



Office for Democratic Institutions and Human Rights

THE SITUATION OF THE JUDICIARY IN SERBIA AFTER MILOSEVIC: WHERE DOES IT STAND, WHERE DOES IT GO?

Presentation by Serb Judges and Discussion

Report

**OSCE Implementation Meeting on Human Dimension Issues
SIDEMEETING
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Report

OSCE ODIHR invited three judges, who are board members of the Association of Judges of Serbia, to give a presentation of the situation of the judiciary in Serbia.

The three judges were:

- Judge Leposova Karamarkovic, Judge, Supreme Court of Serbia, 1991 - July 2000
- Vida Petrovic Skero, Judge, District Court of Belgrade, 1995 – July 2000
- Judge Radmila Dragicevic-Dicic, Judge, District Court of Belgrade, 1994 – July 2000

Also invited was Ms. Biljana Braithwaite, AIRE Center, London.

The three judges explained the background of their dismissals in July 2000, which was related to their participation in the Association of independent judges of Serbia and the regime's attempt to ensure the judiciary's loyalty in the election period. One of the judges served as a legal adviser to the Democratic Opposition and recounted the curious way in which the Constitutional Court handled the Opposition's appeal of the Federal Election Commission's decision regarding the Federal Presidential elections.

They gave an account of how the judiciary was increasingly subjected to the executive branch of power and its present status. This account can be found in detail in the attached report (*see Annex 2*).

A couple of other issues were discussed in addition:

Lustration

The judges feel that there is a need to dismiss some of the judges currently serving. However, they do not favour a large-scale modification of the composition of courts, in order to avoid a negative precedent for future changes of government. Judges should be tried according to provisions of criminal law, such as miscarriage of justice, unlawful detention, etc. Court presidents, who were vital in implementing the regime's "judicial politics" would need to be dismissed. As for judges of the Constitutional and the Supreme Courts, they feel that resignation would be the most honourable option. The judges dismissed by the Milosevic regime should be re-appointed.

War Crimes

The judges expressed their conviction that war crimes trials will have to take place and will be necessary, in order to "restore Serbia's honour".

Legal Reform and Training of the Judiciary

The judges believed that on substance most laws of Yugoslavia/Serbia are not questionable, but that the judicial practice was the main problem. They stressed that the problem of the judiciary is not one of poor legal education or legal expertise, but one of mentality. After years of intimidation and indoctrination by the regime, judges have lost their belief in the importance of an independent and impartial judiciary in a democratic society. To address this problem, it was proposed to organise training programmes and study visits, promoting the exchange of information and experience between Serbian judges and judges from other states with an independent judiciary.

International Support

The judges said that this was their first exposure in an international gathering and that they are very interested in joining international networks. They would very much welcome international support for the reform of the judiciary. Many delegations expressed their willingness to support this. The judges said that they would find it very beneficial to learn from the experience of other ex-Yugoslav states in their reform efforts; they did not see a political problem in this.

Annex 1: List of Participants

Participating States

- Ms. Stella AVALLONE Austrian delegation to the OSCE
- Ms. Michèle DENEFFE Belgian delegation to the OSCE
- Ms. Amela HASIC Minstarstvo za Gudsua Prava BiH
- Mr. Bengt VAN LOOSDRECHT Ministry of Foreign Affairs of the Netherlands
Human Rights Division
- Mr. Rob DEKKER Ministry of Foreign Affairs of the Netherlands
- Ms. Julia ASHINO Russian Ministry of Foreign Affairs
- Mr. Hengry LOTIN Canadian delegation to the OSCE
- Ms. Matei LUMINITA Romanian Ministry of Foreign Affairs
- Ms. Didoik Ion Romanian Ministry of Foreign Affairs
- Ms. Cecilia BALTEANU Romania
- Mr. Nicolas MANSFIELD USA
- Mr. Mario ZADRO Croatian Ministry of Foreign Affairs
- Amb. Reinhard BETTZUEGE German delegation to the OSCE
- Ms. Elisabeth LOTGREN Swedish Ministry of Foreign Affairs
- Mr. Damjan BERGANT Permanent Mission of Slovenia to the OSCE
- Mr. Kåre ELTERVÅG Norwegian Ministry of Foreign Affairs
- Ms. Andrea AEBY Swiss Ministry of Foreign Affairs

