increase the institutional capacity of the High Judicial Council's Administrative office. The problem of human resources should be solved. The Council's administrative office should be composed and funded to a level which allows the proper fulfilment of the Council's tasks.

The procedure initiated for establishing the full and permanent composition of the State Prosecutorial Council should be pursued. Prosecutors and Deputy Prosecutors have to be elected by their peers, in a transparent and fair competition which has to be established and run by the State Prosecutorial Council. All vacant positions within the State Prosecutorial Council have to be filled.

The State Prosecutorial Council should examine how to improve the transparency of its activities. For example, it could run a comprehensive website, allow access to the parts of its meetings which do no deal with strictly confidential matters, etc.

4.2. INDEPENDENT BUDGET AUTHORITIES

Executive supervision (Art. 83 of the Law on the Organisation of Courts) over the activity of the HJC is – in the opinion of the experts and even if every country may find its own practical solution - not in conformity with the principle of judicial independence. Possible changes in national legislation should be considered.

Common efforts of the Ministry of Justice and the High Judicial Council should be taken in order to ensure a proper preparation of the budget for the judiciary for 2011.

The HJC should have the authority to propose the overall budget for the judiciary, including capital investments and IT and should be included in any negotiations regarding the budget before Parliament.

The transfer of budget competences must be carefully prepared. The High Judicial Council and the State Prosecutorial Council as well as the Ministry of Justice must cooperate in the transfer process. Qualified personnel have to be recruited by the Administrative office of the HJC, as well as SPC.

A framework of cooperation between the Ministry of Justice and the two superior Councils should be created. Steering committees on both horizontal and vertical level could be established.

The High Judicial Council and the State Prosecutorial Council should reorganise their internal administration to carry out effectively the new budgetary procedure.

Specific training courses should be provided to the members of the High Judicial Council and the State Prosecutorial Council, at least for those who will have a specialisation or specific competences in budgetary matters.

The administrative, managerial and monitoring capacities of the presidents of courts and prosecutors' offices have to be developed. The creation of two inspectorates - one depending from the High Judicial Council, the other from the State Prosecutorial Council - should be considered (inspectorates are bodies, composed of judges / prosecutors, who are assisted by staff and can inspect courts, prosecutors' offices and judicial administrations, make suggestions or even give orders as to the way the court or prosecution service should solve specific problems, etc.).

As a long term goal, the full transfer of budget competencies, including IT and capital investments should be considered.

4.3. INDEPENDENT POLICY AND RULE-MAKING AUTHORITIES

The HJC has to be able to operate in accordance with the best comparative practice. Organisational, budgetary and personnel measures should be taken in order to increase the capacity and ability of the HJC. In addition, the members of the HJC have to realise the role of the HJC, should be provided with the best practices of self-governing institutions in other countries, etc.

4.4. ADMINISTRATION, MANAGEMENT AND MONITORING

Administrative and managerial capacities have to be developed. The introduction of a professional court manager is a good initiative, which the experts support.

Moreover, the monitoring of presidents of courts and heads of prosecutors offices must be improved further.

The creation of two inspectorates (one within the High Judicial Council, the other within the State Prosecutorial Council) to be composed of judges / prosecutors could afford major improvements in this field. In order to support the presidents of court / head prosecutors in their task of administration and management, inspectorates could be in charge of preparing and putting at their disposal guidelines and methods of administration and management.

Concerning the monitoring of judicial activity, one must admit that, currently, presidents of courts / head prosecutors have the competence of doing that in their jurisdiction and also in the lower courts / prosecution services within their remit. In practice, they have a lot of difficulties in fulfilling this task because they have too much work and not sufficient personnel for investigating. In the 2006 National Judicial Reform Strategy, assessment was made that neither the Ministry of Justice nor the courts have the ability to assess the judicial system's performance and that there is a lack of standards and updated statistical information. Inspectorates could help to solve this problem. In addition, as it is the case in many European countries, internal inspectorates within the judiciary could assess and, where necessary implement the recommendations resulting from their inspection of the operation of the courts and public prosecution services.

Finally, the creation of inspectorates should improve the credibility and the quality of the entire judicial system. Involvement of the Executive in the monitoring process of the judiciary should be avoided (i.e. the inspectorate of the Ministry of Finance). That could be possible, but only if inspectorates are composed of competent and well trained staff and receive a guarantee of independence from external influence.

III. TRANSPARENCY

1. REQUIREMENTS OF THE NATIONAL JUDICIAL REFORM STRATEGY

1.1. TRANSPARENT JUDICIAL SYSTEM

Transparency is an essential element of citizens' trust in the judicial system and helps counter any public perception of self-interest, self-protection or cronyism within the judiciary. This chapter is mostly devoted to the analysis of the "election" procedure of judges and prosecutors recently carried out in Serbia, which has been criticised by international and national actors for its lack of transparency.

The process of selection, appointment, promotion, disciplinary responsibility or removal of judges must serve the institutional and individual independence of the judicial system. Individual independence of judges shall be guaranteed by the High Judicial Council (HJC) as the new judicial body in the constitutional system of the Republic of Serbia.

In the NJRS, short term goals have been defined as follows:

- Prepare the legal framework for the new structure of selection, promotion, disciplinary and dismissal processes

- Approve new criteria for the appointment, selection, promotion, discipline and dismissal of judges of the new courts

Medium term goals were defined as follows:

- HJC to replace the High Personnel Council and Parliament in disciplinary and dismissal proceedings

- Provide legal framework for supplementary criteria for selection and promotion of judges to be prepared in harmony with the establishment of the Judicial Academy

Long term goals were defined as follows:

- HJC to assume full responsibility for the selection, promotion, discipline and dismissal of judges

- Develop and adopt new criteria for the appointment and promotion of judges whilst taking into consideration initial and in-service training

Appropriate access to court proceedings allows better communication between the public and the judiciary. This includes a number of short, medium and long term goals:

- Review and identify the primary weaknesses of existing rules and procedures on access to court information

- Revise court rules and procedures to promote public access to court proceedings

- Conduct an independent survey to identify additional reforms supporting the greater public access to court information

- Scan Supreme Court opinions into a database. Provide access to judges, the media, and the public

- Install a database of Supreme Court and appeals courts decisions in law faculties and public libraries

It was foreseen by the NJRS that the establishment of public relations offices within the HJC and courts would ensure more pro-active communication with the public and the media. The HJC, and in time all lower courts, will utilise an automated system to carefully track and respond to citizen complaints.

1.2. GENERAL "ELECTION"[48]

1.2.1. In general

In the second part of 2009, the HJC and the SPC conducted a procedure of general "election" of judges and public prosecutors in Serbia. As a result of this procedure, the total number of judges and prosecutors was considerably reduced. No specific reasons were provided to those judges and prosecutors who were not elected.

In a judgment of July 2009, the Constitutional Court affirmed the constitutionality of the general "election" procedure, following an appeal filed by the Serbian Association of Judges.

1.2.2. Opinions of the Venice Commission

In 2008, the Venice Commission expressed its concern that the Constitution of Serbia did not sufficiently support judicial independence and that there was a risk of politicisation of the judiciary through the election of the judges and the HJC by the Parliament.[49]

In an Opinion of 2009,[50] the experts of the Venice Commission expressed their concern that the proposed procedure regarding the re-appointment of existing judges would leave the door open for removing judges who had not been guilty of any misconduct. They welcomed the draft criteria and standards for the election of judges which had been submitted to the Venice Commission, and stated that the concern mentioned above was partly addressed by these draft criteria. For example, the presumption – mentioned in the draft - that judges already appointed fulfil the criteria was deemed encouraging. However, the experts noted that this presumption might be overturned, and recommended that, in this respect, great caution must be applied.

1.2.3. Opinion of the Ministry of Justice

The Ministry of Justice affirmed on several occasions that the reform was undertaken with a view to improving the functioning of the judiciary in general and raising the level of professionalism of judges and prosecutors.

[48]According to the national legislation the official term is – general election. The Serbian Association of Judges, the media and the Consultative Council of European Judges refer to the appointment procedure as re-election. Given the lack of an unanimous approach to this issue, the terminology "election" has been retained in the current report.
[49]Opinions no. CDL(2008)013 and CDL-AD(2008)006) www.venice.coe.int.
[50]CDL-AD(2009)023 www.venice.coe.int.

It does not share the view of the media and of the associations of judges and prosecutors that there have been violations of fundamental principles in organising the general "election" of judges and prosecutors in Serbia.

1.2.4. Information obtained from the President of the High Judicial Council

According to the President of the HJC, who met with the experts in March 2010:

- the general "election" of judges conducted by the HJC was carried out in a proper way and in compliance with the Constitution and statutory laws of Serbia;
- the HJC had to make a decision on the number of judges and lay judges, having obtained the consent of the Minister in charge of the judiciary[51];
- the Constitutional Court has examined this provision and stated that there was no violation of the independence of the HJC;
- the HJC adopted a decision (2009) on the number of judges in Serbia (1,870 instead of around 2,400). The decision was based on data on the influx of cases in the previous two years and the expected influx of cases for the next year;
- the new number of judges corresponds to the realistic needs of the Serbian judiciary;
- the new court network has been operational since 1 January 2010;
- according to the new legislation, the general "election" of judges was carried out by the HJC;
- some 2,483 new judicial seats (including 615 magistrates' judges) were announced as vacant on 15 July 2009 and on 27 November 2009;
- at the end of 2009, the HJC elected 1,531 judges for a permanent judicial function, whereas the National Assembly, following the HJC's proposal, elected 876 judges to a three-year-term;
- the basic criteria for the election of judges were qualifications, competences and the worthiness of the candidates;
- the elected judges took office on 1 January 2010;
- 76 positions for judges remained unfilled;
- the HJC handed over its decisions to all non-elected candidates.

Since, according to its President, the HJC had the task of carrying out a general election of judges, and not a re-election of practising judges, the HJC was of the opinion that the judges who had not been elected had no right of appeal to the Constitutional Court, but had a right to an individual petition to the same Court. The HJC's President had no information on how many judges followed such a procedure. She was of the opinion that the judges were entitled to file an appeal against the decision of the HJC to the Constitutional Court, within 30 days

[51] Article 100 (1) Law on Judges.

from the delivery of the decision,[52] but that this provision however applied only to the judges who took office after 1 January 2010.

1.2.5. Information obtained from the State Prosecutorial Council

According to the representatives of the SPC and its President, the Republic Public Prosecutor, who met with the experts in March 2010:

- the general election of public prosecutors and deputy public prosecutors was conducted by the SPC;
- some 1,450 applications for 548 vacancies for positions of Deputy Public Prosecutors were received after the announcement of the general election, in July 2009;
- all applications received were considered;
- 415 Deputy Prosecutors with permanent tenure were elected by the SPC;
- the competition for the 67 positions of Public Prosecutors was opened on 12 November 2009. Upon receiving 250 applications, the SPC observed the same election procedure in reviewing the files prepared by its administrative office, before sending the final list to the Government, which, for its part, submitted it for verification to the National Assembly. The National Assembly elected 62 Public Prosecutors;
- the decisions were based on the requirements set out in the Rules on the Criteria and Standards for the Evaluation of Competence, Qualifications and Worthiness of Candidates for Prosecutorial posts. Among other materials, the qualitative and quantitative performance outputs and the opinion of the Collegium of Public Prosecutors on every candidate were considered. The Association of Prosecutors was involved in the process. 97% of the proposals made by the Association of Prosecutors were accepted and included in the documents on the evaluation. All the applications were reviewed at least three or four times, to avoid wrongdoings;
- around 200 of the former prosecutors did not get a new position as a result of the general "election";
- many Deputy Public Prosecutors only applied for positions one or two ranks above their current position, which made it impossible for the SPC to consider them as candidates for the offices they already held or, alternatively, for a position one rank up when they had applied for a job two ranks higher;
- some prosecutors did not meet the standards and some had received negative evaluations from their superiors; they were not (re-)elected (six or seven prosecutors);
- as there was an open competition, many external candidates applied, which is considered as positive (in large towns, there were ten applicants for one position, on average);
- many non-appointed prosecutors retired; therefore, it would appear that around 100 former prosecutors actually lost their jobs following the process;

[52] Article 67 (1) Law on Judges.

- around 15 non-elected prosecutors were hired as advisors in public prosecutors' offices in the meantime; thus staying in office and getting the chance to apply when new positions are open;

- there are still 44 vacancies that will probably be filled with persons from among the 100 who remained unemployed;

- as a result, the number of actually jobless former prosecutors should be quite low;

- a decision on the additional vacant positions will be announced shortly, thus enabling all the candidates to re-apply for certain positions;

- the prosecutors who were in charge and who had not been re-elected in the general election were not informed of the reasons for their non re-election: by law, there is no obligation to give reasons. However, any non (re-)elected prosecutor could and still can turn to the SPC to ask for reasons (many have done so and have received answers);

- the candidates who were not elected and argue that their rights have been violated can lodge a constitutional complaint with the Constitutional Court. Any other legal remedy, including a suit in court of law, is not possible under the national legislation;

- the Republic Public Prosecutor has no information on how many constitutional complaints have been filed in respect of the non (re-) elected prosecutors.

