

Judicial education and training in Serbia: Report from a short review mission to Belgrade (16-20 June, 2008)

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1. Introduction

The World Bank has been requested by the Serbian authorities to support the judicial modernization and reform process now under way in the country. A Multi-Donor Trust Fund (MDTF) lead by the World Bank is planned to strengthen the effectiveness, independence and accountability of the judiciary, addressing the capacity of various stakeholders in the implementation of judicial reform, including the Judicial Training Center of Serbia.

The objective of the review mission was to update the World Bank's knowledge on the state of judicial education and training (including the support from the EU and other development partners). The review should also provide the task team with inputs on judicial education and training for possible support from the MDTF.

The mission took place from June 16 to June 20, 2008, in Belgrade. A series of (semi-structured) interviews and meetings with selected stakeholders and resource persons (see list of interviewees annexed) were organised by the World Bank Country Office. The desk review of relevant documents and the discussion with the very competent World Bank staff in Belgrade (Svetislava Bulajic and Aleksandra Rabrenovic) contributed to the assessment. They also commented on a first draft report.

One of the deliverables foreseen in the first draft Terms of Reference for the follow-up of the mission was an overview on the legal framework, the key issues at stake, actions taken by the authorities to address such issues, initiatives taken by other donors or civil society actors. Initial suggestions for action in the area of judicial training and education were also expected. This mission report is meant to give such an overview and some initial suggestions. It could be the basis for more targeted products (such as a draft results framework), as it was foreseen in the first draft ToR.

The report starts with identifying a series of challenges for the judiciary in Serbia, emphasizing that individual capacity is only one factor for a judge's or a prosecutor's performance. It provides a brief overview on judicial training activities and the relevant legal framework and focuses on the potentials and challenges of the Judicial Training Center. It ends with some conclusions and suggestions for the World Bank's further engagement.

2. The various challenges for judicial performance in Serbia

2.1. *Various performance factors*

According to Serbia's constitution and the political declarations of its governments, the general objectives for the judiciary and its development - and the main criteria for evaluating judicial performance - are clear: The judiciary should be independent and impartial, professionally competent, efficient and effective in enforcing legal norms and solving inter-individual conflicts. However, like for other transition countries, it is a challenge for Serbia to turn these ambitions into reality. The legal and judicial landscape in Serbia has changed considerably and rapidly during the last years, with a view to adapting the legal and judicial system to its new independent role in a State based on the rule of law - and it keeps changing. The profile of judicial actors has changed with these reforms as well. Judges, prosecutors, and court staff are now expected to have different competencies, and other attitudes and behaviours are required.

Judicial performance depends on many factors. Individual capacities and professional competence of the judicial actors are certainly important, and they can be addressed by training and education measures. But court performance in Serbia will not sustainably improve with training and education of judges and prosecutors only. Other systemic factors might be even more decisive for the performance of judges and prosecutors and for the performance of the judicial system per se. This is not the place for analysing the ongoing reform in detail, but some challenges for judicial performance need to be briefly highlighted here:

2.2. New institutions, rules and strategies, but limited implementation

The need for judicial reform was acknowledged from the early days of the new State. In 2001, a set of **new laws on judicial reform** were launched (law on judges, law on public prosecution, law on High Judicial Council, law on courts organization, and law on seats and districts of courts and public prosecutor's offices). They established new judicial institutions, created new roles and responsibilities, and changed the rules of judicial procedures. However, many of them were not implemented properly and in a transparent way, and many of the new institutions and procedures are still not working, leaving the judicial system in a situation of uncertainty and instability and contributing to a strong sense of insecurity among judicial actors. The courts of appeal and the administrative court are not operational; the constitutional court has been starting its operations very recently. The Supreme Court and the High Court Council remain highly politicised in the eyes of many observers.

The increasingly uneven distribution of workload among the municipal and district courts (leaving some courts in rural areas without work and some courts in the urban centres with a practically unmanageable and still increasing burden of work) has not been effectively addressed so far, in spite of the Law on seats and districts of courts of 2001. The overall number of judges is generally assessed as too high, so many judges fear for their jobs. For example, the number of Supreme Court judges should be reduced from 70 to 15 according to the new law, but there is no strategy on how to select the 15 judges and what to do with the 55 remaining. There are general feelings of uncertainty among judges, which mostly contribute to increasing their resistance to fundamental change.

The **national judicial reform strategy** adopted in 2006 is seen as an important step on the way to judicial reform, setting a series of priorities to achieve an independent, transparent, accountable, and efficient judicial system (including training and education for judges, prosecutors, and attorneys). Although the strategy identified short-, medium- and long-term objectives, it has been only partly implemented until now. After the change of government in 2007, the Strategy Implementation Commission - which was planned to guide the process of change and build broader ownership for it - was not called in any longer by the new minister of justice. However, the Ministry continued to prepare draft laws, with the support of the Strategy Implementation Secretariat and some expert working groups appointed by the Minister himself. This working method may guarantee for a relatively high professional standard of the draft laws, but it is not appropriate to persuade the political actors of the importance of the reform, gain the broad acceptance needed and build political will in the National Assembly for the difficult reform issues.

