

JUDICIAL INSTITUTIONS IN SERBIA

Introduction

The first set of judiciary laws in the post-socialist Serbia was adopted in 2001. Along with the relevant chapters in the 2006 Constitution, this has provided a legal basis for the organization, jurisdiction, and operation of courts of general and specialized jurisdiction and public prosecutors' offices; professional freedoms and guarantees for judges and public prosecutors in Serbia, as well as procedures for their selection, appointment and dismissal. Amendments to these laws adopted in 2002 and 2003 have to a certain extent shifted responsibilities to the executive and legislative branches, in particular those referring to appointment and dismissal of judges and presidents of courts.

In April 2006, the Ministry of Justice passed the National Judicial Reform Strategy setting up the framework for judicial reform for the period 2006 - 2013.

In December 2008, the Parliament approved the new package of judicial laws introducing substantive changes in Serbia's judicial system. The package includes the Laws on Organization of Courts, on High Court Council, on Judges, on Public Prosecution, on the State Prosecutorial Council and on Seat and Territorial Jurisdiction of Courts and Public Prosecutor's Offices. These laws entered into force on 1 January 2010.

The New Court Structure

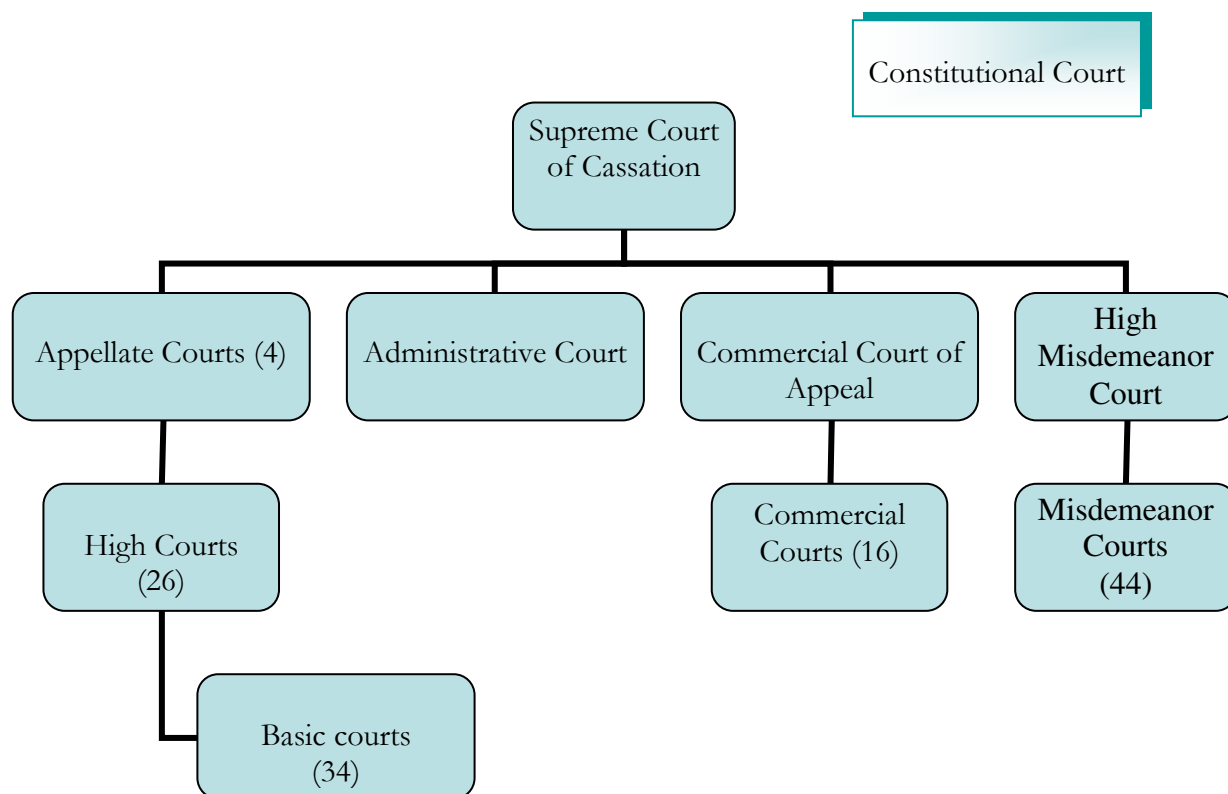
The 2008 Law on Organization of Courts has drastically cut the number of courts, from 168 to 64. The Law served to establish courts of general jurisdiction, namely: the Basic, High and Appellate Courts (in Belgrade, Novi Sad, Niš, Kragujevac) and the Supreme Court of Cassation, as the highest judicial institution in the country.