Neither the Republic Public Prosecutor, nor the SPC received any complaint on the quality of the prosecutors elected in the general "election". The Republic Public Prosecutor did not receive and could not comment on a specific document containing complaints against the "election" and its outcome which had been drafted by the Association of Prosecutors. She could not therefore discuss this document with the Association. The Republic Public Prosecutor received yet other comments by the Association of Prosecutors. At the time she met with the experts, she deemed these comments to be "ill-intended, or even malicious".

1.2.6. Opinions of the Associations of Judges and Prosecutors

Representatives of both associations were involved in the process of the reform at the very beginning, when the Strategy Implementation Commission (SIC) was set up.

The ten-member SIC was meant to be the leading body in the implementation of the goals and activities envisaged in the NJRS and the Action Plan.

SIC members were representatives of the Ministry of Justice, the Supreme Court, the National Assembly Judiciary Committee, the Public Prosecutor's Office, the Judges' Association, the Prosecutors' Association, the Bar, the Judicial Training Centre, the Belgrade University Law Faculty and the Ministry of Finance. The Members of the Commission were elected by the Government of Serbia on 22 June 2006.

According to the representatives of the Association of Judges of Serbia, after the new government of Serbia took office in April 2007, the SIC practically ceased to exist. Representatives of the Association of Judges had a meeting with the Minister of Justice on 26 December 2007, who reassured them that the SIC would start operating as from the beginning of 2008. However, this did not happen, and on the contrary the Ministry of Justice took over all the SIC's competences.

As a result, of the different approaches of the Ministry of Justice, on one hand, and the associations, on the other, towards the issue of general (re)-election, both associations were not initially involved in the process. The situation improved slightly in early 2010, when an agreement was reached between the Republic Public Prosecutor and the Association of Prosecutors (see the section below).

1.2.7. Agreement between the Republic Public Prosecutor and the Association of Prosecutors

At the end of March 2010, an agreement was reached between the Republic Public Prosecutor, representing the SPC, and the Association of Prosecutors, to the effect that 40 new positions as Deputy public prosecutor would be added to the 44 positions which had been left open in the process of the general "election". The prosecutors who were not elected will be able to apply for these 84 positions and their applications will be reviewed first. Those who were the superiors of these candidates in the period of 2006-2009 will be allowed to attend the session of the SPC in which the selection will be decided.

It seems that a satisfactory solution has therefore been found, at least for an overwhelming majority of those who were prosecutors before 31 December 2009.

The SPC further agreed, even if it considered that it was not obliged to do so, to submit explanations to all candidates who were not elected and wished to receive these explanations. In accordance with the decision of the Constitutional Court (see below), the SPC will forward individualised explanations to all prosecutors who have not been elected so far, giving them a reason for their non-election. The candidates will get the opportunity to appear before members of the SPC and receive additional oral explanations and possible suggestions.

For the elections to come, it was agreed that a delegation from the SPC will receive all the candidates who wish to present themselves. The time and place of the hearings will be published in the media.

The SPC will submit an initiative to the Ministry of Justice to improve the laws pertaining to the election of prosecutors and deputies, to ensure better protection of the rights of the candidates, in particular their labour law rights.

The experts would like to stress that cooperation between the SPC and the Association of Prosecutors has brought positive results and that it aims to solve all the problems related to the general election. Apparently, both sides have made concessions with a view to reaching a reasonable solution. This dialogue will help to achieve a consensus, also within the implementation of the reform of the judiciary.

1.2.8. Constitutional Court

The Constitutional Court received around 1'500 appeals and constitutional complaints, filed by around 800 judges and prosecutors who were not elected. This represents a heavy burden for this Court (around 1'500 cases among a total of 5'500 cases currently in the court), which tries to find ways to handle these cases in a proper way and without excessive delays. A large majority of the non-(re-)elected judges and prosecutors filed two complaints: one against the decision not to elect them, and another one against their termination of their office. The Constitutional Court dedicated several sessions to try to find a modus operandi for handling the cases.

The President of the Constitutional Court informed the experts during a meeting on 24 March 2010 that it was difficult to say when the cases could be decided, in the end, even if there was an agreement inside the court that these cases should be considered a high priority. The fact that there were only nine judges appointed to the court, when there should have been fifteen judges, was a major problem and slowed the proceedings also in other cases (it seemed that the SPC would take steps in order to have the remaining positions filled as soon as possible. On 29 April 2010, the experts were informed that four new judges were elected to the Constitutional Court; there are now thirteen judges, but still not the fifteen required by law).

In a statement of 25 March 2010, the President of the Constitutional Court informed the public that her court considers the non-election of judges as a case of "termination of office", and not only a case of someone not being appointed to a new position. The statement mentioned that the non-elected judges should have been provided with individual and reasoned decisions. The same seems to apply, *mutatis mutandis*, to the prosecutors who lost their jobs following the general election and brought their case before the Constitutional Court.

At the end of May 2010, the Constitutional Court issued its first ruling in a case related to the general "election". The Court upheld the appeal of a judge and instructed the High Judicial Council to reconsider his application as an appeal court judge. It considered that the decision of terminating this judge's services failed to offer proper justification as it contained only a general explanation which concerned all non-appointed judges.

1.3. EXPERTS' ASSESSMENT

1.3.1. Transparency

The experts share the opinion expressed by the European Commission that there were "important shortcomings regarding the composition and independence of the HJC and the SPC, the application of objective criteria and the transparency and reliability of the overall process" (letter of 27 April 2010 from Mr. José Manuel Barroso, President of the European Commission, to the presidents of the Judges' Association of Serbia, the Prosecutors' Association of Serbia, MEDEL and the European Judges' Association; media reports).

Furthermore, and as according to the principle of transparency, self-government institutions of the judiciary should not sit behind closed doors. Thus, the Rules mentioned should be re-examined in light of applicable European standards. The same can be said about the SPC, mutatis mutandis.

1.3.2. "Election" of judges

The procedure of general "election" does not meet the requirements of the European standards for transparency.

The representatives of the associations of judges and prosecutors were of the opinion that the reform of the judiciary was necessary. However they were very critical of the way in which the general "election" procedure was conducted. The representatives of the Association of Judges were of the opinion that the "election" of judges lacked clear and objective criteria and was conducted in a very short time. Individual files could only have been given a very summary scrutiny. The representatives of the associations were of the view that the election of judges and prosecutors – called "general election" by the MoJ but was in fact a general re-(election) and was unconstitutional and contrary to international standards.

During the meetings with representatives of different institutions, the experts were informed that the draft criteria for the election of judges – as evaluated by the Venice Commission - were however set aside during the general election procedure of judges. If this information is correct and if the criteria finally applied in the process, if any, were not similar to those examined by the Venice Commission, then the fairness of the election procedure should be questioned and the applied criteria made public.

According to the information received, the draft sent to the Venice Commission provided for a direct election by their peers who were to become members of the HJC. However under the law finally adopted, there was no provision for direct election, the opinion of the judges being only "consultative". The draft sent to the Venice Commission also mentioned that the President of the HJC had to be chosen among the judges elected to the Supreme Court, yet this requirement was not retained in the law which was finally adopted.

The Serbian media recently reported on accusations of corruption in the process of election of judges, these accusations having been brought by a high-ranking official. The press reports mention that the Republic Public Prosecutor had invited this official to provide the evidence he claimed to possess. No further information was obtained on this topic.

According to several sources, the judges who were not elected were not given access to their individual files and were denied any opportunity to discuss the content of their file during the procedure which led to their non election.

It is undisputed that some judges and prosecutors were not fit for judicial function. The experts were given examples of individual judges and prosecutors who had been involved in activities which were incompatible with the exercise of such a function. It is understandable that these persons had to leave their office and the general procedure for “election” provided a useful frame to allow it. But it is not acceptable that many judges – and possibly some prosecutors too - may have lost their positions for no objective reason.

The Consultative Council of European Judges (CCJE) issued a declaration on the reform of the judiciary in Serbia[53]. According to the CCJE, a re-appointment process with respect to all judges in a country is not at all obvious, and the termination of office of Serbian judges violated the principle of irremovability of judges and international standards. The CCJE requested that those judges who were not re-elected be informed in writing of the specific reasons for which their office has been terminated, and be granted an effective remedy before an independent body. In addition, the CCJE recommended that, pending the review of the decisions of termination, the judges who had been removed be provided sufficient means to cover their living expenses. The CCJE also requested that international bodies such as the Venice Commission and the CCJE, as well as international and national judges' associations be associated to this independent instance as observers.

Recently, the Serbian authorities received a critical letter from two EU Commissioners. Following this letter, the Serbian authorities decided to convene a bilateral working group to allow the EU to monitor the revision of the “election” procedure. The European Commission (EC) representatives have asked for the procedure to be repeated for the non-elected judges, as the December 2009 procedure was flawed. During a meeting, the EC representatives notably criticised the unreliability of the reappointment criteria, the absence of an effective remedy for complaints and the unclear role played by security services in the collecting of information. The EC demanded that the new reappointment, based on a revised procedure encompassing individual interviews and precise criteria, be carried out in six months at the latest. The experts strongly support the EC's views in that matter and approve the creation of the working group mentioned above.

[53] CCJE (2010)1 adopted in Strasbourg 20 April 2010.

Cases are still pending before the Constitutional Court. There is no point for the experts to give their opinion on what this court should or should not decide in the future, but the first ruling issued in May 2010 shows that the Constitutional Court wants to decide the cases without delay, which is very positive, and that the procedure followed for the general "election" of judges was at least partly not in line with the constitutional requirements, which could pave the way to a new appreciation of this procedure by the High Judicial Council, the Ministry of Justice and – if necessary - the Parliament.

Continuous discussions taking place between the High Judicial Council, the Ministry of Justice and the Association of Judges are encouraged. Other ways of solving the problem may also be explored. During the round tables with the experts held in May 2010 the representatives of the Ministry of Justice expressed that the Ministry will do "everything possible" to fix the problems which arose because of the procedure of general "election" and that more judges shall be appointed very soon. The experts consider this statement as a proof that the Ministry of Justice is willing to find a solution and a good omen for continuous discussions.

It is clear that the atmosphere within the justice system and the public image of the judiciary cannot improve, unless the problem of the general "election" is solved with satisfactory results. A solution must be found as quickly as possible in accordance with the Constitutional Court's decision and European standards.

1.3.3. Access to the courts' jurisprudence

The Supreme Cassation Court website is not yet operating in a satisfactory way. A solution must be found to this problem, and also to give access to – at least a substantial part of - the lower level decisions: judges and prosecutors need to be able to do their job properly, the parties and especially their attorneys must have access to jurisprudence (this may simplify the proceedings) and the public and the media must be able to scrutinise judicial activity (this may enhance the public's confidence in the justice system). Experts have been informed that many prosecutors and judges do not have access to a database of important court jurisprudence, especially due to the lack of internet access. This issue must be addressed.

1.3.4. Public image of the judiciary

The public image of the justice system in Serbia needs improvement.

This is not specific to Serbia, at least among Central and Eastern European countries, and must be considered partly as a result of the practices under the communist regime, but also as a result of the troubled times which followed the fall of the Berlin Wall.

In Serbia as in many other countries, justice has also been under – justified or unjustified – attacks from the media, partly due to insufficient training of journalists who were not able to understand the rationale of decisions and procedures. At the same time, other factors may have led to the same result.

The self-governing bodies of the judiciary should be interested to know what the main reasons for public mistrust are and what measures should be adopted for the improvement of the situation. It is not enough to just provide regular ad hoc public polls. Studies on it should be carried out. For example, the courts and prosecution services could ask the users – their "clients" – to fill in forms and answer questions about their perception of the justice system (this has been done in some Swiss regions). Another way to collect information could be to place "complaints boxes" in the courts and prosecutors' offices. Journalists, advocates,

policemen, politicians or lay people could be invited to discussions with judges and prosecutors. Judges and prosecutors, assisted by professors of universities, could conduct specific studies. Etc.

In parallel with these efforts, other efforts should also be made to build public confidence in the judiciary. Public appearances by judges and prosecutors could be organised with the assistance of media specialists. Court speakers could work on the image of the judiciary. Etc.

2. OUTSTANDING ELEMENTS IN THE IMPLEMENTATION OF THE NATIONAL JUDICIAL REFORM STRATEGY

The short-term goals concerning preparing the legal framework for the new structure of selection, promotion, disciplinary and dismissal processes, and the approval of new criteria for the appointment and selection of judges for the new courts, promotion, discipline and dismissal, are only partly met.