The example of the new criminal procedure code illustrates that the implementation phase was not planned properly when passing new legislations: The new code provided, for example, for new methods of investigation and evidence, requiring new technology, capacity, and tools, which were however not taken into account for the budget. Therefore the enactment of the new code had to be delayed. Other examples are the lack of financial

resources for the Supreme Court and the High Judicial Council to fulfil their responsibilities foreseen by the new laws.

There is a considerable risk that the **five laws planned to be passed** by the National Assembly within the next months will be confronted with the same problems again. The new Laws on Organisation of Courts, on Judges, on the High Judicial Council, on the Public Prosecution, on Seats and Territories of Courts and Public Prosecution (and, later, the planned law on the national institute for judicial training) will create new institutions and give existing institutions new tasks and responsibilities, without properly taking into consideration the professional capacity, the human resources, and the financial resources needed for implementation. There is a considerable need of planning for developing professional and institutional capacities to make the new system work.

2.3. On the road to judicial independence and impartiality?

According to many observers, judges and prosecutors in former socialist Yugoslavia enjoyed a good reputation, and they were acknowledged for professionalism and impartiality. With the exception of relatively few politically sensitive cases, the judiciary could act rather independently from the party and the executive, compared to other socialist countries. Under the authoritarian regime of Milosevic, the judiciary was cut back to a rather marginal existence. During the 1990s, the prestige of the judicial profession was rapidly declining, along with the prestige of other professions in the public service. A number of competent judges left the judiciary, partly because of low salaries, partly because of increasing political influence on the judiciary. However, in the last years of Milosevic's regime, the judiciary played an important and independent role in challenging the regime, denouncing electoral fraud in 1997. The regime reacted by dismissing some 600 judges. Part of them associated in the newly created Serbian Association of Judges defending their interests to be re-employed. After the fall of Milosevic, the dismissed judges returned to their jobs, and the other judges, which had been loyal to the old regimes, continued to serve. The experience of political pressure seems to have motivated many judges to continue their engagement within the Association of Judges for an independent and impartial judiciary. The Association played a certain role in the judicial reform process after 2000, but its lacking recognition as a public organisation defending the interests of a group of judicial actors still hinder it from playing a more prominent role in decision-making on judicial reform. Since the Association is registered as a NGO only, it has limited access to the policy and decision-making process, so that the Association's practical experience and valuable reflections on legal education and training and judicial reform often risk to be sidelined in the legislative process. Nevertheless, the Association continues to be a very relevant actor in judicial reform, striving for an independent status of the judiciary as well as for improving professional competence.

Many observers doubt about the effective commitment of the political parties currently dominating the National Assembly to the independence of the judiciary. At the least, judicial reform is not perceived as a political priority of the transition process, although the European Union keeps referring to the gaps in the legal and judicial system. The new government with its pro-European strategy will probably be confronted with a growing political pressure from this side, particularly with regard to making the judicial system more efficient and expeditious. The rapidly growing number of judgements from the European Court on Human Rights sanctioning Serbia's judiciary for the non-respect of fundamental procedural guarantees (art. 6, right to a fair trial) will most probably add to the political pressure (see also section 2.6).

There is an ongoing debate on the **role of the legislative in selecting and dismissing judges**, showing that the Serbian Parliament is not yet willing to accept an independent judiciary. A High Judicial Council has been established by law in 2001, with the responsibility of

managing the recruitment and dismissal of judges, but the recruitment of new judges was and is still mainly controlled by the National Assembly. The new Constitution of 2006 declared the High Judicial Council as an independent and autonomous body elected mainly by the National Assembly (art. 153), and kept the prerogative of the parliament to elect new judges (at the proposal of the High Judicial Council) and re-elect them after three years (art.147), providing an important opportunity to put political pressure on new judges. The political stalemate of the past months has led to a blockage of the election of new judges: Except for the judges of the Constitutional Court, there was not one single judge elected in the last two years, while 160 procedures for election and some for dismissal of judges are still pending.

The issue of **re-appointing all judges and presidents of courts** has been raised as well. Art. 7 of the Constitutional Law on Implementation of the Constitution of Serbia provides that judges and presidents shall be elected no later than one year after the date of constitution of the High Judicial Council. The Venice Commission showed concern about this provision, arguing that there was no obvious need for re-appointing all judges and prosecutors. Although the judges, particularly the Association of Judges, continue to raise questions and concerns, the position of the executive and the parliament is still unclear on this issue. This makes many judges feel uncertain and vulnerable with regard to their position, thus undermining sustainable processes of change.

2.4. Limited incentives for capacity development today

The main corps of judicial actors have been trained and made their working experience before 2000. While professional competence might have been high in socialist times, many observers doubt that today the majority of judges, prosecutors and court staff do have the professional capacities needed to cope with the new era and its new responsibilities and the independent role of the judiciary. But, apart from some relatively isolated training efforts on specific issues, the human resources management and the building of new professional competence was not a priority in Serbia's judicial reform up to now.

