

Serbia Background

Legal Context

From 2003 to 2006, Serbia was part of the State Union of Serbia and Montenegro, into which the Federal Republic of Yugoslavia had been transformed. On May 21, 2006, Montenegro held a referendum to determine whether or not to end the union with Serbia. The next day, state-certified results showed 55.5% of voters in favor of independence, which was just above the 55% required by the referendum.

On June 5, 2006, the National Assembly of Serbia declared Serbia the successor to the State Union, following the decision of the Parliament of Montenegro who declared Montenegro independent.

On October 28-29, 2006, Serbia held a two-day referendum that ratified a new constitution to replace the Milosevic-era constitution.

Serbia held Parliamentary elections on January 21, 2007. The Serbian Radical Party claimed victory, but no party has won an absolute majority. The various parties are currently trying to form a coalition and elect a new President and Prime Minister.

The judiciary in post-socialist Serbia is regulated by a **package of laws on the judiciary**, which was originally adopted in November 2001. This package includes the laws on Judges, on the Organization of Courts, on Seat and Territorial Jurisdiction of Courts and Public Prosecutors' Offices, on Public Prosecutors' Offices, and on the High Judicial Council. In combination with select sections of the Constitution, these laws provide the legal basis for the organization, jurisdiction, and operation of Serbia's courts of general and specialized jurisdiction; professional freedoms and guarantees enjoyed by judges; and procedures for selecting and removing judges. The package of laws originally reflected many international standards on the administration of justice and judicial independence, especially in providing the judiciary with a substantial role in managing its own affairs. However, amendments to these laws in July 2002 and March 2003 shifted certain leading responsibilities, such as those involving decisions on judicial appointment and dismissal, to the executive and legislative branches of government. Following the adoption of amendments to the Law on Judges and Law on the High Judicial Council in April 2004, the judiciary regained some of its institutional independence as well as the influence it previously enjoyed in the appointment of judges and court presidents.

History of the Judiciary

The contemporary judiciary and court system in Serbia has its roots in the emergence of an independent constitutional monarchy in the second half of the nineteenth century, which emerged after a prolonged period of Ottoman rule. The development of the Serbian judiciary was influenced by the legal traditions of its European neighbors, most notably Austria, Germany, and France. However, the most significant and enduring influence on Serbian courts today remains the legacy of socialist rule in Yugoslavia. Most of the major courts currently in existence, including the Constitutional Court, the Supreme Court, and the district and municipal courts date from this era. It was also during this period that the court system became a political instrument and individual judges were sometimes pressured to decide cases in a manner that satisfied the wishes of executive and legislative authorities.

Following the ouster of the regime of Slobodan Milosevic in October 2000, a democratically oriented government sought to strengthen the independence of the judiciary and enhance its role in advancing legal and judicial reforms. In November 2001, a new package of laws on the judiciary gave the judiciary unprecedented authority to regulate its own affairs. At the same time, however, the judiciary contained many judges considered to be political cronies of the former regime, who not only lacked integrity but professional competency as well. Efforts to lustrate the judiciary to date have not proceeded according to any comprehensive plan, although a number of judges compromised by the Milosevic regime have either resigned voluntarily or have been dismissed. At the same time, while a number of judges identified with the former regime continue to work in courts throughout Serbia, new judges have also entered the profession since 2000. Among this latter group are many judges who have benefited from both domestic and international efforts to improve judicial education, as well as to promote awareness of judicial ethics and professional responsibility.

The establishment of the **Judges Association of Serbia (JAS)** and the **Judicial Center for Professional Education and Advanced Training (JTC)** has improved the judiciary's institutional independence and its effectiveness in supporting the rule of law in Serbia. Despite considerable challenges, both have sought to raise the status of the profession and the qualifications of individual judges. If these organizations are able to work in cooperation with the Ministry of Justice, which is authorized to oversee the organization of the judiciary and the operation of the courts, they will increase the likelihood that the Serbian judiciary will eventually function in a manner appropriate to a democratic society.

The **High Judicial Council (HJC)** was established in accordance with the November 2001 package of laws on the judiciary to promote judicial reform and the independence of the judiciary. The HJC is an independent expert body presently comprised of five permanent members that include the Minister of Justice, Supreme Court President, State Public Prosecutor, an appointee of the Bar Association of Serbia, and one member appointed by the National Assembly. There are also two groups of ad-hoc members, which include six judges appointed by the Supreme Court and two prosecutors, one appointed by State Public Prosecutor deputies and another appointed by the joint session of district Public Prosecutors. Many of the HJC's competencies were limited in 2002 and 2003, such as its role in the appointment of prosecutors, which was curtailed completely. This competency, in addition to others set forth in the 2001 version of the Law on the High Judicial Council, was restored by the April 2004 amendments. Following these amendments, the HJC is once again responsible for proposing the number of judges and prosecutors required for the efficient functioning of the judicial system and for the names of prospective judges and prosecutors to the National Assembly for appointment.