In the current chapter, the problems linked with the general “election” have been mentioned. According to what has been said to the experts, the procedures for promotion, discipline and dismissal of judges and prosecutors are not all precisely set yet. In particular, the HJC had to prepare many regulations in a very short period of time and has not yet drafted the Code of Ethics required by law.

The short-, medium- and long-term goals related to the appropriate access to court proceedings have not entirely been met. The experts were not informed of specific and sufficient measures on the following topics:

- review of the existing rules and procedures on access to court information
- identification of primary weaknesses
- revision of the court rules and procedures to promote public access to court proceedings
- independent survey to identify additional reforms supporting greater public access to court information
- database for the Supreme Court opinions, including Appeal Courts' decisions, with access provided to judges, the media, and the public and installed in law faculties and public libraries

Some efforts have been made to set up the website of the Supreme Court of Cassation, but the system does not seem to operate at this point.

Tests are being conducted in specific courts to establish public relations offices within the HJC and courts, to ensure more pro-active communications with the public and the media.

The experts were not informed that specific measures would have been adopted to the effect that the HJC, and in time all lower courts, will utilise an automated system to track and respond to citizen complaints.

3. RECOMMENDATIONS

3.1. SELF-GOVERNING BODIES

The experts understand that there are issues within the remit of self-governing institutions which have to be dealt with behind closed doors. Certain data has to remain confidential. Exceptions may be provided in accordance with the principle of transparency. Nevertheless, these exceptions should be clearly defined and limited to what is strictly necessary to ensure the good functioning of self-governing institutions.

Therefore, the rules on the secrecy of the meetings and data of the HJC and the SPC should be improved. A high degree of transparency must be attained, as far as possible.

3.2. PROCEDURE OF GENERAL "ELECTION"

In order to remedy the present situation the following steps are recommended:

- The elections to finalise the membership of the HJC and the SPC should be carried out in accordance with the European standards for transparency.

- Having in mind the latest decision of the Constitutional Court on termination of the judicial office of a judge, both Councils should review the "election" procedure and decide on the necessity of a new procedure. Efforts are being made to solve this issue using the approach taken with the prosecutors. If this fails, then a new procedure could become necessary

- As regards the open positions for judges and prosecutors, the Councils should take into account the shortcomings of the previous appointments procedure and carry out transparent elections.

- The dialogue between the

- European Commission, the HJC, the Ministry of Justice and the associations of judges and prosecutors should continue and their findings should be made available to the public.

3.3. RULES AND PROCEDURES ABOUT SELECTION, PROMOTION, DISCIPLINE AND DISMISSAL OF JUDGES AND PROSECUTORS

Rules and procedures, as well as criteria for selection, promotion, discipline and dismissal of judges[54] and prosecutors[55] must be transparent and objective, containing minimum discretion powers. Even more important is a proper and transparent implementation.

3.4. COMPOSITION OF THE CONSTITUTIONAL COURT

The composition of this Court should be completed as soon as possible.

[54] For further reference please see: CM Recommendation No. R (94) 12.
[55] For further reference please see: CM Recommendation No. (2000) 19.

3.5. TRANSPARENCY OF THE FUNCTIONING OF THE SELF-GOVERNING INSTITUTIONS

All decisions by the HJC on the selection, appointment, promotion, evaluation, discipline and any other decisions regarding judges' careers must be reasoned. It serves not only the interest of transparency of the judiciary but the accountability as well. This has been stressed in several relevant European sources, in particular in the Opinion no. 10 (2007) of the CCJE.

3.6. ACCESS TO JURISPRUDENCE AND COURT INFORMATION

In order to ensure the transparency of judicial activity, accessibility of judicial decisions should be provided, not only for judges and prosecutors, but also for the media and the general public.

The easiest way to give access to judicial decisions is to publish them on a website and – for the judges and prosecutors – to secure an internet access point for each of them. Specific programmes have been implemented in other countries to the effect that all court decisions – or at least a reasonable selection of them – are published on a website which can be accessed by anybody who is interested. In Ukraine for example, tests are conducted in some regions in order to publish all court decisions on a specific internet site, accessible to all who wish to do so. In Switzerland, all decisions of the Supreme Court are published on the website of this court, mostly without mentioning the names of the persons involved in the procedure, but the full decisions are accessible to accredited journalists for a specific period of time.

Efforts are being made in Serbia to establish the website of the Supreme Court of Cassation, which should include decisions of the Appeal Courts. International institutions may assist the Serbian authorities in setting up the system, for example in providing expertise as to concretely set up a website, choosing the decisions to be published, solve the problems related to the protection of personal data of parties involved in trials, etc.

Internet access should be guaranteed to all judges and prosecutors. International institutions may provide assistance in funding the purchase of the necessary equipment.

Efforts still have to be made for the review of the existing rules and procedures on access to court information, the identification of primary weaknesses and the revision of the court rules and procedures to promote public access to court proceedings.

An independent survey to identify additional reforms supporting greater public access to court information should be conducted.

3.7. PUBLIC IMAGE OF THE JUDICIARY

First of all, it is essential to ensure the good functioning of the courts and prosecution services as this is a key element of the public trust in the judiciary.

A specific programme could be implemented in order to improve the public image of the judiciary. International institutions may assist in setting up this programme, on the model of similar projects run in other countries. Part of this programme could be to evaluate the results of the tests actually conducted in specific courts to establish public relations offices within the HJC and courts, to ensure more pro-active communications with the public and the media. Then, a comprehensive system of public relations offices / courts' spokespersons should be set up. Similar measures should be adopted by the SPC, in order to ensure communications

between the prosecutors' offices and the public and the media. Another topic which could be addressed within this programme could be about measures to support the HJC, and in time all courts, and the SPC, and in time all prosecutors' offices, in using an automated system to track and respond to citizen complaints.

To be trusted, the justice system must be transparent. Access to public hearings must be granted as widely as possible. Decisions must be published in a way that makes them accessible. Judges and prosecutors should be able to answer questions from the media, as far as this does not cast doubt over their impartiality. Court and prosecution services spokespersons could be designated among the ranks of judges and prosecutors, receive special training (dealing with the media is no easy task) and be able to answer questions from the media and possibly from ordinary citizens too. During the May 2010 round tables, the experts were informed that tests are being conducted with spokespersons in specific courts and possibly also prosecutors' offices in Serbia. This is to be encouraged.

Most countries are familiar with problems regarding the visibility of the judiciary. Judges and prosecutors are not – and should not be – media stars and should spend more time on their files than on the media scene. But one should remember that if the public does not know what the judiciary is doing, in general, the cases which come under the media's flashlights may hide the real day-to-day work carried out in the justice system. The courts' and prosecution services' spokespersons could do proactive work to make the justice system more visible: announce the courts' and prosecution services' statistics on a regular basis, announce the changes in the composition of the entities, introduce new judges and prosecutors to the media, explain the problems the system is facing and the way it tries to solve them, etc. Individual judges and prosecutors could also participate in public discussions, about new laws, specific problems the justice is facing (more cases of unemployment benefits, because of the recession, etc.), social problems, etc, without of course entering into discussions of individual cases.

These remarks are intended to demonstrate the need for the justice system to work on its public image. This report cannot address all issues and possible solutions. A specific programme could be implemented in Serbia on that topic, with the assistance of the CoE (which has already participated in this kind of programmes in other countries).

IV. ACCOUNTABILITY

1. REQUIREMENTS OF THE NATIONAL JUDICIAL REFORM STRATEGY

1.1. ACCOUNTABLE JUDICIAL SYSTEM

The National Judicial Reform Strategy requires that the Ministry of Justice and the HJC oversee the redesign of the procedure, methodology, and standards for the preparation and transmission of judicial and court efficiency statistics. This is with a view to achieving maximum accuracy and consistency and conforming to the best practices identified by the Council of Europe and other international bodies.

From a technical point of view, the automatic productivity data systems should be tested in commercial courts and general jurisdictional courts and a uniform data collection system initiated, with the aim of having a fully functional system in place by 2011.

All courts should strengthen their administrative capacities, primarily in case processing automation. Case management and IT modernisation should lead to the increased efficiency and transparency of court administration, particularly after the introduction of integrated software within the Administrative Office which should enable the production of precise statistical reporting on the performance of individual courts and their case backlogs.

In order to effectively use judicial and prosecutorial resources, the NJRS envisages gradually shifting to a system that limits the roles of the investigative judges, and where prosecutors will assume responsibility for collecting evidence to ensure more efficient criminal case processing. Additionally, prosecutors are to be permitted to employ judicially supervised plea bargains to address criminal case backlogs and delays. The relevant legal framework should be introduced.

1. 2. JUDICIAL PRODUCTIVITY AND PERFORMANCE

1.2.1. Introduction

The CoE experts are aware that the NJRS does not include relevant parts on some of the topics mentioned below, such as the number of judges and the issue of backlog of cases. However, the experts are of the opinion that those topics are preconditions for any analysis relevant to productivity and performance.

The HJC has reduced the number of judges in Serbia by over 25%, to 1838 (5 June 2009). Up until then, there were actually slightly less than 2,380 judges with permanent judicial function, even if the number of judges determined was 2,413 (no judges had been elected since October 2005).

Different interpretations of the number of judges needed in Serbia are put forward by the Ministry of Justice, on the one hand, and the Association of Judges, on the other hand.

According to information from the Association of Judges, the number of cases in Serbia during the last six years has increased by 54% (2002 to 2008: from approximately 1 600 000

to about 2 450 000). The president of the HJC informed the representatives of the Association of Judges that the Council did not take into account the residual number of cases[56]. Also, it is said that the Council, instead of the "standard" (the expected number of cases that judges should resolve in a month, depending on the matter), tended to be more focused on the average monthly number of solved cases.

The average number of cases solved monthly was much higher than the monthly "standard", since, in the period from 2002 until 2008. The judges resolved more than 46% of cases. The Association of Judges is of the opinion that executive cases were not taken into account in determining the required number of judges; therefore, the number of judges was reduced without respect for two of the three stipulated criteria by which the number of judges was to be determined.

According to the Association of Judges, the average monthly number of cases resolved during a particular period may not be the best basis for the calculation of number of judges needed, for at least two reasons. The first is that the involvement of judges in that period was very high, a level that cannot be maintained in the long run (because of fatigue, stress, illness), so it is not realistic to expect such results. The second is that the quality of decisions, and thus substantial legal protection, necessarily decreases as the number of solved cases increases.

The Ministry of Justice has stressed that in the process of designing the new judicial network, the principle of reducing the number of courts as compared to the population was applied, taking into consideration the fact that, according to CoE data (CEPEJ), the existing number of courts in Serbia per capita was inadequate – too high-, particularly in respect of the total number of civil cases.

The Ministry of Justice relied on comparative studies provided for by the CEPEJ. Looking at statistical data from other European countries and comparing Serbia with Austria, similar in size and population, it could be noted that there were 20,7 judges and 159 courts per 100 000 population in Austria, with the comparable figure for Serbia being 32,2 judges per 100 000 population. In Austria, there were a total of 58 632 civil cases per 100 000 population, while the figure for Serbia was 10 226. In neighbouring Bosnia and Herzegovina, judicial reform had brought down the number of judges to just 22,2 per 100 000 population. Consideration of the comparative data mentioned above led to the conclusion that the number of judges had to be rationalised.

The number of judges in Serbia was then determined by collecting statistical data from the former district and municipal courts (now higher and basic courts) about the inflow of cases in the 2004-2006 period, in accordance with a strict instruction about filling in standardised forms in respect of the future competences of the aforementioned courts, as well as the competences of the new courts (Appeal Courts and the Administrative Court). An average inflow of cases - of all types - spanning a three-year period was established on the basis of the data collected, and this formed the basis for determining the number of necessary judges, taking into account an eleven-month work year.

The Association of Judges argues that it is often overlooked that Serbia has the second highest number of civil and administrative procedures among CoE member states with 9 168 cases per 100 000 population (only Austria has more cases – 9 970), while Spain for example has only 1 926 such disputes per 100 000 population. In Spain, 23% of such disputes end in a ruling, in Serbia the figure is as high as 67%.

[56]According to the Framework criteria for determining the required number of judges ("Official Gazette" No. 61/2006), the required number of judges is determined by the residual cases in the last year, the average inflow of cases in the last two years and approximate number of solved cases, depending on the matter in which the judge is working (a monthly standard or "norm").

The Association of judges also relies on CEPEJ data, stating that according to the CEPEJ 2006 data, only 8 of more than 40 member states of the CoE (Albania, Azerbaijan, Bulgaria, Georgia, Latvia, Lithuania, Moldova, Romania) had a lower level of spending on the judiciary than Serbia. For example, countries with a higher spending per capita than Serbia include Montenegro with EUR 11, Bosnia and Herzegovina 15,5, Poland 21, Czech Republic 24, Hungary 27, Denmark 29, Croatia, Norway and France with 36 each, Finland 40, Italy and the Netherlands with 47 each, and Slovenia with EUR 56 per capita.