Although remuneration levels in the judiciary have substantively improved since 2001, it does not seem very attractive for young professionals to enter judicial services. Low professional prestige, difficult working conditions, uncertain career perspectives, political influence in recruitment and promotion are determining factors for the low interest shown by many talented young lawyers. Some observers also commented on the fact that a relevant number of highly qualified judges have left or are about to leave their position, which raises serious concerns about human resources within the judiciary.

Moreover, the selection process for the various levels of judges and prosecutors is not based explicitly on criteria of professional competence and there is a strong political influence on election processes. In such an environment it is very doubtful that recruitment and selection as well as the promotion of judges responds to criteria of professional competence or merits. While the hierarchical structure of the prosecutor's offices seems to make it somewhat easier to put some pressure on prosecutors to follow common professional standards, the individual incentives for judges to develop their professional performance on the job has remained low: In principle, there is no time for training assigned in their job descriptions. According to many observers, training is not seen as really relevant for future promotion or other decisions on the professional career. On-the-job training seems to remain primarily a matter of personal interest, with the exception of judges, prosecutors and law enforcement personnel involved in family cases and juvenile justice, where special laws already make some training compulsory.

Currently, judges' performance is relevant mainly on two occasions – promotion or dismissal of judges. This seems to be done on the basis of records of statistical data and in accordance with criteria and indicators specified by several bodies. These criteria seem to be unclear,

imprecise and incoherent, and the evaluation procedures are intransparent. The **draft law on judges**, which shall soon be presented to parliament for adoption, could indeed contribute to improving the situation. The draft as it was presented to the Venice Commission for comments, introduces a sub-chapter on the “**performance evaluation of judges**” (chapter 2, Section V). The work of all judges and the court president will be subject to regular evaluation involving all aspects of work and representing “the basis for election, mandatory training of judges, allocation to pay grades, dismissal and instituting disciplinary proceedings” (art. 31/ 1 and /2). The High Court Council shall have the responsibility to develop criteria and procedure for performance evaluation (art. 31/3 and /4). The following articles describe the bodies competent for evaluation in courts, the evaluation period, which is one year, and the rating of performance. As stated in the Opinion of the Venice Commission on the draft law, the procedure set out in these articles is transparent and fair, and it contributes to improving the quality of judicial services and guaranteeing the professionalism of judges. The Venice Commission stressed, however, that an efficient performance evaluation system must be based on a clear definition of the goals to be achieved.¹ It must be added that the law does not yet define the criteria for evaluation. The High Court Council will have the highly delicate responsibility to develop such criteria, distinguishing between performance factors within the control of the individual judge concerned and external factors relating to the performance of the court system (such as court management issues, case load per court, availability of competent assisting staff, etc.). In general, the High Court Council will need professional capacity and additional human and financial resources to develop a coherent evaluation system and implement it. As the Venice Commission points out, the assistance of human resource management experts will be needed.

With the new Criminal Procedure Code, the issues of new capacities needed for the various actors in criminal investigation seems to have been more prominently addressed, leading to an effort of training on the new legislation. However, we could not go into details on the capacity gaps here, nor for prosecutors or support staff, which could play a much more prominent and defined role in court management and ease the burden of judges.

2.5. Weak court management and logistics

Serbia’s judiciary is suffering from a very serious backlog of cases. According to the Bar Association, 1.6 Mio new cases are added every year, putting the judiciary under enormous pressure to perform efficiently. It has also been mentioned in our interviews that the delay in territorial re-organisation of the judiciary has a very negative impact on the performance of the judiciary. Moreover, it seems that there are no standards and guidance for court management, the distribution of roles among various actors, and case management – or they are not applied properly. This means for example that judges and presidents of courts are regularly involved in administrative issues that could be dealt with by assistant court staff. The role of assistant court staff has not been clarified, and many observers see a big potential for improving court performance in developing their responsibilities.

An effective management of cases depends on the availability of logistics and working tools (reference books, manuals, computers, etc.). In some courts in urban areas there is a desperate need for office space and personal resources, hampering the judges and the courts in performing their duties. In other courts, the availability of books and computers is limited. Different donors have invested in making electronic tools available to some courts (the commercial courts in particular) and prosecutor’s offices, but due to a lack of coordination, this resulted in three different computer systems used in the judicial system, with

¹ Venice Commission Opinion no.464/2007, 19 March 2008, CDL-AD(2008)007, N.46ff.

incompatible software making cooperation and coordination even more difficult. The European Commission plans to invest in improving and harmonizing the IT systems in the judiciary within the next years.