The Law also established courts of specialized jurisdiction: the Commercial Courts, the Commercial Appellate Court, Misdemeanour Courts, the High Misdemeanour Court and the Administrative Court.

Pursuant to the provisions of the new Law on Seats and Territorial Jurisdiction of Courts and Public Prosecutors Offices, as of 1 January 2010, the old network of 138 municipal courts was reorganized into a new one consisting of 34 basic courts. Places where Municipal Courts were abolished have retained "court branches" to provide direct access for citizens.

The new network also provides for 45 Misdemeanour Courts, 26 High Courts, 16 Commercial Courts, and 4 Appellate Courts. Three branch offices of the High Misdemeanour Court and the Administrative Court are established in Belgrade, Novi Sad and Niš respectively.

This new system, which has been in place since 1 January 2010, is intended to redistribute workloads to alleviate the previous disparity between overburdened urban courts and underused rural courts.



Qualification and Election of Judges

According to article 149 of the Constitution, a judge shall be independent and accountable only to the Constitution and the law. Judges may not hold either legislative or executive office, be a member of a political party or engage in any other form of compensated employment including paid legal services (Article 152). All judges must have formal university legal training. Basic court judges must have two years of experience in the legal profession following the bar examination, while judges of the higher instance courts are required to have between four and twelve years of experience to qualify for the appointment.

As of January 2010, the new election procedure for judges is two-tiered. Firstly, following the proposal from the HJC, the National Assembly elects a judge for the first time, for a probationary three-year period. The HJC appoints judges to permanent judgeships after the expiration of the probationary period. The HJC also proposes candidates to the National Assembly for the position of court president.

The 2008 Law on Judges determined the criteria for the election, appointment, and dismissal of judges. Provisions on the evaluation of professional performance and discipline were included for the first time.

Currently, there are around 2,400 judges serving in Serbia's judiciary, including misdemeanour judges. The new set of judicial laws called for the general election of all judges and prosecutors in the country. All positions for judges and prosecutors were advertised in July 2009. The High Judicial Council reviewed the applications for judges and evaluated them according to the candidates' professional knowledge, ability and worthiness. In December 2009, the Council re-

elected 1,528 judges from sitting judges, while 886 judges were elected for the first time. Around 700 judges, or one-third of all sitting judges, were not re-elected and have lost their tenure.

Subsequently, in the aftermath of the election, the non-elected judges filed appeals and petitions to the Constitutional Court, challenging the legality of the election as well as the reasons for their dismissal. Eventually, amendments to the Law on Judges were enacted in December 2010, which paved the way for the issue to be returned to the HJC, where its second composition (see below) will review the decisions made by the first composition of the HJC in December 2009. As of August 2011, this process is ongoing.

