

OSCE: SERBIAN LAW REFORM ON TRACK BUT LACKS SPEED AND CONSISTENCY

> *Ambassador Hans Ola Urstad, Head of the OSCE Mission to Serbia, finds Serbia's legal processes considerably improved but still lagging behind in speed and thoroughness of legislation and in implementation of necessary laws.* <



Your mission in Serbia includes advising on legislative changes and monitoring the implementation of laws. What is your impression on the progress Serbia has made so far in the legislative area?

If you refer to the whole nine-year period after Milošević, Serbia has made substantial progress in reforming the judiciary, law enforcement and strengthening the rule of law. Numerous laws have been drafted and adopted. However, some laws are now long overdue--such as the law regulating the work of NGOs, which has been in the legislative procedure for many years.

Important laws that were recently adopted set the stage for a comprehensive reform of the judiciary and law enforcement and are crucial for a more efficient fight against corruption and organized crime.

The Crucial Test

While the progress made in drafting and adopting laws is remarkable, their implementation is the crucial test for demonstrating genuine commitment to reform.

However, there is still room for improvement in the process of drafting laws. Some laws are adopted in a rush and without sufficient public debate. And, of course, consultations among concerned ministries must be standard practice to avoid conflicting provisions in legislation.

The methodology of drafting also needs to improve. For instance, the drafters of new laws should assess what impact the given law would have on other legislation and suggest appropriate changes known as 'regulatory impact assessment'.

At present, we are assisting the Government in planning and prioritizing its legislative agenda, in introducing routine assessment of regulatory impact of proposed legislation and in developing a binding methodology for drafting of new laws.

Would you comment on the newly adopted judiciary laws that caused some controversy among the legal community in Serbia?

The package of judicial laws was adopted in December, 2008 after a long discussion. These laws are necessary to restructure the judiciary and to set up a new network of courts, as foreseen by the Constitution. The Constitution also envisions setting up the High Court Council and the State Prosecutorial Council that are to govern the work of judges and prosecutors, respectively. The key controversy arises from the Constitution adopted in 2006, and not from these laws. The Constitution stipulates that all members of the High Court Council be elected, directly or indirectly, by the National Assembly. Many lawyers consider that such a procedure presents a risk of politicization of the appointments.

The adopted law on the High Court Council and State Prosecutorial Council attempts to address this issue and to create safeguards against undue political influence.

Judicial Training Needed

The OSCE Mission worked together with the Prosecutor's Association of Serbia and developed criteria for evaluation and promotion of Prosecutors. Moreover, the OSCE Mission is deeply engaged in supporting the creation of a Judicial Training Academy that will help to improve the quality of future candidates to the positions of judges and prosecutors. In addition to this, the OSCE is providing its support to the drafting of a new criminal procedure code that will, among other

things, further define the role of prosecutors.

What would be the main areas in which Serbia needs to improve its legislative framework?

The Serbian legislative framework has improved remarkably in crucial areas such as justice, law enforcement and the media, but I can't stress enough that the proper implementation of laws is crucial for Serbia. Implementation of laws requires proper strategies and action plans to be developed and put into practice. There is a significant amount of work to be done in this area, and we are ready to assist. I would like to mention that Ser-

mestic court judgments remain issues of concern. Improved functioning of the judiciary will largely depend on the proper implementation of the judicial reform strategy. Also proper implementation of the existing legal framework is crucial for an efficient, democratic and accountable police service.

Serbia's progress in fighting corruption has been uneven and, on the whole, too slow. The Mission continues to support efforts of the authorities aimed to implement legislation in this area, which was adopted in the end of 2008, and to make fully operational state anti-corruption structures and institutions. Effective functioning of the State Audit Institution is one of the priorities that should not be further delayed.

OSCE's Main Goals

In 2009 we will continue to provide assistance to Serbia in its reform efforts aimed at strengthening independent, accountable and effective democratic institutions, particularly in the fields of rule of law, human rights, media and law enforcement. Of course all of our work is done in close partnership with the Serbian Government and other partners. We will also continue to assist with the implementation of legislation, monitor the functioning of democratic institutions, facilitate the return of refugees and internally displaced persons and promote economic security and sustainability in Serbia. In particular we will continue to advise and assist Serbian authorities on the implementation of the adopted laws: Law on Seizure and Confiscation of the Proceeds of Crime, the judicial package of laws, the Law on Anti-Corruption Agency, as well as in capacity building of new institutions.

bia possesses a wide range of secondary legislation such as by-laws that regulate central aspects of--for example--law enforcement. These are crucial for implementation of laws and it is in the interest of Serbian citizens to be aware of these regulations and in the interests of Serbian democracy to make them more transparent, thus improving the accountability of government agencies.

Slow Courts

To move to specifics in particular areas: over-lengthy civil and criminal proceedings and non-enforcement of do-

The legal media framework in Serbia is generally in line with OSCE commitments. Again, implementation has to be improved. There is also a need to strengthen the guarantees for the independence and accountability of the regulatory bodies and transparency of the license-awarding procedure through amendments to the Broadcasting Law.

In regard to European integration the issue of finding and extraditing the remaining ICTY indictees should be seen as a priority, as well as the adoption and implementation of the set of necessary laws and measures for the visa liberalization process.