The European Commission for Efficiency of Justice of the CoE (CEPEJ) emphasises that there are no easy, magical solutions or shortcuts to the establishment of a sound judicial system and compliance with the rule of law. When a system needs to be changed, it has to be changed, by taking a general approach, achieving a consensus of all the key stakeholders on efficient ways to measure and analyse and strike the right balance between the funds available for justice and adequate ways to manage those funds on the one hand, and the objective set in the justice sector on the other.

1.2.2. Backlog of cases

The backlog of cases is very significant and directly effects judicial productivity and case management. According to the information given to the experts, there are around 2 million pending cases in all courts and prosecutors' offices at present. As already mentioned, this backlog increased at the beginning of 2010 because of the problems experienced with the implementation of the new judicial system and network.

1.2.3. Effective case management

The weakest points identified in 2006 by the NJRS in the field of court administration and court management were as follows:

- "Lack of integrated planning, budgeting and performance measurement capacities, reducing the judiciary's ability to effectively monitor and improve system performance;

- outmoded judicial administration operational practices, hampering effective justice administration and case processing;

- onerous administrative burdens on judges reducing judicial efficiency and lowering morale in the judiciary's ranks;

- lack of continuous training for judges and other judicial officials hindering the development of a modern and professional staff specialised in judiciary management and administration;

- underutilisation of information technology and outdated systems, resulting in the continued use of inefficient and labour intensive administrative practices".

As mentioned earlier, major reforms have been recently enforced or are being carried out within the framework of NJRS implementation. The consequence of this situation is that the entire judicial system finds itself in a period of instability. Change is everywhere: in the structures, in the rules, in the procedures and finally, in the individual behaviour and the culture of all the actors of the judicial system. Under these conditions, it is clear that basic principles of court operation are not stabilised yet. Consequently, it is not easy to adopt a definitive opinion about how things function currently and how they will function in the near future. As one of the participants from the round table discussions held in May said: "The law is good but its implementation is difficult. It is necessary to monitor things carefully in order

to be able to immediately react and if necessary to correct things". Nevertheless, some fundamental initiatives have to be taken in order to safeguard the spirit of the reform, particularly in the light of the important responsibilities presidents of courts / head prosecutors will have from 1 January 2011.

Presidents of courts are elected by the general assembly of judges and this choice has to be approved by the HJC and by Parliament. Head prosecutors are selected by the SPC and their election has to be confirmed by Parliament. In practice, heads of courts / prosecution services are usually not selected for their management skills, despite Article 69 of the Law on judges providing that "Among judges from the court of the same or higher instance, a person with clear managerial and organisational skills based on the criteria set by the High Judicial Council is eligible for the position of President of the court".

The USAID is implementing a programme to introduce court managers in specific courts, as a pilot institution. Under this project, it is also envisaged to train the presidents of courts and head prosecutors on budgetary issues. This part of the project is difficult to implement though, as acting presidents of the courts refuse to undergo training pending the procedure of appointment of court presidents.[57] The USAID will, through the above-mentioned project will assist the Serbian authorities in planning and monitoring of the budget of the HJC. Employees of the Ministry of Justice will be taken over from the Ministry of Justice in a "special unit" (administrative office of the HJC)

The Judicial Academy has a training programme for the judiciary dealing with budgetary issues.

It is undisputed that the HJC and the SPC will be able to indicate the figures of their own funding budgets and will be involved in monitoring their spending in cooperation with the Ministry of Justice and the Ministry of Finance.

The question of who, in future, should defend the judiciary budget before the Parliament is not yet resolved. There are two main opinions on this issue, opinions that were expressed during the discussions with the experts. Some consider that the Minister of Justice or Minister of Finance, as a politician, may be more effective than the presidents of the HJC and the SPC, who are not used to presenting the budget of their institutions before Parliament. Others are of the view that the presidents of these institutions should themselves appear before the Parliament. However, it is undisputed that the HJC and the SPC will be able to indicate the figures of their own funding budgets and will be involved in monitoring their spending in cooperation with the Ministry of Justice and the Ministry of Finance.

All preparatory and installation work of "AVP" (CAS-Case Automation System) software in 60 courts of general jurisdiction has been completed. Software for the central register for certification of immovable property is at the procurement stage.

Staff training activities will be actioned through the project supported through the MDTF. The objectives of this project are ambitious: to equip courts with computers and software, to define and harmonise IT procedures, to train court personnel in IT tools and to produce steering tools (i.e. tables measuring the workload of judges / prosecutors as well as the activity of the courts / prosecution services, etc.). The work has been undertaken and some visible results have been obtained (i.e. tables measuring the activity of the court / prosecution service as well as the activity of each judge / prosecutor). These tables are very useful for people in charge of administration, management and monitoring if they are correctly filled in. This should be checked carefully.

[57]The HJC has indicated that it will soon make proposals to the Parliament about the designation of court presidents.

In addition, a new software for listing the documents ("popis spisa") will be introduced and will increase the transparency of the judiciary's work, by allowing the general public, at first instance, to have internet access to cases by name, number and other relevant data. It will create the opportunity for presidents and judges to take a look into statistical data related to their own efficiency.

The Supreme Court of Cassation, the Administrative Court and four Appellate Courts have also received all necessary computers needed and the software for introducing the 'Court Registry' According to information provided by the Ministry of Justice, the work on the IT network which shall connect all courts and prison administration is in progress.

1.3. ACCOUNTABILITY AND THE ETHICAL STANDARDS

Both the Association of Judges and the Association of Prosecutors have adopted codes of ethics for their members. These codes will be the subject of training by the Judicial Academy.

The HJC is required by law to establish a Code of Ethics of its own. It shall be more of a disciplinary code than those adopted by the professional associations. Up until now, substantial discussion about the content of the code has taken place, and it has to be drafted and adopted by the HJC. Sub-statutory regulations on disciplinary liability of members of the judiciary also have to be adopted in the future.

The Anti-Corruption Agency of Serbia began operating on 1st January 2010. One of its tasks was to register the assets of officials, the funding of political parties, etc. Integrity plans for courts and prosecutors' offices have to be established. The Agency is planning several training courses. One of the aims is to train judges and prosecutors in the field of ethics and integrity. The Agency is ready to cooperate with the Judicial Academy and the latter may rely on the Agency's expertise.

1. 4. DISCIPLINARY PROSECUTOR

One prosecutor will be appointed within the next few months by the SPC to investigate disciplinary offences committed by prosecutors.

For a prosecution service to function properly, there must be some control over the work of prosecutors and their ethical conduct. Prosecutors work in the front line and may be subject to undue influence. It is of paramount importance that everything is done to prevent unethical conduct – in a broad sense - by prosecutors.

Practice will show if the creation of more positions in that field is necessary.

1. 5. EFFECTIVE USE OF THE JUDICIAL AND PROSECUTORIAL RESOURCES

One of the primary goals for the judicial system is to introduce the new system of prosecutorial investigations.

At present, the old system with investigating judges is still applied. Switching to the new system is foreseen by 2011 or 2012 at the earliest. During the round table held in Belgrade, the Association of Prosecutors expressed its concern regarding the change of the entire

criminal investigation, which would exclude the institution of a investigative judge, and replace it by a prosecutor.

The SPC is examining the legislation to be passed to introduce the new system. It has not been decided how to regulate the prosecutorial investigation, including whether there should be a specific law or amendments to the criminal procedure code, or both. Two committees are currently working on this issue of prosecutorial investigation.

1.6. EXPERTS' ASSESSMENT

1.6.1. Judicial Productivity and Performance

The judiciary cannot operate productively without proper funding and the adequate allocation of human resources. Each state is free to consider what level of human resources is appropriate to reflect individuals' expectations that his or her case is heard within a reasonable timeframe. Nevertheless, it seems that the goal of the executive to have more judicial cases solved with fewer judges will be difficult to achieve.

The Association of Judges complained that the new court network demands judges and court staff to spend several hours each working day travelling. That means that judges are wasting parts of their working day on travel and are still supposed to decide the same number of cases per month. That fact alone means that the criteria on judicial productivity have to be increased.

The amount of cases pending before the courts as well as problems with the execution of judgments, already creates a systemic problem of compliance with Article 6 of the ECHR. The experts were provided with information that proceedings before courts, together with the execution of judgments in Serbia would last around nine years[58]. These figures cannot satisfy the expectations of the general public nor ECHR requirements on expedient trial proceedings. Excessive delays in the administration of justice constitute a grave danger to the respect for the rule of law and access to justice.

1.6.2. Effective Case Management

As regards software for courts and prosecutors' offices, many activities have taken place, but there is still a need for improvement. The experts cannot say with precision which improvements are necessary and how they can be carried out. The fact is the actual situation is not satisfactory. The Serbian judiciary and the Ministry of Justice know it and they will have to examine in detail what the problems are and what can be done to fix them.

1.6.3. Disciplinary Prosecutor

According to the opinion of the Republic Public Prosecutor, one person is not enough to fulfil this important task.

Practice will show if the creation of more positions in that field is necessary.

[58]According to the survey conducted by the USAID Bankruptcy and Enforcement Strengthening programme (BES), 73% of companies in Serbia "never or rarely" used the court for enforcement due to system failure; recovery rates for judgments in commercial courts were less 5%; and on average a commercial enforcement case was more than 500 days old despite the fact that courts issues all necessary enforcement orders in less than 20 days. Furthermore, the problem with enforcement in general became so serious that the European Court of Human Rights found violations of the Art . 6. para 1 in 9 cases against Serbia.

2. OUTSTANDING ELEMENTS IN THE IMPLEMENTATION OF THE NATIONAL JUDICIAL REFORM STRATEGY

At present, the Ministry of Justice plans, together with the HJC, to implement a new system able to provide accurate statistical data and therefore allow effective assessment of individual judges' and courts' performances, as well as an accurate overlook over the functioning of the justice system as a whole.

Up until now, neither the Ministry of Justice, nor the courts and prosecutors' offices have the ability to accurately assess judicial productivity and performance. According to the Ministry of Justice itself, they lack uniform standards and regularly updated statistical information at both system and individual court level; this deficiency impedes effective control over the judiciary's performance.

Efforts have been made to introduce case processing automation in the courts, but the system is not widespread yet.

The Ministry of Justice and the SPC are working on the introduction of the prosecutorial investigation, including drafting the necessary laws and by-laws with working groups. The implementation is yet to be done.
The experts were not provided with the information in connection of the introduction of plea bargaining in the criminal procedure. A relevant legal framework still has to be established.

3. RECOMMENDATIONS

3.1. JUDICIAL PRODUCTIVITY AND PERFORMANCE

The HJC and SPC, together with the Ministry of Justice, should continue their efforts to introduce a uniform data collection system for reviewing judicial productivity.

The HJC and SPC should set standards of judicial performance and regularly review the performance of the courts and individual judges and prosecutors.

Clear and objective criteria for the number of judges and the volume of cases that judges are expected to handle over a certain period of time should be developed.

In order to avoid misunderstanding and to seek objectivity, representatives of the Association of Judges should be involved in defining the criteria mentioned above, for instance by participating in targeted working groups.

Such working groups could compare different experiences in terms of measuring the workload in courts for individual judges. There is a possibility to apply the time-sensitive measures of the judges' output performance through identifying the judges' available working hours, the average time necessary to close a case (identifying the type and number of actions in each case and the average time necessary to perform each action) and making a correlation between the time the judges have available and the total number of cases, and the average time and the actual time necessary for their handling. This could help to classify the cases by complexity ("weights"), identify the required number or judges and other staff members, as well as the "norm" for judges, for as long as it is necessary to keep it, during the transition reform period.

The same could be recommended, *mutatis mutandis*, for prosecutors.

The experts would like to state that assessing the productivity and performance of judges and prosecutors according to the number of cases they solve is not the only possible way of doing so. They focused on that solution because it seems that it is the way that has been chosen for now in Serbia and this solution is not contrary to any international standard.

Together with the introduction of a uniform data collection system, possibilities for improving the productivity of judges and prosecutors should be examined. This could be achieved for example by streamlining the workflow, establishing specific business procedures, rationalise the use of courtrooms, specialising judges and prosecutors in specific fields of law, etc.

3.2. BACKLOG OF CASES

State authorities, including the HJC and the SPC, should focus work on appropriate measures to decrease the backlog of cases and improve the quality of execution of judicial decisions.

The backlog of cases is not specific to Serbia. Other countries – and not only in the Balkans – are facing the same problem. But nevertheless, something should be done to improve the situation.

A possible way to solve the backlog of cases is to recruit additional personnel. One option would be to increase the number of judges and prosecutors. In this regard, during the round table organised by the project in May 2010, representatives of the Ministry of Justice announced that additional judges would be appointed very soon, which is a positive development. Another option could be to hire temporary judges and prosecutors, full-time or part-time, from the ranks of other legal professions. As a rule, increasing the number of judges and prosecutors entails increasing the budget.

