

STRUČNI ČLANAK

Doc. Dr. Mario Reljanović* and Dr. Ana Knežević Bojović**

JUDICIAL REFORM IN SERBIA AND NEGOTIATING CHAPTER 23 – A CRITICAL OUTLOOK

Abstract: *A sound and independent judiciary is a precondition for accomplishing the rule of law. Sound judiciary and citizens' trust in it are of critical importance in any state. However, the attainment of true judicial independence is a task faced both by old democracies and transition countries. For countries facing the challenge of EU accession, such as Serbia, good judiciary is not only an immanent value to be obtained, but will also be a key issue during the negotiation process. Since the adoption of the new constitutional framework in 2006, Serbia has embarked on the task of improving its judicial system. Unfortunately, this process was carried out under strong political influences, and had a devastating effect on the Serbian judicial corps, at the same time undermining any trust citizens had in the judicial force. Following the change of the political majority in the Parliament and the changes in government, the Serbian Ministry of Justice has undertaken the task of formulating a new Judicial Reform Strategy and Action Plan for its Implementation, which will be the core instruments to be used in the attempt to attain the two above-mentioned objectives: establishing sound and independent judiciary and meeting the relevant EU accession benchmarks. In this paper, the authors will give their critical account of the Serbian National Judicial Reform Strategy 2013–2018 and the Action Plan for its Implementation, identifying its major deficiencies and drawbacks. The authors will also analyse the planned and implemented changes of the Serbian regulatory framework.*

Keywords: judicial reform, EU accession negotiations, Chapter 23.

1. THE IMPORTANCE OF GOOD JUDICIARY IN THE EUROPEAN UNION ACCESSION PROCESS

Without good and independent judiciary there can be no rule of law. A sound judiciary and citizens' trust in it are of crucial importance for any state, where true judicial independence remains a challenge with

* Ph.D., Assistant Professor, Union University Law School (Belgrade)
e-mail: mario.reljanovic@pravnofakultet.rs

** Ph.D, Policy Coordinator, National Alliance for Local Economic Development, Belgrade, Serbia
e-mail: akbojovic@gmail.com

which both old democracies and countries in transition are faced. When it comes to countries accessing the European Union, as it is the case with Serbia, good judiciary is not only an immanent value to be achieved but also a key point of the accession negotiations. Experiences of the so-called fifth accession to the European Union (accession of ten Central and East European States in 2005 and of Bulgaria and Romania in 2007) showed that changes in the rule of law area represented a lengthy and complicated process, and that problems concerning judicial reform and combating organised crime were not fully overcome in the accession process¹ – with almost no exception, the countries of the Western Balkans failed in implementing European standards into their judicial systems. This is the reason why, when the negotiations with Croatia were opened, a new Chapter 23 – Judiciary and Fundamental Rights – covering judiciary, combat against corruption, fundamental rights and rights of EU citizens – was introduced. At the same time, a new methodology was introduced in the accession negotiations.² Following the experience with Croatia, the European Union has adopted the so-called “new approach” in its strategic accession documents for the 2011–2012³ and 2012–2013⁴ periods; according to this approach, negotiations for chapters 23 and 24 (Justice, freedom and security) are opened first⁵, coupled with a detailed screening, which entails the setting of clear benchmarks that a candidate country must fulfil. The idea is that candidate countries are thus left enough time to make actual quality changes in these areas prior to accession.⁶

However, judicial reform is a topical issue even in countries with long democratic traditions as shown in the Report on Judicial Reform in Europe⁷ of the European Network of the Councils for the Judiciary and the

1 Nozar, W., *The 100% Union: The rise of Chapters 23 and 24*, (<http://www.clingendael.nl/publication/100-union-rise-chapters-23-and-24>, February 10, 2014).

2 Presidency Conclusions, European Council, Brussels, December 15, 2006.

3 Communication from the Commission to the European Parliament and the Council, Enlargement Strategy and Main Challenges 2011–2012, COM(2011) 666 final, October 2011, p. 5.