NGOs

- Mr. Brian PHILLIPS Amnesty International, London
- Mr. Jan CIESLAR Conference of European Churches
Geneva/Czech Republic
- Mr. Henri VOGT Finnish Helsinki Committee

OSCE Institutions

- Mr. Alexander IVANKO Office of the OSCE Representative on Freedom of
The Media
- Ms. Cynthia ALKON OSCE Presence in Albania
- Ms. Birgit KAINZ OSCE Centre in Almaty
- Mr. Ian GORVIN ODIHR
- Mr. Michael MEYER ODIHR
- Mr. Konrad OLSZEWSKI ODIHR
- Ms. Jyothi KANICS ODIHR
- Ms. Gabriele REITER ODIHR
- Mr. Michael MACNAMARA ODIHR
- Ms. Eva BERGHMANS ODIHR

Annex 2: Report of Association of Judges of Serbia

The judiciary in Serbia

The basic problem of the judiciary in Serbia has been the lack of independence. All attempts to have an independent judiciary were suppressed; recently in a more coercive and obvious manner.

During the past ten years, the judiciary acted as a dispatcher of the will of the political centers; the executive branch carried extensive control over the judiciary.

The normative blockade and the personal composition of the courts led to the situation where any independent decision could not be delivered. In the past ten years any serious legislative reform was systematically blocked; especially the one which would guarantee the true independence of the judiciary. The Constitution¹ just proclaims independence of the judiciary; in reality great resistance toward the rule of law, the separation of powers and the respect for the fundamental human rights and freedoms has been manifested.

The right to a natural judge, referred to in the Montreal Declaration on the Independence of the Judiciary, was not *de jure* provided, thus it was neither *de facto* respected. Politically significant cases or those in which the interest of individuals from the governing parties was involved were assigned to already chosen suitable judges. It was enough for every court to have one or two suitable judges, for other judges in court never to get an opportunity to prove their independence and impartiality. Frequently, suitable judges were temporarily transferred to other courts, even to other towns, where they would deliver "correct" decisions under the instruction of the executive. In the past few years, high government officials would publicly declare an individual guilty even though any criminal proceedings were not initiated yet. The presumption of innocence was not respected. Furthermore, the executive would obstruct or constrain the enforcement of legitimate decisions delivered by a court.

Issues of financial autonomy and personal safety of judges depended also upon the will of the executive; they have never been resolved in a way to protect the independence of judiciary and its dignity. Not only that the judges were not receiving salaries according to their position, but those salaries could not satisfy the basic minimum of existence at subsistence level. Illustration for this could be the fact that the average monthly salary from municipal court to the supreme court was from DEM 100 to 200. The court budget is a part of the state budget, hence it was determined and spent without the control of the judiciary. The financial status of judges just used to show how government was disinterested in making the judiciary truly independent. Moreover it led to the inclination of corruption in the judiciary. The ruling parties were involved in most cases of corruption.² They were granting apartments loans and promotions to obedient and suitable judges.

The material status and other problems in the judiciary have contributed to more than 1000 experienced judges (1/3 of their total number in Serbia and 2/3 of judges from military courts) leaving the judiciary. Instead of experienced and qualified judges young and inexperienced recruits came; vast majority of them was elected on political grounds, by being members of one of the ruling parties.

Political suitability was of great importance in the procedure of electing judges. The presidency of the courts has consisted of members or high officials of the ruling parties. Elections and dismissal of the judges are governed by the Courts Act;³ however, the implementation of this Act in reality was distorted. The election and dismissal of a judge has taken place in the National Assembly. The majority in the Assembly had decided on the election and dismissal of judges, which meant that ruling parties did; making this act truly political. The Ministry of Justice played a significant role in the preparation of proposals by giving its opinion. The proposal for the elections of the judges were first discussed by the

¹ The Constitution of the Republic of Serbia, The Official Gazette of the Republic of Serbia, No. 1/90.