2.6. A growing trend to cope with international standards?

There are two elements indicating a growing international pressure on judicial reform. With the new pro-European government, the need for reforming the Serbian judiciary could become more relevant for Serbian politicians, with a view to prepare Serbia for closer **cooperation with the EU**, ensure European judicial standards and promote foreign investment. Under these circumstances, the European Union will certainly remain the most relevant international player with regard to judicial reform in Serbia. Under the CARDS mechanism, the Serbian judicial system and the reform process had been supported with several millions of Euro. Under the new IPA system, the European Commission will continue to support the Ministry of Justice with considerable funds. In the next months, a large programme for further developing the IT network for the judiciary is planned. The judiciary will probably not lack access to funds in the future, particularly from the European side, but it remains to be seen how the reform process will continue. The success of the reform will depend to a large extent on the political priorities set by the EU in its dialogue with Serbia – and on the EU's readiness to push for effective reform. The EU and the EC will remain most important for the political momentum of judicial reform as well as for the financial support of reform measures.

The **European Convention on Human Rights** entered into force in Serbia in 2004. Since then, the judicial standards of article 6 CEDH became an important tool for lawyers to challenge the judicial system, particularly with regard to efficiency and effectiveness. The European Court on Human Rights already found violation of article 6 (right to a fair trial) in more than 20 Serbian cases, particularly with regard to the entitlement to be heard within a reasonable time. Hundreds of cases are pending with the European Court, and more cases are to be expected, adding on to the international pressure. The serious and still increasing backlog of cases will most probably continue to feed the list of cases pending in Strasbourg for the next years or even decades.

3. Judicial training in Serbia: brief overview

3.1. Judicial training in a process of change

The objective of judicial education is to develop personal capacities of individual judicial actors to perform their roles. This is particularly important in transition countries, where the judiciary is supposed to change fundamentally: from an instrument in the hands of the executive to an independent institution enforcing legal norms impartially and ensuring rights of citizens; from the rule by law to the rule of law. This implies important changes of roles and responsibilities of judges and prosecutors as well as attorneys. It is obvious that building professional capacities needed for these new roles and responsibilities is key for managing the process of change. The quality of capacity building in Serbia needs to be measured by its results on making judges, prosecutors and court staff fit for their new roles and responsibilities in an independent, accountable, and effective court system.

Capacity building of judicial actors needs to be addressed during various phases of their professional career:

3.2. *Basic legal education*

Basic legal education is part of the formal conditions for candidates to enter the professional service (or, in some countries, the initial training courses) for judges and prosecutors in Serbia. Like in other countries, basic legal education is a task of the law faculties. Although we did not analyse the quality of law schools, we frequently heard that, despite some initiatives to address capacity gaps in the university system, basic legal education is still very much focusing on ex-cathedra teaching methods. As a general trend, lectures and exams are still making students learn textbooks and legal norms by heart. It seems that, after law school, many students are not really able to understand the legal system and the legal methodology, nor have they learned to apply legal rules to a concrete context.

3.3. *Initial training*

In Serbia, there is no formal initial training for new judges or prosecutors. The recruitment process for judges and prosecutors does not follow clear quality criteria. Professional training for judicial actors is basically the same as for attorneys. To be eligible as prosecutors or judges, the candidates have to pass the same **bar exam** as attorneys do. Candidates for the bar have to have a university law degree and prove that they did practical work for two years in court or with a lawyer, and four years in another legal profession. While the practical training in court and with a lawyer is certainly an essential part of capacity building for all judicial actors, the practical training's quality has been questioned in many interviews: Mentor judges and attorneys often lack the time, the skills or the interest to train, and the trainees' capacities are seldom properly used in court or in law firms. According to many observers, there is a lack of quality control and supervision for the practical trainings.

3.4. *In-service training*

Further professional training for serving judges is a particular challenge in transition countries like Serbia where there was no lustration or vetting process in the judiciary: The most experienced judges and prosecutors (and sometimes the hierarchically leading figures) have been working under another reference framework and might seriously lack capacity and will to cope the he new system's requirements.

There is no compulsory in-service training for judges or prosecutors in Serbia, with two recent exceptions:

- The **Law on Minor Offenders and Criminal-Legal Protection of Minors** obliges judges, prosecutors, attorneys, and the police officers involved in minor offender or minor victim cases to complete special training organised by the Judicial Training Centre. It is authorised to issue a certificate on completed training, which is needed for all actors involved in juvenile justice cases.
- The Rules on Acquiring Special Knowledge on the Rights of the Child, adopted by the Serbian Government, obliges all judges involved in family relations proceedings to attend a special trainig course organised, implemented and certified by the Judicial Training Centre. Under the **Law on Family Relations**, only those who have been issued a certificate can sit on the bench in such cases. The training is organised by the Judicial Training Centre.

In the last years several legal training initiatives were taken by various actors, particularly targeting judges and prosecutors on service, on a voluntary basis.

- The **Judicial Training Centre** offered various trainings on specific issues (for the analysis of its activities see following section).