The High Judicial Council

According to article 153 of the Constitution, the Council is an independent and autonomous body which shall provide for and guarantee independence and autonomy of courts and judges. It has eleven members including the President of the Supreme Court of Cassation, Minister of Justice, and the President of the authorized committee of the National Assembly as ex officio members and eight members (six judges and two lawyers) elected by the National Assembly. The HJC is responsible for appointment and dismissal of judges, in accordance with the Constitution and the Law on HJC. The Council also: 1) makes proposals to the National Assembly for the election of judges that are elected for the first time; 2) makes proposals to the National Assembly for the election of the President of the Supreme Court of Cassation as well as presidents of courts, in accordance with the Constitution and the Law; 3) participates in the proceedings of terminating the tenure of office of the President of the Supreme Court of Cassation and presidents of courts, in the manner stipulated by the Constitution and the law, and 4) performs other duties specified by the Law. A new batch of six judges-members was elected in March 2011 for five-year terms, thus replacing the initial members from the judicial ranks.

The Judges Association

The Judges Association of Serbia (JAS) was founded in April 1997. It is a professional, non-government, non-profit organization in favour of the establishment of an independent, impartial, professional, efficient and responsible judiciary, through affirmation of law as a profession, advancement of regulations, strengthening of respect, professional ethics and the dignity of judges, with a goal of building a legal state and the rule of law. JAS organizes seminars, round tables and public debates on issues relevant for the judicial and legal reform. Around 2/3 of all judges in the country are members of the Association.

The Judicial Academy

The Judicial Training Centre (JTC) was established in 2001 in partnership between the Republic of Serbia, represented by the Ministry of Justice and the Judges' Association of Serbia. The JTC was primarily mandated with the provision of continuing training and the professional advancement of judges; however this was not mandatory, nor directly linked to any career advancement or promotion.

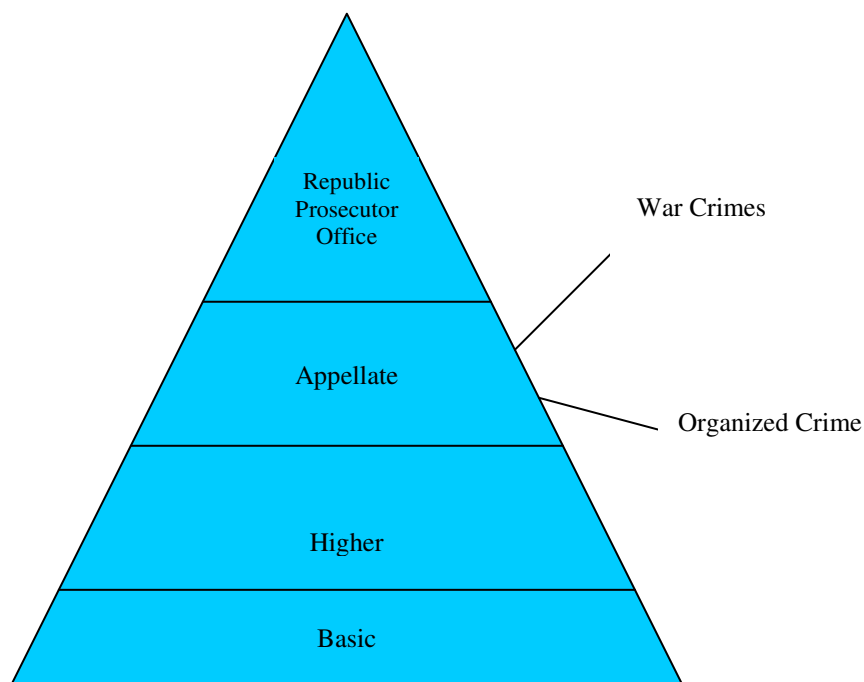
The new law on the Judicial Academy (JA) was adopted in December 2009 ensuring for the first time that the judicial training is integrated into a comprehensive process of selection and recruitment of judges and prosecutors in Serbia. The enactment of the Law marks a milestone in the judicial reform process in Serbia. It foresees a completely new system of recruitment, selection and initial training of future judges and prosecutors. It also provides for a well-organized and systematic in-service training for sitting judges and prosecutors and other judicial personnel, including assistants, apprentices and interns and court and prosecutorial staff. The Academy inherits the existing structure and competences of the JTC whose transformation into a

fully fledged judicial training institution is to be completed by the end of 2011. In the meantime, the first class of the Academy was selected, following competitive exams, in October 2010. Its training is scheduled to be completed in October 2012 when those entrants with passing grades will be eligible for election as judges and prosecutors by the National Assembly.