Another option would be to recruit legally trained court personnel, who help judges and prosecutors in their functions. This option would be less costly than hiring judges and prosecutors and could be discussed in Serbia as well.

A study could be carried out in order to identify whether non-judicial tasks could be assigned to other persons than judges or prosecutors. The experts noted that there is a draft law transferring specific acts from the courts to notaries.

The experts are of the opinion that the national authorities of Serbia, in order to avoid the filing of many applications before the European Court of Human Rights, should also implement the Recommendation (2010) 3 of the CoE Committee of Ministers to member states on effective remedies for excessive length of proceedings, adopted by the Committee of Ministers on 24 February 2010. The measures recommended should be carefully examined by the national experts and authorities. Statutory or - where appropriate - sub-statutory regulations should be adopted in order to (1) balance and control the current situation regarding the excessive length of proceedings; (2) implement necessary procedural changes advocating friendly settlements, summary proceedings, expedited proceedings in order to prevent serious violations of human rights etc.; (3) reconsider the mechanism of execution of judicial decisions. (4) promote Alternative Dispute Resolution (see Chapter IV).

The efficient mechanism of the execution of judgments as an inseparable part of administration of justice is one of the key issues for access to justice. Excessive delays in the execution of judicial decisions discredit the whole justice system. The experts recommend that the Serbian authorities pay particular attention to this problem at national level. The new

draft Law on Execution and Security could be a step forward. Once adopted, the law must be efficiently implemented.

State authorities, including the HJC and the SPC, should identify appropriate measures to decrease the backlog of cases and improve the quality of execution of judicial decisions. They should particularly strive to implement Recommendation (2010) 3.

Possible solutions: to renounce a written motivation of decisions in simple cases if the parties do not expressly request one; to identify whether non-judicial tasks could be assigned to other persons; to recruit additional human resources (judges, prosecutors, other legally trained personnel); etc.

3.3. EFFECTIVE CASE MANAGEMENT

A transparent procedure of regular assessment of each judge's/prosecutor's work based on multi-criteria rules (knowledge of the law, capacity to apply the law, professional behaviour, capacity to take initiatives, capacity to administrate, to lead a team, etc.) should be established in the light of provisions from the standards of the CoE, in particular the European Charter on the Statute for Judges and the Recommendation R (94) 12 of the Council of Ministers. This procedure should include accurate criteria (to be defined) about administration and management skills in order to encourage judges/prosecutors who are interested by such a perspective to acquire the necessary competences through practice and training.

It is important to provide specific training about court/prosecution service administration and management to judges/prosecutors who have been identified as having a chance or being interested in being elected as president of a court or as head of a prosecutors' office. They would be able to implement efficiently their knowledge, for instance, as deputies or as president of court/head prosecutor immediately after their election. Such specific training should also be provided to newly elected presidents of courts/heads of prosecutors' offices. Such training should be compulsory immediately following their election. In all cases, well trained presidents/head prosecutors will be less dependent upon their administrative services, and consequently should have more capacity to properly define priorities, to make choices, to argue about their policy and to check the concrete implementation of their decisions. That would be fully in keeping with the European standards and with the will expressed by the Serbian authorities in 2006.

Administration and management skills (previous experiences in this matter, training courses attended, etc.) might be included by decision-makers as criteria for the election of applicants who want to become Court President or Head prosecutor.

Presidents of courts/head prosecutors have to be assisted by efficient deputy presidents/deputy prosecutors and competent personnel. Administrative tasks create significant workload for presidents of courts/head prosecutors. Indeed, the latter have to organise the court/prosecution service in accordance with the provisions of the law. Article 52 of the law on organisation of the court provides that "the court president represents the court, manages court administration and is responsible for a proper and timely court operation. The court president is required to ensure legality, order and accuracy in the court (…) ensures safeguarding of independence of judges and the credibility of the court, and carries out other tasks set forth by law and the Court Rules of Procedure". Among these other tasks, one could mention the setting of the "annual calendar of tasks" in which the president of court determines each year, after having requested the court judges' opinion about his/her draft, the type of judicial activity for every judge in the court, court unit or detached court. Concretely, heads of courts/prosecution services have to solve many daily problems of operation, to manage human resources, to

monitor the activity of the magistrates placed under their authority, etc. Each month, they have to send a request for funding to the Ministry of justice (later, after the 1 January 2011, to the High Judicial Council/State Prosecutorial Council). They also have to report each week, each month, each quarter and each semester by sending activity tables to the HJC and to the immediate superior court and once a year by sending final activity tables as well as a narrative report (the same goes, *mutatis mutandis*, for head prosecutors). The tables allow monitoring of the work of judges, as well as the activity of the court. Detailed instructions are provided for properly compiling the reports. It is not difficult to imagine the heavy burden of all these tasks. In such a context, and taking into consideration the requirements of the law, some specific needs can be identified.

One of the needs is for efficient deputy presidents/prosecutors: Article 53 of the law on organisation of the courts provides that presidents of courts can delegate to deputy presidents - they are entitled to choose - some court management responsibilities. In Belgrade, the first instance court is located in three different buildings where 1 000 people work daily, among them almost 200 judges. Consequently, the president of the court is fully occupied by administrative issues although she has delegated functions to four deputies who devote half of their working time to such issues. The law forbids delegation of some powers which must remain in the president of court's hands (assignments relating to decision making on employments rights of judges; determining the annual calendar of tasks; etc.). One could suggest that prior to their appointment, deputy presidents'/prosecutors' skills should be assessed in the field in which they will get a delegation. They also have to be trained. For the heads of courts/prosecution services, well trained deputy presidents/prosecutors would provide an efficient support which would help them to perform their tasks. As far as deputy presidents, are concerned training should help them to acquire court administration and management skills, which could be very useful for getting in the future a position of president of court/head of prosecution service. Taking the example of the court of first instance in Belgrade, the idea would be not to reduce the burden of the administrative issues in the president's as well as in her deputy president's agenda, but to create conditions for these authorities to become more efficient and to develop better quality administration and management.

Administrative teams in courts and in prosecution services should not be undersized and should cover all the management domains of the courts/prosecution services.

One year ago, the accountancy service - which was common to the courts and the prosecution services - was split into two different branches: one for the court and one for the prosecution service. However, at each level of court there is a corresponding level of the prosecution service. Even if services are separated and often in separate locations, even if a decision to have totally separate services has been taken (and it is not the purpose of this report to discuss that decision), the question of the sharing of these administrative personnel who will deal with finances and budget has to be studied again: it could be more efficient to have one common structure, even if the personnel of this structure would depend on two different authorities (president, prosecutor), and it is not certain that the budget of the judicial system would be able to carry the cost of two similar structures.

Several interlocutors within the judiciary in Serbia have highlighted the need to provide intermediate staff to the president of the court or to the head prosecutor.

The 2010 regulation of the courts has introduced the position of court managers (director of finances in the public prosecution services). It is interesting to observe that this novelty has been done by a regulation (adopted by the Ministry of Justice) and not by a provision of the law. It seems a good idea, but some care has to be taken on several points. The position of court managers/directors of finances is totally new. A job description has consequently to be established in order to accurately list the competences conferred upon them. In particular, this

would be useful to accurately distinguish their competences from those of other staff, such as the secretaries as well as the managers of the registry office, who under the current regime are in charge of administrative competences. That will not be so easy, and for this reason a working group composed at least of representatives of the Ministry of justice, representatives of the High Judicial Council, representatives of the State Prosecutorial Council and representatives of the courts/prosecution services could be created in order to make proposals for avoiding overlaps and misunderstandings as well as to harmonise practices throughout the country. Maybe the distinction between budget and financial competences (conferred upon court managers/directors of finances) and human resources, as well as assessment of the judges'/prosecutors' work (conferred upon courts/public prosecution secretaries) could make a coherent frontier between the two positions. In all cases, it is important to solve these questions as soon as possible and before the introduction of court managers/directors of finances within the courts/prosecution services. Court managers/directors of finances have clearly to act under the authority and the supervision of the president of court/head prosecutor. Some powers could be delegated to them, but such powers have to be accurately listed and in any case, these powers should be implemented under the authority of the president/head prosecutor or under the authority of the deputy presidents/deputy prosecutors. Court managers/directors of finances have to be competent in their fields of activity. They must be recruited after a transparent procedure which will allow assessing their skills. Their contract has to be attractive according to its length and the salary. They have also to be trained.

It could be envisaged to create several networks (presidents of courts, head prosecutors, court managers, secretaries, etc.) to create conditions for common discussions about practices, problems to solve, initiatives to undertake, etc. Additionally, it is recommended to provide for regular compulsory and official meetings among the actors of the administrative and management issues in courts/prosecution services.

3.4. INFORMATION TECHNOLOGY (IT)

The first priority towards creation of a network of IT experts in courts/prosecution services as well as in the Ministry of Justice would be to reinforce the team which at the central level (Ministry of Justice) prepares and implements IT programmes and ensures their follow up (assessment of the functioning of IT tools, solution of technical problems, improvement of the system, etc.).

The immediate second priority would be to appoint and to train - in courts/prosecution services - IT correspondents who will be able, within the framework of a network, to communicate with the central level (about problems, needs, experiences, etc.) and to circulate information, suggestions, etc. Moreover, these IT experts would be the contact points in this matter for the hierarchy of the court/prosecution service.

An ambitious IT training programme should be developed for the personnel (civil servants, judges, prosecutors) in courts/prosecution services who will have to implement daily the IT procedures (input and monitoring of data), for the personnel who would be specialised at the local level about these matters in the framework of the networks mentioned above, and for the hierarchy of the courts/prosecution services (including presidents of courts and prosecutors).

The current administration of the courts/prosecution services (and in particular presidents of courts and prosecutors) should be closely associated to the programmes and tools which will be implemented in IT matters. Currently a working group with representatives of courts (and maybe also prosecution services) meets regularly with the Ministry of Justice in order to harmonise the procedures which are applied throughout the country. Such standardisation is a

positive feature. But that is also important to integrate in the system observations made by representatives of the courts/prosecution services concerning the tools put at their disposal for steering their service and for producing statistics.

The data coming from the system must be closely monitored. It is important to check that the procedures for the collection of data have been correctly applied everywhere in the country. Some specific procedures - which do not currently exist - have to be conceived. In particular, before their publication, data concerning a court/prosecution service have to be validated by the heads of these services.

The development of IT tools for supporting efficient administration and management must be a priority. That was already mentioned in the National Judicial Reform Strategy of 2006.

3.5. INTEGRITY AND ETHICAL STANDARDS

The institutions in charge of improving judicial integrity should identify the most sensitive issues as regards the unethical behaviour of judges/prosecutors. As a first step, surveys should be carried out by the HJC and the SPC, in cooperation with other institutions, such as the police, Bar associations, NGOs, to this end.

As a second step, the HJC and the SPC should set up an action plan detailing the measures aimed to address the most sensitive issues as regards to integrity and ethical behaviour of judges and prosecutors. To this end, they might organise round table discussions and/or seminars with courts presidents, judges, head prosecutors and prosecutors/deputy prosecutors on these issues.

The topic of integrity and ethics should be included in the curricula of the initial and in-service training programmes. The CoE, which enjoys experience in this field, could assist the HJC and the SPC in drafting and implementing such programmes.

3.6. DISCIPLINARY PROSECUTOR

The appointment of a disciplinary prosecutor is a valuable initiative which can contribute to the improved accountability of prosecutors.

The Republic Public Prosecutor expressed the view that the CoE might make a useful contribution in securing the good functioning of the new institution of the disciplinary prosecutor. In particular, the CoE might support the exchange of experience with other European countries that have special institutions in charge of disciplinary matters (e.g. France, with the "Inspection générale des services judiciaires", etc.).

The cooperation between the CoE – and/or other international institutions - and the SPC as regards the implementation of the institution of the disciplinary prosecutor should be strengthened. As a first step, a meeting with representatives of the SPC, including its President, other Head prosecutors, the disciplinary prosecutor him- or herself and international experts could be organised. The CoE and/or other international institutions might also assist in facilitating an exchange of experiences with countries where this institution has long been in place.

3.7. EFFECTIVE USE OF JUDICIAL AND PROSECUTORIAL RESOURCES

The experts do not consider they should express any opinion about the necessity or opportunity to change the system: as long as the system keeps in line with Rec (2000) 19 about the role of the public prosecutor in the criminal justice system and, for example, with the Strasbourg jurisprudence related to Art. 6 ECHR, there is no European requirement that the investigations are conducted by a judge rather than by a prosecutor and both systems exist in Europe.

This issue is crucial for the future of criminal proceedings in Serbia and needs to be solved in a proper way, in the light of European standards.