² Ruling parties are the Socialist Party of Serbia (SRS), United Left (JUL) and Radical Party of Serbia (SRS).

³ The Courts Act, The Official Gazette of the Republic of Serbia, No. 46/91, 60/91, 18/92, 71/92.

commission of the governing parties; the same commission had been initiating the dismissal process for the politically unsuitable before the National Assembly. At the end it came to the point where not one judge who was not loyal could be elected, moreover if the judge was disloyal he/she could be dismissed. In the last few years, independence of the judiciary was blatantly disregarded by a systematic campaign against the Association of Judges of Serbia. It culminated with the dismissal of most respected judges, members of the Association.

The Association of Judges of Serbia is a voluntary professional non-party and non-political association within the Association of Lawyers of Serbia, established in 1997 by a group of judges from Serbia interested in the improvement of the judicial system and the independence of the courts.

The reason for the establishment of this Association was grave violations of basic constitutional principles and independence of courts by the regime after the local elections in Serbia in November 1996. Certain judges and court chambers, having succumbed to political pressure, had violated basic constitutional principles. Thus they failed in their role in the protection of rights and freedoms of citizens causing the general deterioration of trust in courts, law and justice.

The main purpose of the Association is to promote the rule of law and independent and impartial judiciary. It hopes thereby to improve the separation of powers, the judiciary's role in protecting freedoms and rights of citizens and the organization of judiciary. Its members also aim at returning dignity to their profession.

During the first year of its work the Association has achieved notable results in promoting the judicial profession. It has actively participated in drafting the Model Law on Courts and Judges. The representatives of the Association of Judges of Serbia have participated in expert conferences on the independence of judges. The Association organized the Roundtable "Is there a Corruption in the Courts?".⁴ It has also initiated many other activities, such as the education of judges, regular press conferences, etc.

590 judges from the Constitutional Court of Serbia, Supreme Court of Serbia, High Commercial Court of Serbia, district, commercial and municipal courts are members of the Association.

Since its inception, with regard to circumstances in which it was established, the Association has confronted various forms of opposition, primarily by the authorities. The Association has criticized the laws violating the constitution and basic human rights, such as the new Public Information Act and University Act, and has therefore been subjected to increased pressure by the authorities. Members of the Association have been harassed and their persecution has been announced by certain members of the Serbian Government, by the Minister of Justice, the President of the Supreme Court, and presidents of district and municipal courts. The current regime attempted to deter any public criticism addressed by the Association and caused by violations of the independence of the judiciary, the rule of law, equality of citizens and human rights. Repeatedly, the ruling parties have publicly attacked the Association and accused its prominent members as "traitors and foreign hirelings". The authorities also threatened that the judiciary "would be put in order", and judges re-elected, although the office of the judge is for life. Presidents of courts directly threatened the Association members, who were harassed in various forms, including sudden transfers and withdrawals from cases.

The decision of the Supreme Court of Serbia of 17 February 1999 prohibited in effect the work of the Association, inasmuch as it confirmed the decision of the administrative authorities to decline the request of the Association for the entry into the register of "citizens' associations", as NGOs are styled by Yugoslav law. This judgement also prohibited any association of judges since its reasoning qualifies judges as civil servants who by definition exercise judicial powers in courts as independent state organs, and who advocate the rule of law and the independent and impartial judiciary, and advance their

⁴ Belgrade, March 1998.

profession in the performance of their duties and through the work prescribed by the Courts Act, and therefore, in the opinion of the Supreme Court, did not need a non-governmental organization.