- The **Serbian Association of Judges**, counting more than half of the judges of Serbia among its members, was the initiator of the Judicial Training Centre, showing a particular interest in capacity building for its members as well as in improving performance of the judiciary. Adding to its continuous engagement in the management of the Judicial Training Centre, the Association continues to offer specific training to its members, such as training on ethical standards.
- The **Serbian Association of Public Prosecutors** represents more than two thirds of the active public prosecutors. It has been very active in training as well as in developing operational guidance and performance evaluation criteria for prosecutors. It also lobbies for the legal reforms on public prosecutors. It collaborates with the Judicial Training Centre on specific training issues.
- The **Bar Associations** are also providing training to their members on various issues of interest to them. The Bar Association strives for taking over the responsibility for the bar exam and for organizing a more focused initial training for attorneys.
- **Human Rights NGOs**, particularly the Belgrade Center for Human Rights, have been providing and continue to provide specific training on human rights law, particularly on the European Convention on Human Rights.
- The **Supreme Court and the High Court Council** and the High Prosecutors' Council are responsible for the management of human resources within the judiciary and supervising the performance of judges and prosecutors in the future. The Supreme Court is considerably involved in the training activities of the Judicial Training Centre: The Supreme Court president chairs its programme council, and the majority of the Centre's trainers are Supreme Court judges.
- Various **donors** (particularly UNDP, OSCE, EC/EAR, Council of Europe, ABA-CEELI, USAID, CIDA) took many training initiatives on various topics or supported such initiatives from the various Serbian partners mentioned. According to most interviews, these initiatives focused on specific topics (for example, on human rights issues, commercial law, money laundering, corruption, mediation of inter-individual conflicts). These initiatives seem to have been rather badly coordinated and harmonised, and responded more to the thematic priorities of donors than to a broader needs analysis of the Serbian judiciary.

4. The relevant legal framework

The **Judicial Reform Strategy** of 2006, was setting judicial training as a priority and giving the Judicial Training Centre a most important role, with a view to strengthen and transform it into a „National Institute“. A **Law on the Training of Judges, Public Prosecutors and Their Assistants** was also passed in 2006, under which the Judicial Training Centre is authorised to provide basic training courses and offer permanent training programmes. There is, however, no general training obligation for judges or prosecutors, with the two exceptions on family law and juvenile justice already mentioned. While the current legal framework does provide some basis for the Centre, there are various weaknesses: The current law on training does hardly reflect the specific training needs related to the changing roles of judicial actors, nor does it set training priorities in a systematic way. It did not link training and education to a broader picture of human resources management in the judiciary, to the process of selection, promotion and career planning.

A **new law is in the process of drafting** by a working group appointed by the Ministry of Justice. It should transform the Centre into a „National Institute“ and make initial training compulsory. The initial training course for newly recruited judges would consist of 18 months of practical trainings with civil department, criminal department, prosecutor’s office, misdemeanor courts, and two month outside the judiciary, followed by theoretical courses. A consolidated draft was not yet available in English, so it was impossible to assess the content in more detail. It will be important to follow up closely on the elaboration of this law, which is planned to be passed by the National Assembly later this year. It will also be important to plan concrete implementation measures early enough to realize this ambitious initial training programme. Much more human capacity and financial resources will be needed at the future „National Institute“ for designing the curricula, organizing quality trainings, supervising the practical parts of the training, etc., not to forget the offer of quality in-service trainings which will be equally needed.

The new **legislation on judges and prosecutors**, which is in the process of adoption, will also be highly relevant for judicial training in the future. The current draft law on judges says that „a judge has the **right and duty to advanced professional education and training** at the cost of the Republic of Serbia“ (art. 9/1). However, the law does not say explicitly whether these trainings will count as working hours for participating judges, contrary to the norm for trainers where this is explicitly mentioned (see below). Training would remain **voluntary** “unless when certain forms of training are mandatory under law or by decision of the High Court Council in case of change of specialisation, substantial changes in regulations, introduction of new work techniques and in order to eliminate deficiencies in the work of a judge noticed during performance evaluation” (art. 9/3). It will be very important to follow-up these rules during the implementation phase and link it to the concrete design of the performance evaluation process lead by the High Court Council. According to article 9/5, the **High Court Council** will have an important role to play in stipulating and overseeing the implementation of the “training program that is conducted by an institution competent for judicial training”. Thus, the role of the High Court Council in steering the National Institute will probably have to be strengthened, since it will be responsible for judicial training and performance evaluation. In article 29/5 the draft law on judges also provides **more space for acting judges to engage as a trainer**: “In cases set forth by law or based on decision of the High Court Council a judge may engage in teaching, research and professional activity during working hours.”

5. The Judicial Training Center: Potentials and challenges

5.1. *The structure*

The Judicial Training Centre presents itself as an institution providing training for judges and prosecutors. At the initiative of the Serbian Association of Judges, it was co-founded in 2001 by the Government of Serbia, the Ministry of Justice and the Serbian Association of Judges. 5 of 11 members of its **management board** are appointed by the **Ministry of Justice** (one of whom must be a judge and one a prosecutor). 5 members are appointed by the **Serbian Association of Judges**, while the eleventh member is representing the Judicial Centre’s staff.

The **Programme Council** is appointed by the management board. It consists of 9 members and is headed by the president of the Supreme Court. The Programme Council decides on the topics for the trainings and adopts training programmes. It has established various working groups on legal fields relevant for training (civil, criminal, administrative and commercial law, prosecutors, and human rights).