4 Enlargement Strategy and Main Challenges 2012–2013, European Commission, Brussels, October 2012, (http://ec.europa.eu/enlargement/pdf/key_documents/2012_package/strategy_paper_2012_en.pdf, February 10, 2014).

5 In the case of Serbia, an additional Chapter 35 on Kosovo is opened as well.

6 Hillion, C., 2013, Enlarging the European Union and deepening its fundamental rights protection, *European Policy Analysis*, June issue, p. 6. This methodology was first applied in negotiations with Montenegro – see *General EU position* – ministerial meeting opening the Intergovernmental Conference on the Accession of Montenegro to the European Union (AD 23/12, 27 June 2012), as well as Outcome of Screening on Chapter 23 for Montenegro: Judiciary and fundamental rights (doc. 17785/12, 14 December 2012).

7 European Network of Councils for the Judiciary, *Judicial Reform in Europe 2011–2012*, (http://www.encj.eu/images/stories/pdf/GA/Dublin/encj_report_judicial_reform_def.pdf, February 10, 2014).

Vilnius Declaration⁸. Admittedly, the challenges these countries face are somewhat different.

The explanatory screening for Chapters 23, 24 and 32 for Serbia had started on September 25, 2013, and the EU negotiations were officially opened on January 20, 2014. With what kind of operational and legislative framework does this challenge and are the measures it plans to implement realistic and sound?

2. JUDICIAL REFORM IN SERBIA – THE STRATEGIC FRAMEWORK

The First Judicial Reform Strategy in Serbia was adopted in 2006.⁹ The Strategy rested on the following four key principles: independence, transparency, accountability and efficiency, whilst its proclaimed objective was to establish the rule of law and legal certainty and thus restore citizens' trust in the Serbian judicial system.

The objective of this Strategy, however, was not accomplished. As pointed out in the Judicial Reform Report issued by the Anti-Corruption Council in April 2012¹⁰ the Global Competitiveness Report of the World Economic Forum for 2011–2012 ranks Serbia 128 out of 142 countries, whilst it ranked 106 in 2008 and 2009. The perception of judicial independence, a key objective of the 2006 Strategy has in fact deteriorated after the measures for implementing the Strategy – adoption and implementation of a set of judicial laws – were carried out.¹¹ Similarly, other measures envisaged by the Strategy either failed to succeed or their success may at

8 Vilnius Declaration on Challenges and Opportunities for the Judiciary in the Current Economic Climate, adopted at European Network of Councils for the Judiciary General Assembly in Vilnius, June 8–10, 2011, (http://www.encj.eu/images/stories/pdf/GA/Vilnius/encj_vilnius_declaration.pdf, February 10, 2014).

9 Nacionalna strategija reforme pravosuđa Republike Srbije, *Official Gazette of RS*, 44/06.

10 Report is available online, (<http://www.antikorupcija-savet.gov.rs/izvestaji/cid1028-1965/izvestaj-o-reformi-pravosuđa>, February 10, 2014).

11 This primarily refers to the following statutes: the High Judicial Council Act – *Zakon o Visokom savetu sudstva* (*Official Gazette of RS*, 116/08, 101/10 and 88/11), the Judges' Act – *Zakon o sudijama* (*Official Gazette of RS*, 116/08, 58/09 – CC decision, 104/09, 101/10, 8/12 – CC decision and 121/12), the Organisation of Courts Act – *Zakon o uređenju sudova* (*Official Gazette of RS*, 116/08, 104/09, 101/10, 31/11 – other law, 78/11 – other law and 101/11), the State Prosecutors' Council Act – *Zakon o Državnom veću tužilaca* (*Official Gazette of RS*, 116/08, 101/10 and 88/11), the Public Prosecutors' Office Act – *Zakon o javnom tužilaštvu* (*Official Gazette of RS*, 116/08, 104/09, 101/10, 78/11 – other law, 101/11, 38/12 – CC decision and 121/12), the Seats and Territories of Courts and Public Prosecutors' Offices Act – *Zakon o sedištim a i područjima sudova i javnih tužilaštava* (*Official Gazette of RS*, 116/08).