THE PUBLIC PROSECUTION SERVICE

The Structure of Prosecution Service

The Prosecutorial Structure envisages: the Basic, Higher, Appellate and Republic Public prosecutor's office. The specialised prosecution offices are: War Crime Prosecution and Organised Crime Prosecution. The organisation of the prosecution service in Serbia is pyramidal. The specialised prosecution offices are established on the same level as appellate prosecution offices.



The Republic Public Prosecutor, as well as all other public prosecutors are appointed by the National Assembly on the proposal of the Government to a term of six years, and could be re-elected. Current Republic Public Prosecutor is Zagorka Dolovac.

The Deputy Prosecutors are appointed by the National Assembly on the proposal of the State Prosecutorial Council to a 3-year term of office, after which they are appointed by the State Prosecutorial Council for the permanent tenure.

The new prosecutorial structure envisages 67 Public Prosecutors, and 539 Deputy Prosecutors.

The State Prosecutors' Council is an independent and autonomous body which provides for and guarantees independence and autonomy of prosecutors. It has eleven members including the Republic Public Prosecutor, the Minister of Justice and the President of the authorized committee of the National Assembly, as members ex officio, as well as eight electoral members (six prosecutors and two lawyers) elected by the National Assembly. The State Prosecutorial Council proposes the candidates for the deputy prosecutors for the first time, elect deputy prosecutors for permanent tenure.

Prosecutors Association of Serbia

The Prosecutors Association of Serbia (PAS) is a guild type, non government organization, with a goal of affirmation and patronage of prosecutor's position and reputation, gaining full legal stability, autonomy and public prosecutor's independence. Prosecutor association of Serbia includes both prosecutors and deputy prosecutors of Serbia. PAS organizes seminars, round tables and public debates on issues pertaining to Judicial Reform. Currently, the majority of public prosecutors are members of PAS.

WAR CRIMES PROSECUTION OFFICE

Introduction

The War Crimes Prosecution Office was established in July 2003, following the passage of the Law on Organization and Competence of Government Authorities in War Crimes Proceedings.

Jurisdiction

The War Crimes Prosecution Office was founded with the aim to detect and prosecute perpetrators of criminal offences against humanity and international humanitarian law, as defined in Articles 370 to 384, and Articles 385 and 386 of the Basic Criminal Code, as well as serious violations of international humanitarian law, committed in the territory of the former Yugoslavia since 1 January 1991, as stipulated in the Statute of the International Criminal Tribunal for the Former Yugoslavia (ICTY). These include genocide, war crimes against civilians, war crimes against wounded and sick, war crimes against prisoners of war, use of forbidden means of warfare, destruction of cultural and historical monuments, as well as other violations of international humanitarian law. Jurisdiction of the War Crimes Prosecution Office also includes prosecution of persons responsible for aiding war crimes perpetrators after the commission of act.

Structure

The staff of the War Crimes Prosecution Office includes the War Crimes Prosecutor, Deputy Prosecutors, Spokesperson, Secretary and other staff members. The War Crimes Prosecutor is elected by the National Assembly of the Republic of Serbia. Deputy Prosecutors are assigned to the War Crimes Prosecution Office by the Republic Public Prosecutor, on the proposal of War Crimes Prosecutor, for a period of four years. The current War Crimes Prosecutor is Vladimir Vukcevic who was elected to this post in 2003.

The office maintains regional cooperation with Croatia, Bosnia and Herzegovina and Montenegro, international cooperation with the ICTY and UNMIK/EULEX, as well as domestic cooperation with local NGO's. Cooperation, capacity building, monitoring and information sharing is supported by the OSCE and the US Embassy.