The centre's headquarters are in Belgrade, while there are two regional offices in Nis and Novi Sad. Another regional office is in the stage of planning in Krgujevac. The centre's staff counts 19 employees. Under the guidance of a director, several coordinators for various thematic issues organize and implement the training programme adopted by the programme council.

According to the first draft of the Law on judicial training, the Judicial Training Centre should become a "**national institute**", managed by a board consisting of three members each from the Ministry of Justice, the High Court Council (including one member recommended by the Association of Judges) and the Prosecutor's Office. If this draft will become law, the Serbian Association of Judges will practically lose its influence in favour of the Supreme Court, and the prosecutors' representation will be much higher than before. This would probably mean that the national institute will target more equally both the judges' and the prosecutors' needs.

5.2. *Topics and target groups*

During the last two or three years, the Judicial Training Centre's training offers addressed a series of issues and topics. The training offers are primarily aimed at the **judges at district level**, involving other judicial actors' groups (prosecutors, lawyers, police officers, judges at municipal level, etc.), in accordance with the issues addressed.

According to the Centre, training issues are selected and programmes are elaborated with special attention to various factors, mainly:

- The training needs (or wishes) of judges and prosecutors, as seen by themselves. Since 2006, the Judicial Training Centre evaluates their needs by a questionnaire. According to the Centre, the number of feedbacks from judges and prosecutors is increasing, and the suggestions are taken up by competent working groups. The Supreme Court and the State Prosecutor also make suggestions for programming.
- The capacity needed to apply the newly adopted laws relating to **judicial reform, to EU integration and foreign investment**. In the field of **European legislation** the JTC organised several two-days seminars for judges and prosecutors covering EU law in the areas of intellectual property, environmental protection, consumer protection and the Court of the EU. In the field of **Human Rights**, various training activities were organised for judges and public prosecutors on international standards, particularly on ECHR.
- The training needs for applying new standards in the fight against corruption, money laundry, human trafficking and organized crime. In the field of **criminal law**, several trainings have been offered to judges and prosecutors on the new criminal code (in 2007 focusing on money laundering, financing of terrorism, cyber crimes) and the new criminal procedure code (2007: in total 79 seminars). Moreover, several seminars on corruption were organized.
- Special training courses under the legal obligation for certified trainings in the field of **family law** (six-days specialisation programme required for judges sitting on the bench for family law cases, training of trainers on family law) and **juvenile justice** (first phase of specialisation training completed for more than 4000 judges, prosecutors, lawyers and police personnel; more specialised trainings for persons dealing with juvenile offenders or juvenile victims followed).

Several observers stress (and the staff of the Centre agrees) that for the last years, the Judicial Training Centre was reacting to various needs popping up for various reasons, particularly responding to various donors' interests (and the availability of funds) to work on specific topics. As far as we can see, there was no serious attempt to analyse the more general capacity

gaps in the judiciary and the corresponding training needs in a systematic and comprehensive way.

In recent years the Judicial Training Centre has been asking the judges and prosecutors to express their training needs and wishes in a questionnaire, in order to adapt the training offer to their demand. The expectations of the target groups are certainly an important factor for designing an adequate training programme. But in the current process of change, training programmes should also respond to the **external expectations that the judiciary is confronted with**, for example to deliver competent, impartial, effective and reliable services to citizens and enterprises. Experience from other countries shows that judges and their clients often differ very much in the perception of the weaknesses of the judiciary and the corresponding training needs of judges and prosecutors: While the judges often insist on the need of additional legal information, the ordinary public frequently refers to more general issues like lacking integrity, low professional commitment, lacking impartiality, lacking empathy. There have been various surveys and analyses done with regard to gaps and weaknesses of the judiciary, but these analyses have not been transformed into a comprehensive capacity building strategy, including the training needs of various judicial actors.

5.3. *Content, approaches and methods*

With regard to the content of trainings, different levels of judicial education must be distinguished, asking for a differentiated set of methodologies and approaches:

- **Information about norms and applicable standards** (new laws, practice directions of higher courts, case reports, bench books, manuals).
- Training on **methodological skills** and (new) judicial approaches: For the judges this means to address several methodological questions: How to find and assess the relevant facts, how to find evidence? How to apply the legal rules and standards to an individual case? How to exercise the new judicial discretion and fill the spaces of interpretation provided to the judge in a rule of law-based system? How to solve inter-individual conflicts in civil law cases?
- **Change of attitudes and behaviour**, responding to the changing expectations of the society with regard to the role of a judge and the judiciary in general. From a judicial bureaucracy serving the executive power to a system delivering just decisions and protecting individual rights of citizens.

The training courses provided by the Judicial Training Centre were mainly focusing on information about new norms and standards, to a lesser extent also involving methodological issues and skills training (for example, a recent seminar on communication).

