



LEGAL TICKET TO EUROPE

Serbian Deputy Prime Minister **Bozidar Djelic** recently warned the Serbian public that the country had **"only ten weeks remaining"** to meet the Government Action Plan in the process of joining the European Union (EU), because **"on June 15 the European Commission is to start preparing an opinion"** on the basis of which, by the end of the year, will be decided whether Serbia will become a candidate for EU membership or not.

Meanwhile, the government is preparing answers to additional 629 questions from the area of political and economic criteria, the judiciary and fundamental rights, justice, freedom and security and common foreign and security policy, which the European Commission (EC) submitted to Serbia on March 25. The questions are mostly related to clarification of the already provided information classified by the negotiating chapters, but there is a number of new ones. The government is expected to pass the EC additional answers in the third week of April, before Easter, by which the process of responding to the European Commission Questionnaire, submitted on November 24 2010, would be completed. Then the questionnaire originally had 2483 questions divided into 33 chapters. The Serbian government submitted the answers to the questionnaire to Brussels on January 31.

EC Questionnaire is an official instrument by which the EU assesses the readiness of states to begin the

process of accession. Based on responses from Serbia, assessments of expert missions and the results of current reforms, EC drafts the Opinion (Avis) whether the country is ready for candidate status and to negotiate about joining the membership. Publication of opinion is expected on October 12, 2011, while winning the candidate status requires a positive opinion from the Commission unanimously supported by the EU member states. Serbia has filed application for EU membership on December 22, 2009 and the EU Council of Ministers on October 25, 2010 requested the European Commission to draft an opinion on Serbia's candidacy.

Serbia yet needs to do a lot of work to win candidate status for EU membership. One of the most important is to implement the plan for correction of the re-election of judges and prosecutors. In its annual report on Serbia's progress in EU accession, announced on November 9, 2010, EC made remarks on the judicial reform. The EC pointed to the necessity of **"finishing the process of judicial reform"** as one of the requirements under the Copenhagen criteria, necessary for joining the EU. The Commission noted that **"the deficiencies and lack of insight into the process of election of judges and prosecutors calls into question the independence of the judiciary and can lead to political influence on the judiciary."**



Apart from presenting judicial reform to the local public as a major success, the Serbian government had to quickly respond to criticism from the EU, and initiate the process of correcting the errors. Representatives of Venice Commission, the European Commission and the Ministry of Justice of Serbia, met on December 16, 2010 to discuss amendments to judiciary laws. Thus the re-correction process of the Serbian judiciary reform began that at one point threatened to become the biggest obstacle, after the cooperation with the Hague Tribunal, on Serbia's road towards the EU.

Based on this agreement, on December 29, 2010 the Serbian parliament adopted the amendments to the Law on Judges which appoints the High Judicial Council (HJC) to take over from the Constitutional Court cases in the procedures for appeals of unelected judges. Also, amendments were adopted to the Law on Public Prosecution, which stipulate that the prosecutors and deputy public prosecutors' appeals are conceded to the permanent part of the State Prosecutors Council for decision. Amendments to laws pertaining to the Serbian judiciary were supposed to remove doubts about the procedure for the general election of judges, as well as criticism of judicial reform which the European Commission presented in its annual report on Serbia's progress.

The Serbian government began the process of general re-election of judges, prosecutors and deputy prosecutors and the establishment of a new judicial organization in December 2009. The government then announced that this process, which is mandatory under the Constitution of the

Republic of Serbia adopted in 2006th, was carried out to make the judiciary more efficient, so win the confidence of Serbian citizens in the justice system and to remove judges who took part in the political processes, violations of the electoral will of the citizens or have otherwise violated the profession. That the reform of the judiciary was necessary was agreed by all in the Serbian society - political parties, experts, NGOs and citizens. The problem arose in the manner the reform was implemented.

Rather than use approving general mood for reform and engage the opposition, professional organizations of judges and prosecutors, professional community and NGOs as partners in the process - the ruling coalition has carried out the general re-election by itself only.

The authorities had most problems in implementing the general election of judges, since 2407 judges were elected for the judicial functions, of which 1531 permanently and 876 for a period of three years, after which their work will be re-analyzed. Even 870 judges lost their jobs, and also around 200 prosecutors and deputy prosecutors. The removal of over a thousand people from the Serbian judiciary became matter of debate in the Serbian society, and the Ministry of Justice failed to respond to the questions that concerned the criteria by which judges and prosecutors lost their jobs, doubts that classified secret services' information was used illegally in the decision making and that there was certain governmental influence. Thus, the reform of



the judiciary became a controversial topic in the Serbian society. Shortly after, this topic has intrigued and Brussels, and already in February 2010 a five-member delegation of the European Commission arrived in Belgrade, with an Austrian referee, one of the most influential personalities of European justice, **Gerhard Reissner**, highly important for the correction of reelection deficiencies presently carried out in Serbia.