best be assessed as partial. The major failure in implementing this reform was, beyond any doubt, the general appointment of judges and prosecutors in 2009 – a process that was only seemingly finalized by the decisions of the Serbian Constitutional Court of July 2012 and January 2013.¹²

It is therefore that in 2013 Serbia embarked with a thoroughly distressed judicial system, burdened with the legacy of the general appointment process, compromised independence of the highest representatives of the judicial power (the High Judicial Council and the State Prosecutors' Council)¹³ and a considerably altered but less functional court and prosecutorial network.¹⁴

The work on the new judicial reform strategy started in 2013 – a working group comprising representatives of the Ministry of Justice, professional associations, judges, prosecutors and the Bar, and one representative of the civil sector was formed for that purpose.¹⁵ The work of the Working group was followed by controversies – on February 25, 2013 the Prosecutors' Association and the Judges' Associations forwarded a letter to the Minister of Justice informing him of the methodological drawbacks and the reasons for which they decided to leave the group. Attached to the letter was a document elaborating in detail the positions of the Prosecutors' Association and the Judges' Associations – one of their main objections related to the indecision on the part of the Ministry to deal with the responsibility of the current members of the High Judicial Council and the State Prosecutors' Council for the failed 2011–2012 review process.¹⁶ Strikingly, some of them were in fact members of the Working group, which clearly

12 Decision No. VIIIU-413/2012 (published on October 9, 2012); Decision No. VIIU-420/2012 (published on October 24, 2012); Decision No. VIIIU-486/2012 (published on November 22, 2012); Decision No. VIIIU-880/2012 (published on January 31, 2013); and Decision No. VIIIU-961/2012 (published on February 13, 2013). For a detailed criticism of the judicial reform process in Serbia in 2008–2012 period see Rakić-Vodinelić, V., Knežević Bojović, A., Reljanović, M., 2012, *Judicial Reform in Serbia 2008–2012*, Beograd, CUPS, text is available online, (<http://cups.rs/wp-content/uploads/2013/04/Judicial-Reform-in-Serbia-2008-2012.pdf>, February 10, 2014).

13 Rakić-Vodinelić, V., Knežević Bojović, A., Reljanović, M., 2012.

14 More on this issue and the problems concerning the efficiency of courts and access to justice in Knežević Bojović, A., Reljanović, M., 2012, *Reforma pravosuđa u Srbiji, in Usklađivanje prava Republike Srbije sa pravnim tekovinama EU: prioriteti, problemi, perspektive*, Beograd, Institut za uporedno pravo, pp. 89–118.

15 The Working group was established by the Ruling No. 337-00-77/2001-06 of January 3, 2013. It had 24 members. Even before the working group was formed, the announcement that it would have been coordinated by the assistant minister of Justice Čedomir Backović had raised concerns in the civil sector (<http://pecanik.net/2012/10/ko-je-cedomir-backovic>, February 10, 2014).

16 This process was in fact a review of decisions on non-appointment of judges and prosecutors passed in 2009 with regard to persons who held judicial and prosecutorial offices before the 2009 reform. The process was marked by many irregularities and

compromised the legitimacy of the Strategy drafting process and the Strategy itself. However, this issue was subsequently dealt with, to an extent, in the adopted version of the Strategy, which is a welcome step forward.

The first two versions of the Judicial Reform Strategy were made available to the general public via the Ministry of Justice webpage and the adopted National Judicial Reform Strategy¹⁷ (hereinafter: the Strategy) do differ, and certain improvements are notable. On the other hand, some of the measures set out in the Strategy and the Action Plan for its implementation cut deeply into sensitive issues that were not subject to open public debate, and are sure to raise controversies – e.g. the Judicial Academy being a single entry point to the judicial profession or the establishment of the Commission for Unification of Jurisprudence. It also seems that the timeframe of the Action plan is very ambitious and planned as a tangible response to the start of the EU Accession screening process – a way to show that there is some activity in improving the Serbian judicial system, which was sadly missing in the 15 months period preceding its adoption.¹⁸ Unfortunately, the dangers of setting such a tight and compact timeframe – insufficient time to reconsider the best possible options for improving or amending the legislative framework and limited time for open public debate and ensuring support to the change – do not seem to have been taken into account. It seems that the Ministry has forgotten that it was precisely these issues that were the key factor in the failed implementation of the 2006 Judicial Reform Strategy.