The trainings are logistically organised by the Judicial Training Centre's staff (by its thematic coordinators) and provided mainly by trainers who are **active judges (mainly from the Supreme Court)** or prosecutors or by broadly recognised experts. A short uniform training programme was provided to the trainers (judges and prosecutors) in 2006/2007, in order to develop training skills and methodology. Trainers are selected by the Working Groups of the programme council and the Centre's coordinator responsible for the training. Trainers seem to be relatively well paid. The Centre evaluates performance after every training session and trainers with bad scores are not invited any more. The interviews provided a mixed picture on the quality of trainers: While some observers said that the Supreme Court Judges involved are experienced practitioners able to transfer usable legal knowledge and practical skills on the topics required, others mentioned that the trainers often lack the necessary pedagogical skills to ensure knowledge transfer. The Bar Association openly questions the Judicial Training

Centre's and its trainers' capacity and experience to provide certified training on juvenile justice and family relations.

The training methodology focusses mainly on **lectures**, but includes also **discussions and some group exercises**. This might be an appropriate form for transfer of information and intellectual knowledge. It is, however, much less adequate for acquiring practical skills and learning to use new methodologies and approaches. The Centre's coordinators interviewed were aware of the need to develop new methodology that is **more interactive** and helps participants to apply the gained knowledge in practice. Different types of practical exercises based on practical experience and active participation can help, but it will require more resources (longer trainings, the availability of appropriate trainers, more sophisticated training of trainers). With the improving computerization of courts and prosecutor's offices, **e-learning tools** are seen as an appropriate way forward, as suggested also by ABA/CEELI and USAID.

The limited time frame did not allow us to go into a broad evaluation of the Centre's activities. The relatively detailed diagnostic analysis of the Judicial Training Centre done and published by UNDP Belgrade in 2006² came to a positive conclusion. It is even more **difficult to assess the impact** of the trainings on the professional capacity of judges and prosecutors. Given the fact that the seminars offered are mostly on-off events of one or two days, the expectations to have a sustainable impact on the capacity of the judges in general must be limited, even if there is a considerable number of judges participating in the events (The Centre reports 5.3 days of training for each judge or prosecutor per 2007). The findings of research done in 2004 on the „effects of professional advancement on the judiciary“ published by UNDP in 2005³ came, at that time, to a mixed conclusion about the satisfaction of judges and prosecutors with the trainings provided.

5.4. *Financial arrangements*

In the first two years of its existence, the Judicial Training Centre was financially supported mainly by **UNDP**. Since 2004, the Ministry of Justice started to take over a considerable part of the budget. From 2005 on, the **Ministry was responsible for the basic financing** of the centre (salaries and infrastructure), and since 2006 it contributed to finance training courses as well. According to the Centre, in 2007 about 50% of the Centre's budget (1 Mio. Euro) was borne by the Ministry, while 50% was financed by donors.

Many other donors have contributed to fund the Centre's activities in the last years: UNDP (together with CIDA) continued to support the JTC for setting up a judicial training resource database, promoting international cooperation, advancement of curricula and encouraging research and training evaluation, as well as some outreach activities. It also invested in the Centre's training activities on human rights. Among other activities supporting judicial reform, the **European Agency for Reconstruction EAR** was implementing a programme „Support to the Judicial Training Centre“, including technical support and strengthening institutional capacities of the Centre (3 Mio. Euro for two years). OSCE, CIDA, USAID, the French Embassy, UNICEF, Open Society Institute, SIDA, ABA-CEELI, GTZ and the Council of Europe Belgrade Office were contributing to individual training activities or supported the Centre's institution building process.

² Dusan Radosavljevic et al., Diagnostic Analysis, UNDP Belgrade, July 2006, www.undp.org.yu/tareas/gov/a2k/Diagnostic_Analysis.pdf.

³ Miomir Despotovic, Katarina Popovic, Natasa Matovic, The effects of professional advancement on the judiciary: findings and recommendations, UNDP Belgrade 2005, www.undp.org.yu/tareas/gov/a2k/Effects_Prof_Advancement.pdf.

The uncoordinated variety of donors' approaches is seen by many observers as a key factor hindering the Judicial Training Centre's ability in developing a more systemic approach. It particularly forced the Centre into specific training activities, according to donors' interests instead of responding to the priorities of the National Judicial Reform strategy.

5.5. *Conclusions*

Measured against the many challenges faced, it must be seen as **a substantive success** that, in its seven years of existence, the Judicial Training Centre has developed into an institution organizing trainings (seminars) mainly for district judges (and other judicial actors, according to the issues) on many relevant topics. The quality of the trainings provided mainly by Supreme Court judges and other experts could not really be assessed here, the picture from the interview is mixed. The trainings focused mainly on transferring information, legal knowledge and some methodological skills.