Immediately after the Serbian parliament adopted amendments to judicial laws and the Government's Action Plan for judicial reform to eliminate the gaps and correct errors in the process of re-appointment of judges and prosecutors, the Serbian Justice Minister **Snezana Malovic** met with European Commissioner for Justice **Viviane Reding**, on February 1 in Brussels. After the meeting Minister Malovic said that **"it was agreed that the Serbian authorities shall cooperate more closely in future with the Directorate for EU Enlargement and Directorate of Justice of the European Commission"**. A day later, head of the European Union in Serbia **Vincent Degert** said that the Union would monitor the implementation of the Action Plan of the Serbian Government for the judiciary reform. The President of the Association of Judges of Serbia **Dragana Boljevic** welcomed the supervision of the Directorate of Justice and the interest of Commissioner Viviane Reding for judicial reform in Serbia, and pointed out that it was **"encouraging"** and showed **"the seriousness of the problem and serious approach of the EU"**. The European Commission insisted on the involvement of representatives of professional associations of judges and prosecutors in Serbia - Associations of

Judges and Prosecutors of Serbia. Thus, the two associations for the first time became an equal partner to the Ministry of Justice in the process of judicial reform. Had it been from the beginning, many mistakes wouldn't have been made in this process.

Judges Association of Serbia is a professional association of judges in Serbia, and the Prosecutors Association brings together prosecutors and their deputies. These two associations have fiercely criticized the implemented reforms and advocated for the interests of judges and prosecutors, particularly those who were not elected. Over the last eighteen months they managed to become the true representatives of their members and to fight for the rights to those who were not re-elected, and those who again became judges and prosecutors. The crisis made these two associations to become powerful actors in the judiciary, whose voice must be considered by any authority. These two associations won the rights of its members by having internationalized the problem and presenting it to Brussels. With the help of the EU, a new opportunity has been provided for unelected judges, public prosecutors and deputy public prosecutors. The leaders of the two associations, unelected judge Dragana Boljevic and Deputy Republic Public Prosecutor **Goran Ilic**, were reelected to office in their associations in February this year and will now represent judges and prosecutors in the correction process. The fact that the European Commissioner for Enlargement **Stefan Fule** during his recent visit to Belgrade informally met with the President of the Association of Prosecutors of Serbia Goran Ilic, tells what kind



of reputation enjoy him and Dragana Boljevic in Brussels.

The ruling coalition is aware of the importance of the process of review of the judicial reform process, which involves the Ministry of Justice, the Venice Commission, the European Union, OSCE and the professional associations of judges, public prosecutors and deputy public prosecutors to be successfully completed. The decision of the Council of Ministers of the European Union to grant Serbia candidate status and start negotiations largely depends on the success of this process. As the candidate status and starting negotiations with the EU is the most important foreign policy goal of Serbia, it is clear that the success of the process that is underway is important.

At the moment, drafting is being completed of bylaws that will regulate the rules for re-election audit process. The Regulations on criteria for evaluation of competence, capability and integrity of the judiciary are also being set out. On the job work together a new composition of the High Judicial Council (HJC) and the State Council of Prosecutors (HCP), together with Associations of Judges and Prosecutors. The review process is expected to begin in early May. The position of the European Commission is that HJC and HPC need to agree with professional associations of judges, public prosecutors and deputy public prosecutors. The issues for which there is no agreement will be arbitrated by **Gerhard Reissner**, European Commission expert and President of the European Association of Judges. This arbitration was accepted by both sides.

Currently professional associations of judges and prosecutors and the Ministry of Justice closely cooperate, mostly thanks to the State Secretary in the Ministry of Justice **Slobodan Homen**, who understood the importance of dialogue within the profession. Associations of judges and prosecutors expect in this dialogue to ensure fair review process based on new criteria. It is estimated that about 80 percent of unelected judges, public prosecutors and deputy public prosecutors used either complaint or appeal as legal remedy. The decision on these appeals will be brought by the High Judicial Council and the State Prosecutors' Council, while the observers are professional associations of judges and prosecutors, the European Commission and the OSCE.

At this point there is no agreement on all issues between the HJC and HCP on one side and professional associations of judges and prosecutors on the other side. For instance, the criterion of worthiness was very widely interpreted during the re-appointment of judges and prosecutors. Consequently, this criterion was misapplied in the least, which led to mistakes in re-election of judges and prosecutors.

The Venice Commission has recently taken the position that the unworthy of the office of judge, public prosecutor or deputy public prosecutor are only judges or prosecutors who have been legally convicted or against whom was conducted



disciplinary action. HJC and HCP believe that unworthy are all judges and prosecutors who have seriously violated the professional standards. Professional associations of judges and prosecutors are willing to compromise, but demand that determine the reasons why someone may be unworthy are pre-determined, and that the evidence for these reasons must be reliably identified by December 17, 2009.