The new Strategy sets as its objective “The improvement of quality and efficiency of justice, while strengthening judicial independence and responsibility, thus also strengthening the rule of law, democracy, legal certainty, access to justice and restoring faith in the judicial system”. The Strategy rests on five key principles:

- independence,
- impartiality and quality of justice,
- competence,
- responsibility,
- efficiency.

was formally finalised by the mentioned Constitutional Court decisions adopted in 2012, and January 2013.

17 Nacionalna strategija reforme pravosuđa, *Official Gazette of RS*, 57/13.

18 A careful analysis of the Action plan shows that the plan in the third and fourth quartal of 2013 was to form working groups and draft as much as 22 normative acts (either new statutes or amendments to the existing ones) and simultaneously implement a number of important activities, such as drafting the programme for permanent training of judges and prosecutors and adopt the rulebooks on assessing the work of judges and public prosecutors.

Transparency is not a separate, but rather a cross-cutting principle. At the same time, the Strategy has identified priorities¹⁹ – urgent measures that must be taken in order to deal with urgent needs; these are:

- reintegration of judges and prosecutors who were reinstated by the Constitutional Court decisions in the judicial system and changes in the judicial network;
- dealing with case backlog;
- judicial decisions are to be made within reasonable time;
- improving the status of the High Judicial Council and the State Prosecutors Council and setting a regulatory framework which will govern the accountability of these two bodies;
- unification of case law;
- setting up a single e-justice system.

Indeed, some of the measures that were planned to be taken in 2013 were aimed at resolving priority issues – such as the drafting of the Amendments to the laws on the High Judicial Council and the State Prosecutors Council²⁰ and the drafting of Amendments to the Seats and Territories of Courts and Public Prosecutors' Offices Act.²¹ However, whilst the latter amendments were swiftly drafted, adopted and have entered into force, the former remain undebated and are not pushed forward. It seems clear that the issue of the HJC and the SPC remains a highly political one – and as long as that is the case, there can be no true judicial independence and all other measures to that effect are simply a façade.

One of the main problems of the Judicial Reform Strategy and, in fact, one of the main problems of all judicial reforming efforts is an evident lack of precise information as to how many judges, public prosecutors and deputy public prosecutors does Serbia have today.²² Although it seems logical that such data would be crucial in any strategic planning – particularly if one of the recommendations made in the Strategy is a need for every judge, prosecutor and public prosecutor to have a judicial/prosecutorial assistant²³ – accurate figures are still missing. And this is a true paradigm of the Serbian judiciary at present.

19 Strategy, pp. 3–4.

20 Measure 1.1.1.1. and Measure 1.1.1.2. in the Action plan.

21 Measure 2.6.1.8. in the Action plan.

22 As for an exact number of judges, it is available in the Statistical report on the work of judges in the Republic of Serbia for the 01.01–31.12.2012. period and amounts to 2380, (http://www.vk.sud.rs/assets/files/izvestaji/statistika_2012.pdf, February 10, 2014).

23 Strategy, p. 12. Curiously, this idea is not explicitly referred to in the Action plan, but is mentioned indirectly, in strategic guidelines 1.2.1. and 5.3.3., as well as in measure 1.5.1.3. – Defining the status of judicial and prosecutorial assistants in order to pro-

Judicial Reform Strategy and the Action plan include a number of comprehensive legislative interventions, but, at the same time, there is an evident lack of clarity or purpose to these measures, which, again, makes it difficult for the key stakeholders to take ownership of the strategy and the normative changes and support their implementation. Even though, as pointed out before, the final wording of the Strategy does differ from its working versions, and while some comments made by the stakeholders have been taken into account, the public debate on the Strategy was, in fact, for most part a one-way street and the reason why the Government has opted for one of many possible solutions has not been provided, which is not good – the only way to truly reform the judicial sector is to ensure full understanding of the measures being taken and through that, to ensure as wide a support as possible from the key stakeholders. Otherwise, the reformatory measures may well prove futile.

