

Belgrade, 13<sup>th</sup> July, 2012

## **Guidelines for the further measures in Judicial Reform**

Starting from the facts that consequences of judicial reform, so far, are detrimental to the functioning of the judiciary, due to the influence of the executive branch and illicit pressure of judicial-administrative authorities over the judiciary which is unbearable, that judges and prosecutors are intimidated, judicial network is neither rational nor functional, number of magistrates and judicial personnel is insufficient, the cost of justice is too high, the access to justice is unequal and difficult, the right to a fair trial is jeopardized and that the public trust in judicial system is lower than ever, as determined by following critical assessments:

- Political - expressed in the Resolution of the Parliamentary Assembly of the Council of Europe of 25<sup>th</sup> January, 2012 No. 1858 (2012) and the European Parliament Resolution of 29 March 2012 on the European integration process of Serbia

- Professional - especially of the:

Local experts:

- Ombudsman
- Commissioner for Information of Public Importance and Personal Data Protection
- Anticorruption Council
- several dozens of the most prominent law professors in Serbia in the Public Appeal from January 2011 and their numerous public statements

Foreign experts, expressed in:

- Opinions of the Venice Commission of Council of Europe,
- Resolutions of the European Association of Judges, especially in the request to the officials of the European Union of 5<sup>th</sup> June 2012
- Declarations of MEDEL - European Association of Judges and Prosecutors for Democracy and Liberties, especially in the request of 30<sup>th</sup> June 2012 to the officials of Council of Europe and of the European Union
- Declarations on Serbia of the CCJE - Consultative Council of European Judges of the Council of Europe, especially that of 18<sup>th</sup> June 2012
- Final analytical report of independent experts - judges Simon Gaboriau (France) and Hans-Ernest Bottcher (Germany) of 26<sup>th</sup> June 2012

Judges' Association of Serbia believes that the strategic goals of judicial reform can not be achieved by the mere overcoming of flaws in the implementation of existing laws, and that is needed to establish a new legal framework that will enable:

1. Strengthening of judicial independence by eliminating:
  - violations of the principle of permanence of judicial office for non-reappointed judges - by reinstating them and
  - the threat to the principle of permanence of judicial office for judges reappointed and the first-time-appointed judges - by abrogation of the provisions of Law on Judges of December 2010 (which prescribed the review of HJC decisions of reappointment and first time election)
2. Improvement of the quality of judicial work and liability of judges (which could end in disciplinary sanction or dismissal), with respect to the guarantees of judicial independence - by the establishment and functioning of reliable and effective systems of:
  - Evaluation of judges work (regulated by the bylaws to be adopted on the criteria, standards and procedures for evaluation, and election and training the bodies for evaluation)
  - Disciplinary responsibility
3. Legitimacy and restoration of confidence in the High Judicial Council, disrupted by numerous failures of previous composition:
  - By election of new elective members of the High Judicial Council and their deputies, through a transparent process in which the Judges 'Association will be represented by one member proposed by itself
  - Creating the grounds for the election of the President of High Judicial Council from the judges - members of the Council
4. Qualitative and cost-effective judicial system with equal public access to justice through:
  - Determining the appropriate number of judges which will ensure their equitable burden
  - Development of training of judges and its functional correlation with the evaluation of judges
  - Establishing a new Judicial Network
  - Adjustment of procedural laws to the legal tradition and the resources of Serbia, which will be applicable and in compliance to international standards

In creating a new legal framework it is necessary to:

- Revive the Commission for Judicial Reform envisaged by the National Judicial Reform Strategy
- To ensure broad participation of civil society, particularly of national and international professional associations of judges and prosecutors and of the Consultative Council of European Judges of the Council of Europe
- Strengthen cooperation with the institutions of the Council of Europe and the European Union
- Determine the priorities and dynamics of these necessary measures and
- Provide funding

Judges' Association of Serbia remains open for any clarifications and cooperation on further activities in concretization and realization of the proposed guidelines.

Respectfully,



President of Judges' Association of Serbia