Another point of contention is determining the efficiency of work of judges, public prosecutors and deputy public prosecutor. The associations argue that the measure of efficiency is the lowest norm (a norm is the percentage of successfully solved cases) of an elected judge or prosecutor in any prosecution or court. This means that the standard norm is even with a judge or prosecutor whose norm is the weakest. Professional associations require that all judges and prosecutors whose norm is better than minimum standards of an elected judge or prosecutor in a court or prosecutor's office to be returned to work. If this model is accepted - almost all non-elected judges and prosecutors would be back on their jobs, since there were many cases where a judge or public prosecutor were very inefficient in their work.

Now the government pays the cost of choosing undeserving people to hold judicial functions, but who had a party or other support. Now is their (none) work became a measure for assessing the work of others.

Professional associations of judges and prosecutors require removal from the Draft Law on Advocacy and notaries of controversial provisions regarding barriers for the transition of judges and prosecutors to the lawyer's profession. The Draft Law stipulates that two years after resigning, a judge, prosecutor or holder of management functions are absolutely banned to work as lawyers. In addition, after those two years, in the following three years The Lawyers' Chambers or public notaries may deny a former judge, public prosecutor, deputy public prosecutor or a holder of an administrative function. That basically means that the prohibition of performing the work of lawyer can take up to five years. Furthermore, professional associations are complaining because of the introduction of bar exam, because they consider it illogical for someone like the judge of the Supreme Court or Deputy Public Prosecutor! Draft Law prohibits the transfer to the notary public of anyone who is deprived of his office, while it is but not precisely expounded what it means. The associations believe that these draft laws pressure the elected who are left without alternatives, and additionally pressure the unelected judges and prosecutors before beginning the review process. In fact, many non-elected judges or prosecutors could abandon their opposition and enroll in the Lawyers' Chamber before the adoption of this law, so as not to wait five years after the adoption of the law. The European Commission has supported the views of professional associations of prosecutors and judges so other solutions can be expected.

The profession and the state have different views in regard to the elected judiciary.

The associations insist that in their case review process is possible only if carried out against individuals who underwent disciplinary proceedings but they were nevertheless re-elected. Associations of judges and prosecutors believe that the independence of judges' and prosecutorial function would be endangered if the review of the decisions on the election of judges and prosecutors is executed arbitrarily.

However, as there is communication between the authorities and professional associations of judges and prosecutors and an arbitrator who will decide in cases of contention - it is clear that the issues in this process will be resolved. The question remains why it was waited a year to start with the review, in particular as the story around the reform of the judiciary threatened the fight against organized crime? The European Commission in July 2010 pointed out that **"there is no successful fight against organized crime, if judges and prosecutors do not have professional integrity,"** and that the way **"in which he conducted re-election compromise that independence."**

Serbian judiciary will not become independent, professional and successful, nor it will regain its reputation among the citizens until all in the Serbian society understood that such a judiciary is in the best interest of society. If we want a judiciary that is efficient, both in the fight against organized crime and protection of society, it must be

independent. The judges' or prosecutors' salaries range from 87 to 155 thousand, without special prosecutors, and judicial departments for organized crime and war crimes. Judges' and prosecutors' salaries in Croatia, Slovenia, Bosnia and Herzegovina, and recently in Montenegro, are higher. Recently, the Serbian government adopted the Decree by which to assign housing to police officers and the Serbian Security Information Agency, as well as judges and prosecutors working in special courts for war crimes and organized crime. While it is not disputed that the Government assigns housing to officers and employees of the Secret Service, it is problematic in relation to judges and prosecutors. This is contrary to the idea of independence of special prosecutors, which is a European practice, because they should have control over the government officials.

In addition, the Serbian judiciary seeks long-term planning activities, which are currently lacking. It is already evident that a number of judges and prosecutors who were not elected will now be returned to work. This means that the optimal number of judges determined for Serbian judicial system was wrong.

Today, the Serbian public trust in the judiciary is lower than before the reform, which contributed to the scandal around the re-election.

It will take much time and joint work between government and professional associations of judges and prosecutors to regain that trust. The story of the judicial reform is not good for Serbia, or the



country's image in Europe. However, this story is not hopeless and it is possible to convert it into an advantage of Serbia's EU accession process. If so, Serbia will easily exceed its European path, because it a stable and independent judiciary is one of the most important things required from countries wishing to become members. Who doesn't believe, let them look at the case of neighboring Croatia and the problems it has with the judiciary, which is why it is still uncertain when it will conclude negotiations on EU membership.