3. ACCESS TO JUSTICE

Access of citizens to justice is one of essential postulates for establishing functional democratic society. Access to justice is equivalent to the existence of legal procedures which any person can initiate before an independent court in order to protect and defend his/hers rights. There are two components to the access to justice:

- the legal component, which means that the right to access to justice has to be guaranteed by law;
- the factual component, which means that there has to be a clear practice of realization of this right without any practical obstacles.

Judges' Association of Serbia has analysed access to justice using several indicators of accessibility: physical, financial, legal and time availability, also covering standards of independence and impartiality of judges.²⁴

The judicial network developed in 2009 in fact created a number of problems for the citizens and had an adverse effect on the exercise of the right to access to justice. Namely, the Seats and Territories of Courts and Public Prosecutors' Offices Act of 2008 established 34 basic courts instead of 138 municipal courts in the first instance. Furthermore, 103 so-called "court units" were also established, mostly in places that had municipal courts before the reform. The number of second instance courts, named

protect their acquired rights, given the change of conditions for appointments to judicial and prosecutorial offices.

24 Društvo sudija Srbije, *Jednaki pred sudom i zakonom: država vs. građanin*, 2012, str. 1, (<http://www.sudije.rs/>, 10.02.2014).

High Courts, was reduced from 30 to 26. The number of commercial courts was also reduced from 18 to 16. Newly established courts were: The Administrative Court, four Appellate Courts and 45 Misdemeanour Courts. There were 34 Basic Prosecutorial Offices instead of 109 former Municipal Prosecutorial Offices, as well as 26 High Prosecutorial Offices, which replaced 30 District Prosecutorial Offices.

Reform of the judicial network practically created “judiciary centres”, 34 cities in which basic courts were situated. There was no planning or clear criteria as to which municipal courts should continue their existence. Such poorly conducted efforts resulted in some municipalities and cities being left without judicial institutions although there was a clear need for them; inhabitants of some places that were left without judiciary services were in a particularly difficult situation because of the fact that the nearest court was as far as a few tens of kilometres away. In addition, other important factors, such as the number of cases of courts before 2009, demographic, social, economic, and infrastructural factors (how much time and money will one need to access the nearest court), were not taken into account.

The newly adopted Seats and Territories of Courts and Public Prosecutors’ Offices Act²⁵ only slightly mitigates these shortcomings. The number of misdemeanour courts is reduced to 44; there are 66 basic courts, which is still significantly less than 138 courts before 2009; there are 25 high courts, and number of appellate courts has not been changed. In addition, according to 2013 changes there are 58 basic prosecutorial offices, while the number of high prosecutorial offices has been reduced to 25; the number of appellate prosecutorial offices has not been changed compared to 2009 legislation.

Despite these changes and a higher number of basic courts and prosecutorial offices, the situation described above will not be significantly different. Citizens are being forced into far more expenditures in order to communicate with the justice system and protect and/or practice their constitutional and legal rights. It is not difficult to imagine that travel costs constitute a significant burden for people that do not have courts in their cities; many of them will give up on protecting their rights only because of the fact that it will cost them too much to travel several times to fairly distant cities (and possibly stay there for a few days). Thus, the overall opinion is that the access to justice of citizens of Serbia has been seriously reduced.

There are also serious problems with the Law on Civil Procedure that was enacted in 2011 and has already been twice amended by decisions of the Constitutional Court. The ruling of the Constitutional Court regar-

25 *Official Gazette of RS*, 101/13.

ding unconstitutionality of Article 85 of this Law has special significance for the analysis of the right to access to justice. This article proclaimed that citizens had to represent themselves before the court, or had to engage advocate for representation. Only legal persons had the option of being represented by a bachelor of law with passed bar exam. This solution led to further extension of citizens' procedural costs, without any proper explanation given by legislators. Law had not made any exceptions regarding the type and value of the disputes; that meant extremely high costs for so-called "small-value disputes" when advocates' fees could exceed by far the value of the disputes in question. One of the outcomes of forming "judiciary centres" was also migration of advocates in these cities, so persons who needed their services had to pay travel costs in order to communicate with their representatives in court and/or perform procedural actions. Constitutional Court ruled that such a solution is unconstitutional and repealed it,²⁶ concluding that it diminishes the achieved standards of human right of access to justice, at the same time being contrary to the European Convention on Human Rights.