This decision violated the freedom of association, which is guaranteed to judges by the International Covenant on Civil and Political Rights, ratified by Yugoslavia, as well as by the European Convention for the Protection of Human Rights and Fundamental Freedoms. The right to associate for the protection of their common interests is their fundamental freedom. It is proclaimed in Art. 20, para. 1 of the Universal Declaration of Human Rights, but also guaranteed by Yugoslav constitutions: the Federal Constitution – Art. 40, para. 1 and the Constitution of the Republic of Serbia – Art. 44, para. 1. The freedom of association of judges is prescribed and recognized by international instruments; point 9 of the Basic Principles on the Independence of the Judiciary from the Universal Declaration on the Independence of the Judiciary cites that judges can form and join associations or other organizations in order to represent their interests, advance their professional training and protect their judicial independence. According to Art. 16, para. 2 of the Federal Constitution, “commonly recognized standards of international law are an integral part of the internal legal system”. Therefore the freedom of association of judges exists, regardless of its negation by the Supreme Court of Serbia.

At a press conference in February, Vojislav Seselj, one of the deputy prime ministers of Serbia, claimed that some judges were bribed and that they were members of the so-called independent association of judges and obviously working for the CIA. In a television program he accused Slobodan Vucetic, a Constitutional Court judge, and Zoran Ivosevic, a Supreme Court judge, that they were acting against Serbia by working with marginal political parties that were instruments in the hands of the West.⁵ The Association of Judges reacted by filing criminal charges against Vojislav Seselj.

At the beginning of October, the President of the Supreme Court of Serbia Balsa Govedarica stated that he would demand the removal from office of all judges who were members of the Association of Judges. According to Govedarica the Association was being used to voice the "political demands of some parties although it is not legally authorized to do so since the Supreme Court of Serbia did not approve its registration".⁶

Dragoljub Jankovic, the Serbian Minister of Justice, together with Govedarica demanded presidents of courts to see that at court staff meetings all judges state publicly whether they were members of the Association of Judges. Those who confirmed their membership would be removed from office for being politically active, which was allegedly incompatible with their function. At the same time, nobody reproached Minister Jankovic for being a member of JUL Main Board or the President of the Supreme Court of Serbia Balsa Govedarica for being in the SPS.

Meetings at which judges were called upon to acknowledge their membership in the Association of Judges with threat of dismissal if confirmed, were held at the end of 1999. Thirty judges from Novi Pazar admitted to being members of the Association, while the judges from Nis invoked the constitutional guarantee of the right to privacy which prohibits all forms of interrogation aimed at divulging their membership to whatever kind of association.

On 21 December 1999 the National Assembly of Serbia dismissed three prominent members of the Association of Judges: Slobodan Vucetic, judge of the Constitutional Court of Serbia, Zoran Ivosevic, judge of the Supreme Court, and Bozo Prelevic, judge of the Fifth Municipal Court in Belgrade. It was done without any legal procedure and in violation of the Constitution and laws. One of the dismissed judges was the President of the Association of Judges of Serbia, while the other two were members of its Governing Board.

⁵ *Danas*, 10 February 2000, p. 7.

⁶ *Beta*, 13 October 1999.

The Constitution of the Republic of Serbia and the Courts Act prescribes a complex procedure for the dismissal of judges. Judges of the Supreme Court of Serbia have to decide in a general session whether the legal provisions for dismissal were satisfied. If they are the proposal for dismissal is to be submitted to the Judiciary Commission of the National Assembly, which thereupon concludes whether the proposal should be submitted to the National Assembly itself. Therefore, judges of the Supreme Court of Serbia exercise extensive power. Moreover, the procedure of convening a general session of the Supreme Court of Serbia was not respected in the case of judges mentioned above. The President of the Supreme Court of Serbia, Balsa Govedarica, submitted the proposal for dismissal to the Judiciary Commission on his own, deceiving citizens that the law was respected. Other members of the Supreme Court of Serbia had not stated that the dismissals were illegal, neither had they protested in any way. Apparently, the composition of the Supreme Court of Serbia was arranged in a manner which allow the ruling parties to intervene whenever they decide to. The judges were dismissed within fifteen hours and they did not have an opportunity to present their case before the general session of the Supreme Court of Serbia. They learnt about their dismissal from the media.