V. EFFICIENCY

1. REQUIREMENTS OF THE NATIONAL JUDICIAL REFORM STRATEGY

1.1. AN EFFICIENT JUDICIAL SYSTEM

According to the National Judicial Reform Strategy (NJRS), the legal framework should set up an integral system of legal aid which will provide for effective assistance to defendants in civil and criminal cases as well administrative disputes, and enable the development of standardised criteria for granting legal aid. Systematic and well-publicised alternative dispute resolution (ADR) programmes hosted and promoted by the ADR Centre, shall ensure a new, more efficient and less expensive avenue for dispute resolution and considerably reduce the burden on courts and judges, which will, in turn, increase the efficiency of the judicial system.

The NJRS envisaged establishing the National Judicial Training Institute by 2008. This independent judicial institution was supposed to operate under the supervision of the HJC and assume the mandate, functions, and resources of the Judicial Training Centre.

The National Judicial Training Institute was foreseen to provide standardised multi-level initial and in-service education and training programmes for judicial officers. The training was supposed to emphasise case management techniques to address the significant case backlog of the courts. It has been foreseen that the National Judicial Training Institute shall have the first students (2010-2011) trained and graduating under the new curriculum, before beginning to prepare for careers in the judiciary. The training of judges and prosecutors has been developed for the improvement of theoretical and practical knowledge and the skills necessary for an independent, efficient and professional justice system.

On the basis of the new constitutional and legal framework, a new system of court jurisdictions shall be introduced by the establishment of the new Supreme Cassation Court. The Courts of Appeal will, for the most part, take over the jurisdiction of the Supreme Court, and general jurisdiction courts (higher and basic) will, with minor changes, retain their present jurisdiction. Specialised courts will be established to decide administrative, commercial, misdemeanour and other disputes. The court network shall be rationalised, as a medium term goal, and will operate efficiently and in accordance with the best comparative practices, as a long term goal.

In addition, the reconstruction and construction of court facilities has been foreseen to be carried out between 2006 and 2011.

1.2. IMPROVED ACCESS TO JUSTICE

1.2.1. Legal aid

Legal aid plays a crucial role in the efficiency and accessibility of justice. The right to legal aid is a fundamental right recognised by the Council of Europe[59] and is provided for by

[59]The Serbian Constitution also expressly mentions in Article 67 the right of all persons to legal aid. However, for the purpose of this report, an assessment in the light of CoE standards, is decisive.

Article 6 (3) (c) of the ECHR in criminal matters. Resolution (78) 8 on Legal Aid and Advice[60] states that "no one should be prevented by economic obstacles from pursuing or defending his right before any court determining civil, commercial, administrative, social or fiscal matters. To this end, all persons should have the right to necessary legal aid in court proceedings".[61]

As mentioned above, the NJRS introduces reforms in the field of legal aid to promote access to justice and improve the efficiency of the judicial system in Serbia. According to the Strategy, the system of free legal aid should include a legal advice service in which free counselling is offered to citizens and an in-court representation service is provided for. The legal advice and in-court representation services are conceived as public services financed by the Serbian administration and run by Bar associations. These services are provided in almost all matters (civil, criminal, labour, administrative). By the year 2007, the legal aid system should have been reviewed and a new law creating an integral system of legal aid should have been adopted. By the year 2009, institutional support for legal aid should have been provided and criteria for granting legal aid defined. Further reforms are planned for 2010-2011.

Free Legal Aid Projects are being implemented in Vojvodina, Nic and Belgrade. The experts focused on the project in Vojvodina.

The project in Vojvodina follows two lines of work: first, the establishment of a legal advice service and in-court representation throughout the Autonomous Province of Vojvodina; second, it intends to contribute to the institutionalisation of free legal aid in the territory of Serbia through specific support to the executive and legislative branches and other competent institutions.

The project in Vojvodina proved that the model implemented in various municipalities in Serbia can work as a comprehensive system in a supra-municipal territory (Vojvodina).[62]

Therefore, the Free Legal Aid Project appears to be a valid, comprehensive system which might succeed throughout Serbia.

1.2.2. Mediation

1.2.2.1. Introduction

In general, the role of alternative dispute resolution (hereinafter ADR) and in particular that of mediation have been highlighted in a number of international law instruments. A variety of intergovernmental organisations[63] include the promotion of ADR in their working programmes, and this often leads to non-mandatory legal instruments (soft law).

The Committee of Ministers of the CoE adopted a recommendation specifically relating to family mediation[64] to introduce, promote and strengthen family mediation, and also a

[60]Adopted by the Committee of Ministers of the CoE on 2 March 1978; available at http://www.coe.int/t/e/legal_affairs/legal_co-operation/administrative_law_and_justice/Texts_&_Documents/Conv_Rec_Res/Resolution_(78)8.asp, last access 28 March 2010.

[61]In Resolution (78) 8 the Committee of Ministers "recommends the governments of member states" to take relevant measures with a view to the implementation of these principles.

[62]Report on the Free Legal Aid System issued by the Catalan Ombudsman in Serbia (December 2009), available at http://www.sindic.cat/en/page.asp?id=187, last access 28 March 2010.

[63]E.g. the United Nations Commission for International Trade Law (UNCITRAL) adopted a model law on international commercial conciliation; ADR in connection with e-commerce is discussed by the Organisation of Cooperation and Development in Europe (OECD).

[64]Available at http://www.coe.int/t/e/legal_affairs/legal_co-operation/family_law_and_children's_rights/conferences/Rec(98)1%20E.pdf, last access 11 March 2010.

recommendation on civil mediation[65] to facilitate mediation in civil matters in general. The Serbian legislation should therefore be analysed in the light of these two recommendations.

The NJRS does not mention mediation explicitly but refers to ADR in general. Systematic and well-publicised ADR programmes, hosted and promoted by the ADR Centre, should ensure a new, more efficient and less expensive avenue for dispute resolution. Within the scope of the first reforms (2006-2007), the existing and proposed ADR Centre programmes were to be reviewed. In 2008-2009, the ADR Centre was to receive approval from the Ministry of Justice and the High Judicial Council, to expand these programmes. In 2010, the ADR Centre should begin a comprehensive programme to expand on its activities.

1.2.2.2. Current Law on Mediation

a. In general

Contrary to the situation in the field of legal aid, a Law on Mediation currently exists. This law was passed in 2005, well before the adoption of the NJRS. Disputes regarding property, commercial, family, labour, other private law matters, administrative and criminal procedures fall within the scope of the application of the law (provided for by Art. 1 of the Law on Mediation). Article 2 provides that mediation can be any procedure whereby the parties wish to settle their dispute through one or more mediators assisting the parties to reach an agreement. Mediators should not be authorised to impose a binding agreement on the parties.

b. Principle of confidentiality

The principle of confidentiality (Art. 6 of the Law on Mediation) requires that all information, proposals and statements related to the mediation procedure are confidential unless otherwise agreed by the parties. An exception to the principle of confidentiality is made where disclosure is required under the law or for the purpose of implementing or enforcing a settlement agreement, as well as when the public interest requires it.

c. Suspension of limitations

Parties should not be prevented from using mediation due to the risk of the expiration of limitation terms.[66] However, Article 11 of the Law on Mediation provides that the opening of the mediation process does not suspend that period of limitation. The lack of suspension of the limitation terms constitutes a further gap in the current law.

d. Function of the ADR (Mediation) Centre

The Law on Mediation does not make any reference to the ADR (Mediation) Centre. However, the legal empowerment of the Mediation Centre as a control and regulatory authority, has become a necessity, *inter alia* because the Mediation Centre is a key element of the reforms envisaged by the NJRS. Directive 2008/52/EC stipulates that Member States should encourage "the introduction of effective quality control mechanisms concerning the provision of mediation services."[67] The absence of a clear settlement of this issue constitutes another legislative gap.

[65]Available at https://wcd.coe.int/ViewDoc.jsp?id=306401&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75, last access 28 March 2010.
[66]Guidelines for a better implementation of the existing recommendation concerning family mediation and mediation in civil matters, Strasbourg, 7 December 2007; e. g. under the Belgian Law on Mediation, signing the mediation protocol suspends the running of the limitation period for the duration of the mediation.
[67]Recital no. 16 of the Directive 2008/52/EC.

Currently, the Mediation Centre, which is a public institution founded by the Republic of Serbia, the Belgrade Bar Association, the National Bank of Serbia and the Child Rights Centre, deals solely with commercial mediation. It trains mediators, issues mediation licenses and offers seminars and courses on using mediation in commercial disputes. Other forms of disputes, e.g. family and labour disputes, do not fall within the scope of its activities.

e. Effect of agreement

Directive 2008/52/EC emphasises that "Mediation should not be regarded as a poorer alternative to judicial proceedings" and that "Member States should therefore ensure that the parties to a written agreement resulting from mediation can have the content of their agreement made enforceable".

According to Article 16 of the Law on Mediation, the settlement agreement reached through mediation shall be considered an out of court settlement. Further on, the same article states that the settlement agreement can substitute a court settlement only if the judge files it in the court registry.

This regulation clearly assumes that an agreement reached through mediation is inferior to a judicial settlement. The parties to such a mediation agreement cannot enforce its content without undertaking further steps. A legislative gap therefore exists in this respect.

The current ADR (Mediation) Centre was dealing more with the education of mediators than with alternative dispute resolution. Some lawyers that have been interviewed stated that the situation is such that there are more mediators than cases solved by the ADR (Mediation) Centre.

Currently two draft laws on mediation have been prepared. The first one has been drafted by the Mediation Centre, the second one by a Working Group set up by the Ministry of Justice.

1.2.2.3. Draft Law prepared by the Mediation Centre

a. In general

A Law on Mediation has been prepared by the Mediation Centre. The scope of application of the draft Law is broader as it includes (with the exception of the cases mentioned in the current law) mediation in educational institutions, in the area of environmental protection, relationships that develop from discriminatory behaviour, cross-border disputes, corporate disputes and, very generally, other cases where mediation can be applied (Art. 3 of the draft Law on Mediation). Furthermore, international mediation is envisaged in Article 4 of the draft Law on Mediation. Another milestone of the draft law is Article 27 which states that mediation is a requirement for instigating court proceedings for property claims. Thus, mandatory mediation is established, constituting an efficient means of raising awareness of mediation among the judiciary, legal professionals and parties to a dispute.

b. Principle of confidentiality

The legislative gap which currently exists in the implementation of the principle of confidentiality is partially addressed by Article 12 of the draft Law. This article states that all persons present in the mediation process must keep all proposals, statements, facts and information concerning this procedure confidential. In the case that they violate this principle, they shall be liable for damages flowing from the breach. Mediators violating the principle are only held responsible if damages occur. The draft law still does not establish any disciplinary sanctions.

Moreover, Article 12 of the draft Law encompasses solely "proposals, statements, facts and information presented *during* the mediation process" (author's italics). Hence, this provision is not as expansive as Article 6 of the current Law on Mediation, which covers "all information, proposals and statements *related* to the mediation procedure" (author's italics). This broadly formulated provision does not only include information disclosed during the mediation procedure, but also the subject-matter and result of the procedure. Thereby, the wording of the draft Law creates a legislative gap compared to the current Law, as it does not protect the confidentiality of information sufficiently.

c. Suspension of limitations

Article 20 of the draft Law provides that the statute of limitation relating to the claim will not be suspended by initiating a mediation process. As a result, the legislative gap identified in the current Law on Mediation has not been filled. The draft regulation could prevent parties from using mediation due to the risk of the expiration of limitation terms.

d. Function of the ADR (Mediation) Centre

According to Article 46 of the draft Law, the Mediation Centre will change its name to the Republic Mediation Centre. The Republic Mediation Centre shall be authorised, inter alia, to issue acts for the purpose of implementing the draft Law on Mediation. It will also conduct training, maintain the register of and monitor the work of mediators and organisations registered for conducting mediation, as well as simultaneously representing and protecting their interests.

This provision will therefore fill the currently existing legislative gap by establishing the Republic Mediation Centre as the controlling and regulatory authority.

e. Effect of agreement

Article 27 of the draft Law on Mediation introduces mandatory mediation. Moreover, the agreement reached through mandatory mediation has the effect of a writ of execution (Art. 23 of the draft Law on Mediation). The parties to mediation can therefore now enforce the content of their agreement made according to these provisions without taking any further steps and will gain more legal certainty during the mediation process. Thus, the currently existing legislative gap is filled by Article 27 and Article 23 of the draft Law on Mediation.

1.2.2.4. Draft Law prepared by the Working Group

a. In general

Another draft Law on Mediation has been prepared by a working group established by the Serbian Ministry of Justice. The scope of application of this draft Law (disputes regarding property, commercial and family matters, labour and other civil law relations, administrative and criminal procedures) remains the same as in the current Law on Mediation.

b. International Mediation

International mediation is envisaged in Article 4 of the draft Law. However, a crucial inconsistency can be found in this provision. On one hand, the second paragraph states that the mediation procedure shall be conducted under this Law, except if the participants explicitly agree that the procedure will be conducted under other rules. On the other hand, the

third paragraph states that the participants may not exclude the application of this Law on Mediation.