Financially most vulnerable citizens have the right to free legal aid. However, free legal aid in Serbia is currently provided to citizens only by NGOs, legal clinics, workers' syndicates and political parties (for their own members), as well as by a handful of municipalities. Free legal aid is considered to be one of the essential human rights; however, this field remains unregulated over the years, which leaves much room for abuse. Regulation of free legal aid system has been delayed several times, mostly for two reasons: efforts of advocates' associations to hold a monopoly over free legal aid in order to reserve all state funds for this activity, and lack of financial means in the state budget to create quality network of free legal aid providers.

Most recent draft of the Free Legal Aid Act²⁷, which is currently in the public debate phase, contains some very questionable solutions, especially considering the regulation of restrictive procedures for granting free legal aid to a person. Given that all free legal aid providers, except for advocates giving legal representation in court, public notaries and mediators, will not be paid from budget funds for providing legal aid (practically, they will be left to their own sources of financing) it is unclear why the state would want to restrict access to free legal aid they provide. Furthermore, the concept of non-financing free legal aid activities, with very narrow exceptions, is detrimental to the free legal aid future in Serbia.

26 Constitutional Court Decision No. IUz-51/2012, *Official Gazette of RS*, 49/13.

27 Source: Ministry of Justice and Public Administration, (<http://www.mpravde.gov.rs/sekcija/53/radne-verzije-propisa.php>, February 10, 2014).

Lack of will to help free legal aid providers who perform important social duties and raise quality in exercising the right to access to justice, has been chronically present for past two decades and will be set as standard once this Act has been adopted. Free legal aid providers mostly work *pro bono*; however, they will still be denied for reimbursement of their basic administrative expenditures.

4. CONCLUDING REMARKS

Based on the previous analysis, it is reasonable to expect that Serbia will face several serious problems during negotiations on Chapter 23. Some of these will certainly be as following:

- New judiciary network is inefficient.
- Access to justice has been significantly reduced.
- What changes were (or will be) made by introducing new legal professions into the system.
- Corruption and lustration are problems no one is dealing with.

As correctly noted in the 2013 Progress Report²⁸ “Regarding the independence of the judiciary, the current constitutional and legislative framework still leaves room for undue political influence, in particular when it comes to appointments and dismissals, and needs to be amended”. Sadly, it seems that the failed 2009 judicial reform has resulted in the one thing that the members of the judicial profession and the legal community were fighting against – an indolent and submissive judiciary, almost fully subject to political influences, in constant fear of the executive power.

While the voices which challenged the premises of the 2009 reform were clear and numerous, there seems to be little or no reaction to the planned interventions in the judicial sector. The single point of entry into the judicial profession – the Judicial Academy – has every chance to become a highly political and highly corruptible operation – but no one in the profession seems to voice these concerns openly. Despite the changes to the judicial network, it remains inefficient and burdened with considerable case backlogs. The country’s distribution of population and business is an additional challenge – judges in Belgrade work on as much as 5 times more cases than judges in smaller towns in Serbia.²⁹ Even though