The **High Personnel Council (HPC)** is a body comprised of nine judges of the Supreme Court. It is responsible for determining whether a judge should be removed from office by the National Assembly for illegal, improper or unprofessional conduct. The HPC may suspend judges and order other disciplinary measures in response to unprofessional judicial conduct. Like the HJC, the membership and competencies of the HPC were changed pursuant to amendments to the November 2001 package of laws on the judiciary. In addition, the HPC was suspended pursuant to a February 2003 decision of the Constitutional Court but was reconstituted following the April 2004 amendments to the Law on Judges. These amendments also provided for the establishment of a **Monitoring Board**, comprised of five Supreme Court judges, which may review the processing time of case files and judgments in an effort to guard against judicial negligence and incompetence. Once it completes this review, it may recommend that the HPC initiate disciplinary proceedings.

In an effort to facilitate judicial reform after 2000, the government of Serbia has created several expert advisory groups. In 2002, for instance, it established the Council for Reform of the Judiciary, which eventually adopted a Strategy for Judicial Reform. However this initiative failed to produce any concrete results and the Council remained a moribund body for much of its rather limited existence. The **Commission for the Implementation of the National Judicial Reform Strategy** was created by the government in April 2004 to contribute to legislative reform, to initiate judicial education programs, and to cooperate with international efforts aimed at improving the independence of the Serbian judiciary in accordance with European legal standards. Its seven members includes the Minister of Justice, who chairs the Commission, the Deputy Minister of Justice, the Supreme Court President, two other members of the Supreme Court, one representative of the Serbian Bar Association, one representative of the Serbia and Montenegro Bar Association, and a Secretary. The Commission drafted a Platform for the Strategy for Judicial Reform in September 2004, which set forth a framework for improving the efficiency of the courts and reducing the length of proceedings, facilitating the establishment of a new court network, improving initial and continuing education for members of the judiciary, and increasing the availability and use of information technologies. This document served as a starting point for the development of the National Judicial Reform Strategy, which was subsequently made public by the Ministry of Justice in July 2005 and updated in December. The Strategy, which was developed in consultation with international advisers, sets forth a framework for judicial reform that focuses on improving the independence, transparency, accountability, and efficiency of the judiciary through a series of short-, medium-, and long-term reforms that span 2006-2013.

Structure of the Courts

According to the Law on the Organization of Courts, the court system of Serbia is divided into courts of general jurisdiction and specialized courts. Courts of general jurisdiction include the Supreme Court, courts of appeal (which still have not been constituted), and municipal and district courts. Specialized courts include the commercial courts and the yet to be constituted Administrative Court. Special panels for prosecuting war crimes and organized crime have been established within the Belgrade District Court. In addition, a Constitutional Court hears and decides matters that involve the constitutionality of laws, regulations, and official acts.

The **Supreme Court** is the highest court of general jurisdiction in Serbia. As such, it functions to provide for the uniform application of law by the courts. The Supreme Court may hear and decide cases on appeal from decisions of the High Commercial Court, in addition to the courts of appeal and the Administrative Court once these particular courts are constituted and begin hearing and deciding cases. The Supreme Court may also issue advisory opinions on draft laws, but only in matters involving the judiciary. Its legal basis is provided for in the 1990 Constitution and several of the laws on the judiciary originally passed in November 2001. There is no separate law regulating the Supreme Court in Serbia. However, the Supreme Court does have its own rules of procedure. Currently, the Supreme Court is comprised of more than sixty judges. They normally sit and hear cases in three-member and five-member panels on criminal, civil, and administrative affairs. A panel of nine Supreme Court judges may review decisions of these five-member panels.

A new appellate structure organized around the **courts of appeal** was scheduled by law to begin working and hearing appeals in 2002. However, the establishment of this new appellate court structure has been postponed on several occasions by legislative amendments. It was last scheduled to begin functioning on January 1, 2007; however, questions regarding the Law on the Implementation of the Constitution have postponed its effective date. Once eventually

constituted, the courts of appeal will be located in Belgrade and in the cities of Kragujevac, Nis, and Novi Sad. Decisions rendered by the district or municipal courts in the first instance will be reviewed and decided upon by one of these four appellate courts. With the establishment of the new appellate courts, the Supreme Court of Serbia will function as a court of cassation, rendering decisions on appeals issued by the appellate courts below.

There are 138 **municipal courts** and 30 **district courts** located throughout Serbia. The municipal and district courts are courts of general jurisdiction. They hear and decide cases in both civil and criminal matters. Municipal courts are exclusively courts of first instance with jurisdiction over criminal offenses punishable with up to 10 years of imprisonment as prescribed by law and civil matters of lesser importance. District courts also exercise first instance jurisdiction but in matters of a more serious nature. Until the new courts of appeal are constituted, district courts will continue to serve as courts of second instance and hear appeals from municipal court decisions. Decisions of municipal and district courts may be appealed to the appellate courts once these courts are constituted. As courts of first instance, both the municipal and the district courts often serve as the primary means by which most citizens of Serbia access the judicial system to protect their rights and to receive a remedy in the event these rights have been infringed upon. More than 2,000 judges and 8,000 other personnel staff these courts.