As a result, the parties' freedom to choose the applicable law contradicts the prohibition on excluding the application of the draft Law on Mediation. This discrepancy constitutes legislative uncertainty which must be corrected.

c. Principle of confidentiality

The legislative gap which currently exists in the implementation of the principle of confidentiality is filled by Article 9 of the draft Law on Mediation. This Article states that all participants in the mediation process shall keep all information concerning this procedure confidential. In case they violate this principle, they shall be liable for damages caused by the violation. Furthermore, an appropriate sanction is provided for by Article 30 of the draft Law on Mediation, which stipulates that a mediator shall be deleted from the Registry of Mediators if, in conducting the mediation procedure, he or she seriously violates a mediator's obligations.

d. Suspension of limitations

According to Article 15 of the draft Law, the statute of limitations relating to the claim will not be affected by the opening of the mediation process.

The legislative gap identified in the current Law on Mediation has not yet been filled. The draft regulation may possibly prevent parties from using mediation by the risk of expiry of limitation terms.

e. Functions of the ADR (Mediation) Centre

Despite the fact that the Mediation Centre is a key element of the reforms envisaged by the NJRS and is currently very active in the field of commercial mediation, the draft Law on Mediation does not mention this institution.

Instead, in Article 27 the draft Law introduces a system of "registry keeping", according to which the Ministry of Justice is in charge of keeping a registry of mediators and a registry of accredited mediator training organisations. These registries shall be public and published on the website of the Ministry of Justice.

f. Effect of agreement

Article 16 of the draft Law on Mediation states that the agreement reached during mediation shall have the effect of an out-of-court settlement. It may only have the effect of a court settlement if the judge files it in the court registry. Thus, the legislative gap in the current Law on Mediation is not filled.

1.2.2.5. Comparison between the draft laws

As the two drafts assessed above differ considerably from one another in certain aspects, a comparison of the main provisions will be made.

First of all, the draft Law on Mediation prepared by the Mediation Centre introduces mandatory mediation in property disputes, whereas the draft prepared by the Working Group only refers to optional mediation.

Secondly, the Mediation Centre draft grants the agreement reached through mandatory mediation the effect of a writ of execution, whereas the Working Group draft handles the agreement as an out-of-court settlement.

Finally, the draft prepared by the Mediation Centre establishes the Centre as a regulatory and control authority. The version drafted by the Working Group does not mention the Mediation Centre, but creates a system of "registry keeping", according to which the Ministry of Justice is in charge of keeping a registry of mediators and a registry of accredited mediator training organisations.

1.3. STANDARDISED SYSTEM FOR EDUCATION AND TRAINING

1.3.1. Training of judges and prosecutors

A very high-level professionalism and competence on the part of the judges and prosecutors is an essential requirement for the good functioning of the justice system, and need to be supported by modern and comprehensive training curricula and methodology. A Judicial Academy was established by law in 2009 with the task of providing initial and continuous training for judges and prosecutors. The Academy replaced the former Judicial Training Centre and began operating in 2010 with strong support from the EU. The budget of the former Judicial Training Centre was transferred to the Judicial Academy. Additional budget support should be provided from mid-2010, which has already been agreed upon by the Judicial Academy and the Serbian Government.

The Director of the Judicial Academy used to be the Director of the former Judicial Training Centre. According to the law on the Judicial Academy, the Management Board should be composed of 4 persons selected by the High Judicial Council, 2 representatives of the government and 3 persons selected by the State Prosecutorial Council. The Management Board of the Judicial Academy has been constituted on 10 June 2010. On the first constitutive session of the Management Board, a Program Board was established. According to Article 57 of the Law on the Judicial Academy, the Statute of Judicial Academy is to be adopted in 30 days, and other bylaws in 60 days, from the day of the establishment of the Management Board.

1.3.2. Initial training

As a rule, future judges and prosecutors will not be appointed if they have not followed an initial training programme at the Judicial Academy, but if there are no candidates who have successfully passed the training of the Judicial Academy this condition could be lifted depending of the circumstances and the qualification of the candidates.

In September 2010, the Judicial Academy will provide initial training for around 25 future judges and prosecutors over the course of 24 months who will then be placed in courts and prosecutors' offices. The final number of candidates who will attend this training is to be decided by the HJC and the SPC. The Director of the Judicial Academy is aware that training 25 future judges and prosecutors is not enough to meet the needs of the judiciary, but prefers to begin this first initial training programme with a limited number of persons, and subsequently fine-tune it as needed.

1.3.3. Continuous training

Continuous training is and shall be provided by the Judicial Academy on a voluntary basis. Judges and prosecutors are free to register and attend training sessions. There are however exceptions to this principle:

- training in specific fields, when a judge or prosecutor is going to specialise in one of these fields (obligatory specialisation matters: juvenile law, family law)

- a judge or prosecutor whose performance is rated as insufficient by the HJC or SPC may be obliged by one of these self-government bodies to attend specific training sessions

- if the HJC and the SPC identify shortcomings in the training of judges and/or prosecutors, they may request that the Academy organise training sessions in specific fields and instruct judges and/or prosecutors to attend these sessions

Continuous or in-service training focuses on practical issues. 95 % of the lecturers are judges and prosecutors themselves, while 5 % are professors. This should contribute to ensuring that the training meets the actual needs of the participants.

It is planned that 7 000 - 8 000 persons will attend training sessions in 2010, mostly judges and prosecutors, but also police officers, etc. Training sessions in 2010 are and shall be provided in compulsory specialisation subjects, such as plea bargaining, fighting organised crime, seizure of property (with judges and prosecutors, but also policemen).

1.4. A MODERN COURT NETWORK

1.4.1. In general

A new network of courts and prosecutorial offices, requiring less staff and judges and prosecutors for its functioning, was set up as of 1 January 2010, after the Law on the Seats and Territorial Jurisdiction of Courts and Public Prosecutors' Offices entered into force.

As a result of these changes it was and still is necessary to reconsider some procedural aspects in order to improve the efficiency of the judicial system. For example, in the criminal procedure, when a case is referred to a higher court, the case can be sent back to the first instance court only once, according to the new regulation. In 2010, the criminal procedure code will be adapted for prosecutorial investigation. Amendments to the law on civil procedure were introduced at the end of 2009. The Law on Enforcement and Security was drafted, but had not been forwarded to the Parliament, by the end of May 2010. A law on notaries should simplify the tasks of the courts in the future.

1.4.2. Courts' network

The new Law on the Seats and Territorial Jurisdiction of Courts and Public Prosecutors' Offices introduced substantial changes to the system. The number of courts was significantly reduced. The competences of courts were newly distributed. The new organisation was designed with a view to making the system more efficient and less expensive, and to eliminate shortcomings. The expectations for the new system were and remain high.

The former system consisted of some 168 courts, among which 138 courts were at municipal level. Under the new law, the Serbian court network consists of 34 Basic Courts, 24 Higher

courts, 4 Courts of Appeal (courts with general jurisdiction), a Commercial Court, an Administrative Court (specialised courts) and the Supreme Court of Cassation.

The competence of Municipal courts was transferred to the Basic courts and their units. The competence of the District courts was transferred to the Higher and Appellate courts. The competence of the Supreme Court was transferred to three new institutions (Supreme Court of cassation, Administrative Court and Appellate Courts).

Previously, there were small courts with very few cases and larger courts with too many cases. This led to the huge discrepancies in the access to courts, which depended on the place of residence. An example would be a court in a small town with 5 judges dealing with only 10 to 20 cases a year. In Belgrade, every judge has to work on 300 to 400 cases a year, in civil matters alone. Nowadays, the workload is supposed to be evenly distributed among judges, also for complex cases.

The number of judges was reduced, from around 2,400 up until 2009 to 1,870 from 2010. Consequently, the authorities expect the performance and efficiency of the judges to improve.

The changes, including to the buildings, had to be made within two months, but all the new courts are said to be functioning, except in Belgrade, where only 60 % of the courts are said to operate normally. The Ministry of Justice is expecting the situation to improve in the near future.

The experts were not provided with the official figures regarding the backlog of cases per judge. They were informed by the Association of Judges that in May 2010, contrary to the expectations raised by the reform of a more balanced distribution of work, the judges' workload continued to vary from court to court. For example, the Higher Court in Sombor (Vojvodina, northern Serbia) started 2010 with only 80 cases (8 judges working in this court). In the First Basic Court in Belgrade, an investigative judge started 2010 with more than 1 000 cases, whereas a civil judge working in the Higher Court in Belgrade started 2010 with more than 1 300 cases.

The experts were told that the number of hearings held before the courts in the first three months of 2010 had dropped sharply, compared to the same period in 2009 (from 100 % in 2009 to 15 % in 2010). The Ministry of Justice itself admitted in February 2010 that some courts were still not operating. At the same time, the Republic Prosecutor said that things were not functioning entirely as they should. As already mentioned, the backlog of cases - already high at the end of 2009 - has increased.

1.4.3. Constitutional Court

The experts met the President and several members of the Constitutional Court. The latter explained that, apart from general "election", one of their main concerns is the huge backlog of cases concerning the undue length of judicial proceedings, which represents about one third of the complaints brought to the Court. This depends on one hand on the inefficiency of the whole justice system, on the other on the fact that every case of undue length of proceeding is to be brought directly to the Constitutional Court. This leads the court to have to deal with minor cases. The non-execution of court decisions also brings a number of cases to the Constitutional Court.

1.4.4. Prosecutors' Offices

The new prosecutorial network has been operational since 1 January 2010. It has been designed to correspond with the court network.

Before 2010, there were 129 municipal public prosecutors offices. Since 1 January of the current year, 34 basic public prosecutors offices have been created. At district level, the reduction was from 33 to 24 prosecutorial offices. There are 4 prosecutors' offices at appeal level.

Previously, there were 710 prosecutors' positions (Public Prosecutors and Deputy Public Prosecutors). Under the new system, there are 67 Public Prosecutors, including the Republic Prosecutor and the special prosecutors (organised crime, war crime and cyber crime) and there are also Deputy Public Prosecutors, for a total of 615 prosecutors' positions. Performance and efficiency are expected to improve significantly and the workload to be more evenly distributed.

1.4.5. Experts' assessment

The internal organisational structure of the judiciary has to be decided by each individual state. It would not be useful for the experts to discuss the number, type of courts and prosecutors' offices Serbia has chosen to create. The experts would only like to make one remark in this regard: the new judicial network seems to be adapted to the conditions in Serbia, as there is a clear structure; the courts' and prosecutors' offices' overall structure is identical; judicial entities are spread around the country, with consideration of the regions and the population; etc.

The Ministry of Justice has put a lot of efforts into providing sufficient infrastructure. A new court building has been constructed and additional buildings have been secured. Renovations and transformations have been achieved. Nevertheless, the Ministry of Justice admits that the situation is still not satisfactory and that more efforts have to made, with the lack of financial resources being the main obstacle. The Ministry of Justice is trying to obtain these resources.

Therefore, the experts will refrain from making further comments in that respect, except for recommending that the ongoing efforts are continued.

2. OUTSTANDING ELEMENTS IN THE IMPLEMENTATION OF THE NATIONAL JUDICIAL REFORM STRATEGY

2.1. IMPROVED ACCESS TO JUSTICE

2.1.1. In general

The NJRS has indicated that there are certain restrictions as to access to justice in Serbia. A few concrete restrictions have been listed: limited budget for legal aid, poor legal frameworks insufficient dissemination of legal and court related information. Serious doubts were raised whether access to the justice system might be improved without further reforms.

As has already been mentioned some steps have been made for implementation of measures envisaged in the NJRS. Some of them, however, have not been implemented yet.

2.1.2. Legal aid

It is clear that Serbia still lacks a legislative framework on legal aid. Legislation in this field is urgently needed since the right to free legal aid is a fundamental right under Article 67 of the Serbian Constitution and also Article 6 (3) of the European Convention on Human Rights.

The lack of comprehensive legislation on free legal aid directly affects the efficiency and accessibility of justice.

The current situation is still such that access to justice is restricted by a limited budget for legal aid, the absence of a legal framework and insufficient dissemination of legal and court-related information. Additionally, with government revenues for justice administration limited, efforts to collect court services fees and consolidate service locations may further restrict access to justice.

2.1.3. Mediation

The short-term goals pursued by the NJRS, namely the review of existing ADR Centre programmes and the proposal of additional programmes, cannot be considered as achieved. While Serbia has made major steps to improve and develop mediation in commercial matters, comprehensive mediation programmes have yet to be established in the fields of family and civil mediation. The lack of implementation of this immediate, short-term reform objective has clearly affected the achievement of the medium- and long-term reforms set out in the NJRS, namely the approval of the Ministry of Justice and the HJC of the proposed additional programmes and start-up of such programmes.