28 Commission Staff Working Document Serbia 2013 Progress Report, SWD(2013) 412 final, Brussels, 16.10.2013, p. 39.

29 An average number of new cases per judge amounts to just over 178 in the Second Basic Court in Belgrade, or 138 in the First Basic Court in Belgrade, whilst it amo-

public notaries were introduced into the system by a new law, the Notarial Chamber is not yet constituted because too few candidates have managed to pass the mandatory exam and the state is reluctant to start the operation of this profession any sooner.³⁰ The manner in which trials are conducted shows that political will is paramount in high-profile cases. The author's first-hand experience in organising a set of lectures on the consequences of the 2008–2012 process has shown us that judges and prosecutors alike are reluctant to speak of what had happened and prefer to act as if it never did. The members of the HJC and the SPC have remained the same – and while it is true that there were no legal grounds for their removal from office, no one within the profession attempted to create constant and persistent public pressure on them and ask them to resign. They remain in office and are as susceptible to political pressures as ever. On the other hand, the European Commission, even though having duly noted the problems with judicial independence, remains somewhat unrealistically optimistic with regard to the ongoing and planned legislative interventions in the sector in Serbia. In fact, the problems the judiciary and the citizens using its services have faced in 2008 remain the same, if not worse, in 2014. If the profession remains as reluctant to react and does not make an attempt to use the accession process to truly advance in the right direction, than the reform will fail once again. Whether Serbia will become an EU member with a competent and independent judiciary or not shall not depend on the EU and the Ministry of Justice – it shall, by and large, depend on the profession itself. Presently, it seems that prospects in this respect are bleak.

BIBLIOGRAPHY

1. Commission Staff Working Document Serbia 2013 Progress Report, SWD(2013) 412 final, Brussels, 16.10.2013.
2. Communication from the Commission to the European Parliament and the Council, Enlargement Strategy and Main Challenges 2011–2012, COM(2011) 666 final, October 2011.
3. Constitutional Court Decision No VIIIU-420/2012 (published on October 24, 2012);
4. Constitutional Court Decision No. IUz-51/2012, Official Gazzete of RS 49/2013

unts to just over 37 in Vranje, 56 in Paraćin, 66 in Zaječar, 70 in Novi Pazar. Source: *Statistical report on the work of judges in the Republic of Serbia for the period 01.01–31.12.2012*, (http://www.vk.sud.rs/assets/files/o_sudu/izvestaji/statistika_2012.pdf, February 10, 2014).

- 30 Pursuant to the relevant statute, the Chamber is to be constituted once the first 100 notaries are appointed. This could have been changed by an amendment to the law and about 50 persons who have passed the exam so far could have been appointed and start to work.

5. Constitutional Court Decision No. VIIIU-413/2012 (published on October 9, 2012);
6. Constitutional Court Decision No. VIIIU-486/2012 (published on November 22, 2012);
7. Constitutional Court Decision No. VIIIU-880/2012 (published on January 31, 2013);
8. Constitutional Court Decision No. VIIIU-961/2012 (published on February 13, 2013);
9. Društvo sudija Srbije, *Jednaki pred sudom i zakonom: država vs. građanin*, 2012, (<http://www.sudije.rs/>).
10. Enlargement Strategy and Main Challenges 2012–2013, European Commission, Brussels, October 2012, (http://ec.europa.eu/enlargement/pdf/key_documents/2012/package/strategy_paper_2012_en.pdf).
11. European Network of Councils for the Judiciary, *Judicial Reform in Europe 2011–2012*, (http://www.encj.eu/images/stories/pdf/GA/Dublin/encj_report_judicial_reform_def.pdf).
12. High Judicial Council Act – Zakon o Visokom savetu sudstva (*Official Gazette of RS* 116/08, 101/10, 88/11).
13. Hillion, C., 2013, Enlarging the European Union and deepening its fundamental rights protection, *European Policy Analysis*, June issue.
14. Judges’ Act – Zakon o sudijama (*Official Gazette of RS*, 116/08, 58/09 – CC decision, 104/09, 101/10, 8/12 – CC decision, 121/12).
15. *Judicial Reform Report 2012*, Anti-Corruption Council, (<http://www.antikorupcija-savet.gov.rs/izvestaji/cid1028-1965/izvestaj-o-reformi-pravosua>)
16. Knežević Bojović, A., Reljanović, M., *Reforma pravosuđa u Srbiji, Usklađivanje prava Republike Srbije sa pravnim tekovinama EU: prioriteti, problemi, perspektive*, Institut za uporedno pravo, Beograd, 2012.
17. Nacionalna strategija reforme pravosuđa Republike Srbije, *Official Gazette of RS*, 44/06.
18. Nacionalna strategija reforme pravosuđa, *Official Gazette of RS*, 57/13.
19. Nozar, W., *The 100% Union: The rise of Chapters 23 and 24*, (<http://www.clingendael.nl/publication/100-union-rise-chapters-23-and-24>, February 10, 2014).
20. Organisation of Courts Act – Zakon o uređenju sudova (*Official Gazette of RS*, 116/08, 104/09, 101/10, 31/11 – other law, 78/11 – other law, 101/11).
21. Presidency Conclusions, European Council, Brussels, 15 December 2006.
22. Public Prosecutors’ Office Act – Zakon o javnom tužilaštvu (*Official Gazette of RS*, 116/08, 104/09, 101/10, 78/11 – other law, 101/11, 38/12 – CC decision, 121/12).
23. Rakić-Vodinelić, V., Knežević Bojović, A., Reljanović, M., 2012, *Judicial Reform in Serbia 2008-2012*, CUPS, Beograd, (<http://cups.rs/wp-content/uploads/2013/04/Judicial-Reform-in-Serbia-2008-2012.pdf>).
24. Seats and Territories of Courts and Public Prosecutors’ Offices Act – Zakon o sedištim i područjima sudova i javnih tužilaštava (*Official Gazette of RS*, 116/08).
25. State Prosecutors’ Council Act – Zakon o Državnom veću tužilaca (*Official Gazette of RS*, 116/08, 101/10, 88/11).