But of course, there are some weaknesses to be addressed:

- The training needs of assistant court staff have not been addressed systematically so far.
- The lack of obligation for judges and prosecutors to participate in training courses impacts on the outreach of the training offer: It does not necessarily reach those who are most in need of training.
- Since capacity building is not seen as very relevant for one's professional career and training hours are not accepted as working hours, there is little motivation for many judges to spend their free time on training.
- The Centre has gained broad acceptance in organizing training seminars with external experts, but it could not develop into a training institution able to design and provide core trainings by itself.
- Despite some donors' investment in promoting a more pro-active role of the Centre, it did not develop into an institution able to shape policy making in the field of judicial training.
- Depending on the sometimes very specific interests of its various donors, the Centre was not able to develop a more systemic approach to capacity building within the judiciary, responding to the fundamental changes implied by the ongoing judicial reform.

The **structure** of the Centre is based on a joint venture of the Ministry of Justice and the Association of Judges. Although the Supreme Court president is playing an important role in the programming of the center, this basis is not broad enough to respond to the training needs of the various judicial actors. If the Centre's offer is to respond to the needs of public prosecutors and attorneys as well, the Association of Public Prosecutors and the Bar Association will have to have a more important say in the programming. Moreover, for the future it will be necessary to give more weight to the High Court Council (instead of the Supreme Court) and to the High Prosecutors' Council, which will be, according to the new laws, primarily responsible for the professional performance of judges and prosecutors.

6. Suggestions for further engagement

When engaging in improving legal education and training, international support should address various issues:

In the medium and long term, international support is needed for:

- Keeping the judicial reform aiming at independence, accountability and effectiveness, and making **legal education a priority** for the process of reform;
- Developing a **comprehensive human resource management** strategy within the judiciary, dealing with performance criteria, the performance evaluation process and its consequences, recruitment and dismissal criteria, and the effects of the planned re-structuration on the judicial personnel.
- A **capacity building strategy** based on a comprehensive and continuous **analysis of capacity gaps** and corresponding training needs of judicial personnel (judges, prosecutors, assistant court staff). In defining the individual capacities needed for performance, various factors have to be taken into account: (1) the needs for training and practical guidance expressed by the judges and prosecutors, (2) the public perceptions of the weaknesses in the judiciary, and (3) the needs for building additional capacity to cope with new responsibilities in a judiciary based on the rule of law.

It is particularly important to focus on the future role and responsibilities of **assistant court staff**, and the corresponding needs in capacity development.

- Making **professional competence** (including legal knowledge, methodological skills, and impartial behaviour) **a main feature of selection and promotion processes**.

In the short term, the World Bank should:

- monitor closely the **adoption process for the already drafted laws** on judicial reform, with a view to promote incentives for individual capacity building of judicial actors (clarification of roles and responsibilities of judges, prosecutors, and assistant court staff; merit-based selection and promotion criteria, evaluation of performance, paid training time, etc.);
- insist on realistic **planning for human and financial resources** for the implementation of the laws, and follow-up and support the implementation process;
- monitor closely and support the **drafting of the law on judicial training**, particularly in
 - developing the Judicial Training Centre into a “**National Training Institute**” **for all types of judicial actors**, built on the experience made by the Centre and, if possible, broad ownership by the MoJ, judges, prosecutors and attorneys;
 - making capacity building concepts and norms **coherent and compatible** with the relevant norms of the already adopted laws on the judiciary;
 - developing a coherent and feasible **implementation plan** that provides for human resources and the financial means for realizing the objectives of the law, including the national training institute.
- assess the possibilities to **support the Judicial Training Centre**, particularly in
 - developing a more pro-active role on capacity building;
 - building the capacities of the staff to design and implement a more comprehensive and systematic approach to legal training and education, including analysis of needs and evaluation of training results;

- developing more innovative and interactive methodologies (including e-learning) focusing primarily on practical skills and changing professional attitudes (instead of transferring legal information only);
- selecting and training the trainers accordingly.
- follow-up the activities of and **cooperate closely with other donors in the field** (UNDP, OSCE, EC, USAID/ABA-CEELI), with a view to harmonize the approaches for financial and political support of the judicial reform.

Annex: List of interviewed persons

Ana Maricic, *Secretariat for Implementation of the Judicial Reform Strategy SIS, Ministry of Justice*

Stephane Thibault, *Advisor on Judicial Reform, Ministry of Justice*

Dragana Boljevic, *Judge, President of the Serbian Association of Judges*

Nenad Vujic, *Director of the Judicial Training Center, and staff*

Srdijan Svircev, *CIDA Belgrade*

Beatrice Meyer, *Swiss Development Cooperation SDC Belgrade*

Isabeau Vilandre, Natasa Rasic, *Genivar/CIDA Belgrade*

Vladimir Seslija, Svetlana Vekic, and Jovica Kotic, *Bar Association of Serbia*

Peter Bach, *Programme Manager, European Agency for Reconstruction Belgrade*

Ivana Ramadanovic, Borko Nikolic, *OSCE Belgrade*

Bogdan Turudija, *European Commission, Belgrade*

Blazo Nedic, Neil Nolen, *ABA-CEELI Belgrade*

Goran Ilic, Marina Matic, *Serbian Association of Public Prosecutors*

Ljubica Pavlovic, *Secretariat of the Supreme Court President and the High Judiciary Council President*