The legal rationale for dismissal was not in accordance with the Constitution or the Courts Act. The dismissed judges were blamed for being politically active because of publicly criticizing violations of the independence of judiciary, the rule of law and human rights. Furthermore, membership in the Association of Judges and its Governing Board was considered as political activity. Those activities have been considered as violation of the constitutional provision⁷ that proscribes political activities of judges that are incompatible with their position.

In July 2000 twenty judges were dismissed in the same manner (one from the Supreme Court of Serbia, one from the High Commercial Court and seven from the circuit courts); all remaining judges who were members of the Governing Board of the Association of Judges were among them. The direct motive for dismissal was an open letter which discussed the situation in the judiciary and the influence that the executive had over the judiciary. Hence, the principle of immovability of judges was disregarded and the Association of Judges of Serbia was practically unable to operate.

The members of the Association of Judges of Serbia believe that it is their duty to take part in the process of the democratic transition of the country, to promote the independence of the judiciary so as to protect the rights and freedoms of citizens. Their activities have been professional and apolitical, aimed to point out the increasing influence of the organs of the executive on the election and removal of judges, this influence essentially jeopardising the democratisation of the society and the functioning of legislative powers.

By fighting for independent judiciary, the rule of law and respect for human right the dismissed judges had sacrificed their safety and financial existence had shown true dedication to their honorable profession. On the other hand, the former regime in Serbia did everything to threaten the independence and dignity of the judiciary.

Essential for bringing back the dignity to the courts in Serbia will be knowledge, endurance, patience and financial resources. The new government should establish the rule of law, decentralize and depoliticize the judiciary, change the personal composition of the courts, fight corruption and initiate global reform of the legislation which should be in accordance with international standards.

The recent events have completely changed the politically scene, bringing democratically oriented parties and social groups in power. In that context, we hope that the new ruling political parties will change the attitude toward the judiciary and understand the essential need for the separation of powers. Without independent and impartial judiciary the rule of law and democracy cannot be established. The new government, in the cooperation with a civil sector, should put the efforts to rebuild the trust in courts by

⁷ The Constitution of the Republic of Serbia, Art. 100 and 126, para. 4.

reforming organizational structure of courts, annulling supremacy of the executive power over the judiciary, reconsidering the cases of dismissed judges and reeducating judges.

We would like to underline the importance of the adequate solution for transitory period, which can suffer no delay. Good rules and good implementation in times of transitions are the best basis for a solid permanent solution.

Association of Judges of Serbia

Annex 3: ODIHR Press Release

Serbian judges call for international support in reforming judicial system

WARSAW, 18 October 2000 -- A delegation of Serbian judges expressed the urgent need for international assistance with the reform of the judicial system in Serbia. The delegation was invited by the OSCE Office for Democratic Institutions and Human Rights to present at this year's OSCE human rights conference in Warsaw the situation of the Serbian judiciary. The three judges, who were dismissed in the last months of the Milosevic regime, are board members of the Association of Independent Judges of Serbia.

"Without an independent judiciary there is no democracy", said Judge Leposava Karamarkovic. "The courts lost their independence during the Milosevic years and are almost completely dominated by the executive branch." She pointed at a system of dependence and corruption based on low salaries, favouritism, and intimidation in case of dissent. In the last months of the Milosevic regime, numerous judges were dismissed in order to ensure loyalty during the election period.

"This is the first opportunity for us to bring our situation to the attention of such a large international forum", said Judge Karamarkovic. She emphasized the need to establish international networks after a decade of isolation, also drawing on the experience of other ex-Yugoslav countries. "Numerous challenges lie ahead, with war crimes and the question of lustration being among the most difficult." The judges expressed their belief that independent courts will be crucial for dealing with war crimes and establishing individual responsibility.

Several government delegations to the conference expressed their interest to provide quick support. The OSCE will continue to assist the Serbian judiciary by facilitating and providing international help. For further information contact Jens-Hagen Eschenbächer, OSCE/ODIHR Public Affairs Officer at +48-22-5200600 or +48-603683122 (mobile).