26. Vilnius Declaration on Challenges and Opportunities for the Judiciary in the Current Economic Climate, adopted at European Network of Councils for the Judiciary General Assembly in Vilnius, June 8–10, 2011, (http://www.encj.eu/images/stories/pdf/GA/Vilnius/encj_vilnius_declaration.pdf).

REFORMA PRAVOSUĐA U SRBIJI I PREGOVARAČKO POGLAVLJE 23 – KRITIČKI OSVRT

Mario Reljanović i Ana Knežević Bojović

REZIME

Jako i nezavisno pravosuđe preduslov je postojanja vladavine prava. Snažno pravosuđe u koje građani veruju od izuzetne je važnosti za svaku državu. Ipak, dostizanje cilja istinske nezavisnosti pravosuđa zadatak je kojim se bave kako stare demokratije tako i države u tranziciji. Za zemlje koje su kandidati za članstvo u Evropskoj uniji, kao što je Srbija, kvalitetno pravosuđe ne predstavlja samo imanentnu vrednost kojoj se teži, već i ključno pitanje u procesu pregovaranja o pristupanju. Od usvajanja novog ustavnog okvira 2006. godine, Srbija je pokrenula proces unapređivanja pravosudnog sistema. Nažalost, on je bio realizovan pod jakim političkim uticajem, i rezultirao je devastirajućim efektima na pravosudne organe, u potpunosti podrivajući poverenje koje su građani imali u sudsku vlast. Nakon promene političke većine u Narodnoj skupštini i izbora nove vlade, srpsko Ministarstvo pravde preuzelo je zadatak donošenja nove strategije reforme pravosuđa, kao i akcionog plana za njeno sprovođenje, koji bi u budućnosti služili kao osnovni instrumenti za postizanje dva već pomenuta cilja: uspostavljanje snažnog i nezavisnog pravosuđa i ispunjenje postavljenih standarda Evropske unije. U ovom radu autori kritički analiziraju Nacionalnu strategiju reforme pravosuđa Republike Srbije za period 2013–2018. godine i Akcionog plana za njeno sprovođenje, ukazujući na njihove glavne nedostatke i slabe tačke. Autori će takođe analizirati planirane i implementirane promene zakonske regulative u ovoj oblasti.

Ključne reči: reforma pravosuđa, pregovori o pristupanju Evropskoj uniji, Poglavlje 23.

Dostavljeno Redakciji: 30. aprila 2014. god.

Prihvaćeno za objavljivanje: 17. juna 2014. god.