Detailed comments on positive aspects, as well as shortcomings, of the two draft laws prepared by the Mediation Centre and the Ministry of Justice have been made above. In the light of European standards, and of the goals of the NJRS, the draft law prepared by the Mediation Centre goes further than the one drawn up by the Ministry of Justice as it foresees the establishment of the Mediation Centre as a control and regulatory authority. Moreover, Serbian legislation on mediation needs a regulation suspending limitation periods and one that awards the agreement reached during mediation the effect of a writ of execution.

2.2. STANDARDISED SYSTEM FOR EDUCATION AND TRAINING

The NJRS acknowledged that "there is no developed and comprehensive curriculum for judicial and staff training. In general, training efforts are inadequate, both for new and experienced judges and staff", and it indicated steps to improve the situation, in the short, medium and long term.

The NJRS envisaged that in the short term (2006-2007) the Judicial Training Centre conduct training of the judiciary and training of trainers, and that the Ministry of Justice and the HJC prepare and approve a plan for a National Judicial Training Institute. International assistance for the new National Judicial Training Institute facility was also to be secured. These measures were implemented. Yet, a third short-term reform goal ("the Ministry of Justice, the High Judicial Council and Law faculties agree on the design of a new curriculum and judiciary departments") has not been achieved yet.

Medium- and long-term reforms[68] originally envisaged in the NJRS (with the exception of the establishment of the Judicial Academy) have not yet been carried out.

One of the important topics to be addressed by the education and training system is to bring European standards to the attention of basic judges and prosecutors. This constitutes a

[68]Medium and long-term reforms included: trainers begin training of new judges and permanent training; new training curriculum for judges developed and approved by the HJC; law faculties strengthen judiciary departments and offer additional practical training opportunities (medium-term reforms, 2008-2009) and further long-term reforms envisaged for 2010-2011: results analysed and curriculum of the National Judicial Training Institute improved, final comprehensive training program developed, its implementation begins; new training curriculum for court staff developed and approved by the Ministry of Justice and HJC; first students trained by new curriculums graduate and begin preparing for careers in the judiciary and the Bar.

significant challenge. It seems that all judges and prosecutors should soon have computers with internet access, or at least easy access to a computer with internet. A database with the relevant European standards in the Serbian language would therefore be a useful tool.

A Program Board for the Judicial Academy, composed solely of judges and prosecutors and the Director of the Judicial Academy, has been established. This board could therefore prepare the necessary curricula for the initial and in-service training.

Doubts have been raised as to whether all of the planned and expected training can be fully achieved, bearing in mind the difficult economic situation.

2.3. MODERN COURT NETWORK

Short-term reforms of the NJRS (2006-2007), the adoption of the new constitutional and legal framework for the change of court organisation and jurisdiction, the identification of primary capital investments required for major urban courts and the preparation of a proposal for international assistance, were partly achieved.

The other measures envisaged in the NJRS[69] have not been accomplished or the result of the implementation is still unclear.

The current situation leads to the conclusion that either something was wrong with the calculations made before setting up the new court structure, or the drastic reduction of judicial positions did not bring the expected result. At any rate, there is concern that Serbia might be sanctioned by the ECtHR for not fulfilling its obligations to organise the judicial system in a way that would avoid breaches of Article 6 of the ECHR.

The experts are also concerned about the costs of the new system, which, contrary to the expectations, is said to be far more expensive than the previous one. The reason is that many judges and prosecutors can no longer work in the city or town where they live. According to the legal provisions, they have to be paid special allowances for travel and accommodation, which amounts to a significant part of their income. The question as to whether, in order to diminish the costs and improve efficiency, the relocated judges and prosecutors should move their homes, as is generally expected from professionals who have their place of work relocated, cannot be answered by the experts. A concrete solution depends mainly on the local situation in relation to the matter of lodging, a matter which the experts are not familiar with.

Until now, the new court structure has not proven to be more efficient than the previous one. On the contrary, the interviews carried out and the data provided show that the court system has became more expensive, less accessible (more time is needed to reach the court), and overall less efficient.

One problem is that the new system had to be implemented within a very short period of time (as one of the experts' interlocutors stated it was: "too fast, unplanned, uncontrolled"), some buildings were not ready, appliances were insufficient, staff was lacking, etc. Another problem is that there are fewer judges and prosecutors, and they had the difficult task of adapting themselves to the new system. Despite the judges' and prosecutors' efforts, which

[69] In the NJRS, medium-term reforms (2008-2009) were described as follows: - new courts shall operate in accordance with the constitutional legal framework, and court network need to be rationalised; international assistance to be secured for capital investments in major urban courts. Long-term reforms (2010-2011) were as follows: rationalised court network to operate efficiently and in accordance with the best comparative practices; reconstruction and construction of new court facilities to be completed.

cannot be ignored, this led and is still leading to shortcomings in the procedures and has amplified the already existing backlog of cases.
As mentioned, the experts acknowledge the efforts made by the Ministry of Justice to provide an adequate infrastructure.

3. RECOMMENDATIONS

3.1. IMPROVED ACCESS TO JUSTICE

3.1.1. Legal aid

The full entrenchment of the rule of law in any society requires equality of all citizens before the law. A comprehensive legal framework for the provision of legal aid should be drafted and adopted urgently. A key element of such a legal framework should be a catalogue of services that must be provided in order for legal aid to be considered appropriate, i.e. access to pre-litigation advice, legal assistance and representation in court and exemption from, or assistance with, the cost of proceedings.[70] The Free Legal Aid Project appears to be a valid and comprehensive system that can work throughout Serbia and should therefore be implemented throughout the rest of the country.

3.1.2. Mediation

To enable a better implementation of the recommendations of the CoE Committee of Ministers concerning mediation, Serbia should establish comprehensive mediation programmes in the fields of family and civil mediation.

A regulation suspending limitation periods must be provided for cases that use mediation.

Furthermore, the system would benefit from a rule or regulation that introduces mandatory mediation in property disputes and awards the agreement reached through mediation the effect of a writ of execution.

The legislative gap in the implementation of the principle of confidentiality should be filled. The principle of confidentiality is essential in establishing the parties' confidence in the mediation process and its outcome.[71] Breach of the confidentiality duty by a mediator should be considered a serious disciplinary violation and should be sanctioned appropriately.[72]

Relating to the possible proposed changes to the mediation centres, it appears doubtful that institutional "registry keeping" will be sufficient with regard to several issues, such as dissemination of information on mediation. In the light of the numerous changes introduced in the judicial system, authorities should carefully consider whether a revision of the legal framework concerning this particular issue is appropriate.

[70]See the Directive 2003/8/EC of 27 January 2003 to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes. This directive is considered precisely because the Republic of Serbia aims to facilitate the EU association process (see p. 4 NJRS).
[71]Guidelines for a better implementation of the existing recommendation concerning family mediation and mediation in civil matters, Strasbourg, 7 December 2007.
[72]ibid.

3.2. STANDARDISED SYSTEM FOR EDUCATION AND TRAINING

The Judicial Academy has a very important role to play within the judicial system. Within the framework of its mandate of provision of initial and continuous training for judges and prosecutors, it can significantly contribute to developing a common culture and a common approach to cases within the judiciary. It may also help create links between the different bodies involved in the judicial process. For instance, joint training sessions could be envisaged for certain subjects (police officers, judges and prosecutors could receive in-service training together in the field of seizure of assets for example).

The experts recommend that adequate funding be provided to the Judicial Academy, to allow the fulfilment of its important duties. They also believe that the Academy should be run in a way that safeguards the independence of the judiciary and guarantees that judges and prosecutors receive high-quality initial and in-service training. The Managing Board and the Programme Board of the Judicial Academy will play an important role in this regard. The experts recommend that these bodies be established as soon as possible.

A provisional working group composed by representatives of the HJC, SPC and Judicial Academy should now establish a programme for the initial training. The experts were informed that the Judicial Academy intends to introduce an intensive training programme for future presidents of courts, and that a training programme for court managers is being drafted; one session for both court presidents and court managers is foreseen to clarify the irrespective tasks and to avoid any confusion between their functions.

The experts are of the opinion that initial and continuous training of judges and prosecutors is extremely important, and as a result all measures envisaged in the NJRS should be implemented as soon as possible. It seems the Ministry of Justice and self-governing institutions of judges and prosecutors understand this and have concentrated all efforts in the latest months on implementing the NJRS measures regarding judicial education and training.

It is true that the first initial training session, beginning in October 2010, will involve 25 candidates only, and this is not enough to meet the needs of the judicial system. The experts understand that the Judicial Academy would like to run this first programme with a limited number of participants to be able to adjust it when required. Nevertheless, the authorities should aim to increase the number of candidates to be admitted to the first initial training session in the near future.

At present, it is impossible to give an opinion on the training programmes: the programme for initial training has not been established yet and the in-service programme is only beginning.

The experts recommend that the Ministry of Justice, HJC and SPC agree on designing a new training curriculum for judges and prosecutors which should correspond to the real needs of the judiciary. Special emphasis – implemented within specific training sessions – should be put on human rights law. The HJC should approve the new curriculum as soon as it is designed, provided – of course – it is of sufficient quality. It is also recommended that law faculties be involved more closely as they can offer additional practical training opportunities.

The Judicial Academy received strong support from the EU for office and sub-offices equipment. The Council of Europe should continue to provide support to the Academy as well. Examples of in-service training sessions that could be organised with CoE assistance, include capacity-building sessions for prosecutors to enable them to fulfil their new role more effectively (including as regards conducting prosecutorial investigation), in particular with reference to ECHR standards and the principles of the CoE Recommendation Rec (2000) 19.

To identify more accurately the could be built up fields in which efforts should be made, a specific programme to assess the implementation of the Council of Europe recommendation Rec (2000) 19 on the role of the public prosecution in the criminal justice system. International experts, together with Serbian experts, could visit prosecution services, meet prosecutors, their representatives, other bodies involved in the criminal justice system (police, attorneys, etc.) and observers (media, NGOs) could examine the day-to-day implementation of the principles enshrined in the Council of Europe recommendation Rec (2000) 19, and suggest possible measures. The same could be said of a possible assessment of other specific standard-setting documents, addressing the independence of judges.

At any rate, the medium- and long–term reforms envisaged in the NJRS should be implemented, in particular those regarding the development of a final comprehensive training programme.

European standards should be disseminated to all judges and public prosecutors and be accessible in the Serbian language. This may play a positive role in developing a proper judicial culture among judges and public prosecutors, including the understanding of the importance of the efficiency in the justice system.

A way to disseminate the relevant CoE standards can be to include the topic in the initial and in-service training programmes, with special sessions addressing those issues. The director of the Judicial Academy is well aware of the needs of the Serbian judges and prosecutors and of the importance of placing notably human rights law at the centre of the training. Assistance by the Council of Europe might be useful here too (assistance for the drafting of standard-oriented programmes; international experts attending sessions; drafting of documents and presentations to be used in training sessions; financing specific sessions; financing specific items to be used in sessions).

3.3. MODERN COURT NETWORK

The relevant state and, if necessary, municipal authorities (not only the Ministry of Justice and the self-government bodies) should maintain their efforts in solving the existing problems with buildings and related questions for the courts and prosecution offices. If needed, the budgetary allocations have to be reconsidered for solving this problem as soon as possible.

The Ministry of Justice and the self-government bodies should assess the situation of judges and prosecutors who have to work far away from home and search for efficient – and more cost-effective – solutions in their assignments. The experts were informed that some courts already spent their annual budget by May 2010 to cover judges' travel expenses. If this information is correct, steps should be urgently taken to address this problem. A possibility would be to assign the judges and prosecutors to courts and prosecutors' offices as closely as possible to their homes or, as far as possible, to encourage the judges and prosecutors to move their homes to places nearer to their new place of work.

The current situation as regards the influx of judicial cases, cases solved, the balance of backlogs between different courts and judges should be carefully assessed, measured on a regular basis using objective criteria, and made available to the courts and judicial self-governing bodies. Clear and flexible legislation should be prepared with a view to providing the institutions concerned with proper tools to ensure a proportional workload between courts and judges of the same level.

A Committee composed of national and international experts should be established in order to assess the situation and identify the obstacles to the improvement of the efficiency of the

judicial system in Serbia. A concrete Action Plan for the implementation of the medium– and long-term reforms envisaged in the NJRS should be adopted. Particular attention should be paid to securing international assistance for capital investments in major urban courts, as well as constructing new court facilities and renovating existing ones.

A Working Group should be set up in order to examine whether the current regulatory framework imposing that each case of undue length of proceedings be brought directly to the Constitutional Court should be changed. If so, the Working Group should examine which further steps should be taken in order to improve the situation. One possible solution could be to reconsider the institutional competence between the Constitutional Court and other courts, even if this requires changing the Serbian Constitution.