



Belgrade, 7 February 2010

Mr José Manuel Barroso
President of the European Commission

Dear Mr. Barroso,

We are addressing you in our capacity of Presidents of the Judges Association of Serbia (JAS), the Prosecutors Association of Serbia (PAS) and MEDEL (Magistrats européens pour la démocratie et les libertés), aiming to express our common and deep concerns about the situation in Judiciary in Serbia.

As you know, Judiciary reform process in Serbia has been monitored during last several years by the European Commission, Council of Europe, Venice Commission, CCJE (Consultative Council of European Judges), Special UN Rapporteur on the independence of Judges and Lawyers who gave their opinions regarding that process. In fact, Venice Commission will issue its further opinion on the re-election criteria performed during the process on its plenary session at the beginning of March this year.

General election of all judges and prosecutors in Serbia was done in mid December 2009. In fact, it was the re-election of all judges who already had permanent tenure, given that the procedure for electing, inevitably presupposed that all sitting judges, who already had permanent tenure of office were "forced" to apply for election. Otherwise they would not be elected pursuant to the new Law on Judges and their tenure of a judge would cease to exist from 1 January 2010.

The process was performed by the High Court (Judicial) Council (HCC) and State Prosecutorial Council (SPC) which have not been constituted in line with the Constitution and Laws of the Republic of Serbia and worked and rendered its decisions in incomplete composition.

The whole process was pronounced as a secret and was performed without application of comparable criteria. Judges were not shown the evidences concerning performances, neither theirs, nor of other judges who applied for the same position, nor was the ranking done. None of the judges had any opportunity to have efficiency legal remedy, which was thus performed without contradictory procedure. Secrecy, not previously foreseen, non-legitimate eliminatory criteria were used (e.g. judges and prosecutors whose spouses are lawyers were not (re)elected in majority).

The public statements of the Minister of Justice, president of the Parliamentarian Judiciary Council (who are both the members of HCC and SPC) and of Director of Security Intelligence

Agency (BIA), later withdrawn, raised public doubts that both Councils misused police and secret service data, as well as personal data about the judges and prosecutors were used in that process, contrary to the Constitution and laws.

Application processing and (re)election procedure were conducted in unreasonably short period of time within three and half months – from September until mid December 2009. The President of the HCC herself publicly stated that the Council had processed diligently and conscientiously all 5.020 applications within 400 working hours (so, within 5 minutes professional capabilities and qualities of each judge have been evaluated and supposedly compared with other candidates).

As the consequence of this process, 840 judges (more than 1/3 of all judges in Serbia) and up to 170 prosecutors (around 1/3 of them) from the 1 January 2010 seized to be judges and prosecutors. In fact, they were dismissed. Among the "excluded ones" are the President of JAS and 1/3 of all members of the Bureau of JAS; a similar treatment has been given to the PAS. In addition, it must be recalled that all the judges and the public prosecutors who had worked on the case of Mladic's accomplices and the colleague who had interrogated the assassin of the Prime Minister Mr. Djindjic have not been confirmed.

The fact that they were not (re)elected, judges and prosecutors learned by reading the decision with the list of names of (re)elected judges and prosecutors. The abovementioned Decision, except for the names of (re)elected judges and prosecutors, the functions they have performed and the courts that they are selected for, contained no other data. Not only that those judges and prosecutors did not get any reasoning for such decision, but none of them got any decision. Not any right to an effective legal remedy was provided.

Vast majority of not (re)elected (dismissed) judges and prosecutors submitted the constitutional appeal to the Constitutional Court – the only legal remedy provided for the cases in which some human rights are violated or denied by the act or action of state body and in which the other legal remedies are exhausted or not provided.

Not (re)elected judges started to get "decisions" just at the end of January 2010. Such decision contained not even the name of the person to whom it has been sent, nor any legal remedy prescription. It contents the list with names of not re-elected judges and the "reasons" which are completely the same for all of more than 800 of them.

Minister of Justice, the President of HCC and some high politicians, commented publicly these events several times, putting the mark of equality between all not (re)elected judges and prosecutors and organized crime and corruption. Even though, public is constantly expressing high level of suspicion into independent and fair procedure.

National Associations of judges and prosecutors of France, Romania, Germany, Spain, Portugal, Serbian Ombudsman and Commissioner for Public Information and Personal Data Protection, independent experts, law professors, professional associations, bar chambers, judiciary unions, student parliaments, parties and other groups supported JAS and PAS principal standpoints and criticized heavily these undemocratic acts with serious negative long lasting impacts on Serbian judiciary.

Magistrats européens pour la démocratie et les libertés - MEDEL/Judges for Judges Dutch Foundation expert delegation just finished their steering visit to Serbia. They expressed their concerns into election procedure which lacked in transparency and leaves open a lot of questions. They also stated that it remains unclear how the criteria for (re)election were applied on a case-by-case basis. More concrete, they emphasized the fact that the decisions of both Councils do not contain any personalized individual reasoning and therefore

justification. As a conclusion, they pointed out that they informed European institutions on this issue and that it would be the best if Serbia, as a potential EU member, finds itself the right solution for this situation.

These institutional decisions objectively undermine the image of the independence of the Judiciary in Serbia and do not inspire the judges and prosecutors from other countries the indispensable trust that is the base of the development of the judicial cooperation in the aim of fighting the corruption and the transnational criminality.

Having in mind all above mentioned, all together with EU interest for Serbian judiciary which is the reason for the next week visit of EU delegation to Serbia, we strongly wish that the International Community, above all, the European Union, use all forms of moral suasion *vis-à-vis* the Serbia's Authorities in order to convince them on the necessity of a total review of such procedure and it's results, which should be based on international standards for the establishment of independent judiciary.

We would be honoured and thankful if you would be able to receive us, even in the informal way, in order to expose all that might be unclear or needed for the deeper understanding of this issue.

Dragana Boljevic
President of JAS

Vito Monetti
President of Medel

Goran Ilic
President of PAS