Cases

Update September 2011

So far, a total of 143 persons have been indicted, while the overall number of cases involves almost 2600 victims. Some of the high profile cases include the Scorpions case, Ovcara trials, Jurisic case and Gnjilane group case.

ORGANIZED CRIME PROSECUTION OFFICE

Introduction

The Organised Crime Prosecution Office was founded with the passage of the Law on Organization and Competence of Government Bodies in Suppressing Organised Crime on July 19th 2002. On 11 September 2009, several Serbian laws entered into force which considerably improved the legislative framework in countering organized crime. In particular, the amendments to the Organized Crime Law further enhanced the powers and autonomy of the Prosecution Office.

Jurisdiction

The Organized Crime Prosecution Office is competent for adjudication of crimes as set forth in Articles 2 and 3 of the Law on Organization and Competence of Government Bodies in Suppressing Organised Crime. These include activities such as human trafficking, extortion, possession and/or circulation of narcotics, money laundering, smuggling, misfeasance in office, accepting and soliciting bribes, conspiring to commit unconstitutional activity pertaining to state security and other activities that have an element of organized crime as defined by the law. In fact, since the adoption of amendments to the Organized Crime Law, the jurisdiction of the Organized Crime Prosecution is extended to other important crimes, such as serious forms of corruption, money laundering and terrorism.

Structure

The Organized Crime Prosecution Office is one of the two public prosecutor's offices with special jurisdiction and it is established for the entire territory of the Republic of Serbia. The office is staffed with roughly 20 prosecutors. The Organized Crime Prosecutor is elected by the National Assembly - upon proposal of the State Prosecutors' Council - which enhances both its independence from the Republic Public Prosecutor and the overall transparency of the election procedure. Finally, the mandate of the Organized Crime Prosecutor and his/her Deputies is extended to six and four years, respectively, allowing the Office to develop its own prosecutorial strategy in dealing with organized crime. The current Organized Crime Prosecutor is Miljko Radisavljevic, who was first appointed to this post in 2007 and re-appointed in 2009.

The High Court in Belgrade has first-instance and the Appellate Court has second-instance jurisdiction for organized crime cases. Both the High and Appellate Courts have special departments for trying organized crime cases, and a Special Detention Unit was established within the Belgrade District Prison for persons remanded in custody in relation to organized crime proceedings.

Special Provisions regarding special investigative techniques are set forth in Chapter XXIX A of the Criminal Code. These include the use of informant witnesses, under cover agents, controlled delivery, wire tapings and interceptions. The already mentioned criminal justice reform will expand these powers and further enhance the leading role of the Special prosecutor during the investigation phase.

Cases

In 2009, the Organized Crime Prosecution Office preferred indictments against 125 persons and reached first-instance conviction verdicts against 37 individuals. Since coming into force of the

Law on Seizure of Assets Deriving from Crime in March 2009 and until January 2010 the Organised Crime Prosecution, based on Article 17 thereof, launched financial investigation against 199 persons, filed motions, pursuant to article 21, for temporary seizure of assets against 28 persons; based on article 28 - motions for permanent seizure of assets against 4 persons, and based on article 22 issued an order prohibiting disposal of assets against 2 persons. One of the most prominent procedures underway is the Saric case where a total of 20 persons are indicted on charges of cocaine smuggling in 2008 and 2009 on the territory of Serbia, several former ex-Yugoslav states, and countries in West Europe and South America.

Useful Links:

Ministry of Justice: <http://www.mpravde.gov.rs/en>

Supreme Court of Cassation: <http://www.vk.sud.rs/>

War Crimes Prosecution Office: http://www.tuzilastvorz.org.rs/html_trz/index_eng.htm

Judges Association of Serbia: <http://www.sudije.rs/en>

Prosecutors Association of Serbia: <http://www.uts.org.rs/en/index.php>

Judicial Academy: <http://www.pcsrbija.org.rs/>

OSCE Rule of Law/Human Rights Dept: <http://www.osce.org/serbia/13161.html>

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