The **Administrative Court** will exercise first instance jurisdiction over administrative disputes and have the authority to review administrative acts throughout the entire territory of Serbia. It was most initially scheduled by law to begin hearing cases on January 1, 2004, but the Constitutional Court suspended implementation of the provisions on the court's establishment because the National Assembly has yet to appoint judges to this court or designate other resources, including a building in Belgrade, where the court will be headquartered. The Supreme Court will exercise second instance jurisdiction over decisions of the Administrative Court once this court is eventually constituted and begins functioning, which was currently scheduled for January 1, 2007 until questions regarding the Law on the Implementation of the Constitution postponed its effective date.

Commercial courts of Serbia are specialized courts having jurisdiction over a wide range of commercial matters, including copyright, privatization, foreign investment, unfair competition, maritime, bankruptcy proceedings, and other disputes arising out of commercial activity involving domestic and foreign entities. There are 18 commercial courts located throughout the territory of the Republic of Serbia, and their decisions may be appealed to the High Commercial Court in Belgrade. Decisions of the High Commercial Court may be appealed to the Supreme Court. Close to 250 judges staff Serbia's commercial courts.

In July 2003, **specialized panels on war crimes** were established within the Serbian court system, several years following the conclusion of the Balkan wars of the 1990s. These panels have jurisdiction over alleged violations of the Basic Criminal Code, in addition to crimes against humanity, violations of international law, and criminal acts as defined by Article 5 of the Statute of the International Criminal Tribunal for the former Yugoslavia (ICTY). The Belgrade District Court's war crimes panel, comprised of 9 judges and 2 assistants, exercises first instance jurisdiction over all war crimes cases tried in the Republic of Serbia. The Office of the War Crimes Prosecutor, also established by the new law, issued its first indictments on December 4, 2003. Together the special panels and the War Crimes Prosecutor will take the lead in the investigation and domestic prosecution of alleged war criminals in Serbia.

Specialized panels on organized crime have also been established pursuant to the Law on Organization and Competencies of Government Authorities in Suppression of Organized Crime of July 2002. They exercise jurisdiction over offenses involving criminal conspiracies such as money laundering, human trafficking, and extortion, as well as illicit trade in arms, ammunition, and explosive substances. The special panels on organized crime also have jurisdiction over cases related to the assassination of the Serbian prime minister. The Belgrade District Court's special panel on organized crime exercises first instance jurisdiction in all these matters. It is comprised of 9 judges, working with 3 assistants, who will hear cases in panels of three. Decisions of this first instance special panel may be appealed to the appellate court in Belgrade, once that body is constituted. In the meantime, the Supreme Court will exercise second instance jurisdiction. In addition to the special panels, a special prosecutor's office and a special branch within the interior ministry have also been created in an effort to combat organized crime.

The **Constitutional Court** of Serbia determines whether laws, regulations, and other normative acts promulgated by state bodies of the Republic of Serbia are in conformity with the Serbian Constitution. It may also resolve conflicts involving jurisdictions between courts and state bodies. The Constitutional Court also has jurisdiction to decide matters involving the status and operation of political parties and organizations, as well as certain election-related disputes. Proceedings may be initiated by state authorities, individuals, or by the Court itself. Nine justices appointed by the National Assembly sit on the Constitutional Court.

Conditions of Service

Qualifications

All judges must have formal university legal training. However, there is still no requirement that new judges must have practiced before tribunals prior to taking the bench, nor are they required to have completed any specific courses in preparation for becoming a judge. New municipal court judges must have obtained at least two years of experience in the legal profession following the bar examination. Many of these judges satisfy this two-year requirement as a court intern and then complete at least another two years as a judicial assistant before assuming their official functions. Judges at higher courts are required to have between four and twelve years of post-bar exam professional experience to qualify for appointment. 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.

Appointment and Tenure

Judges are formally appointed by the National Assembly of Serbia upon receiving nominations from the HJC. If the HJC's nominee is rejected by the National Assembly, the HJC shall propose another candidate for appointment. The National Assembly may not under any circumstances appoint a judge that has not first been nominated by the HJC. The HJC determines nominees on the basis of their professional abilities, the quality of their work, and other basic criteria such as academic performance and published scientific and professional papers. Court presidents are also elected by the National Assembly following their nomination by the HJC.

Training

Although there is no mandatory requirement that judges participate in continuing legal education, considerable emphasis continues to be placed on the training for Serbian judges. Many newly appointed as well as more experienced judges have participated in trainings organized and

conducted by the Judicial Center for the Professional Education and Advanced Training (JTC), a joint initiative of the Ministry of Justice and the Judges Association. Other domestic and international organizations also conduct trainings for judges. For the most part, these trainings are aimed at improving the practical skills required of a judge, such as conducting a hearing and examining witnesses. There are also a number of trainings being offered in judicial ethics, commercial law, and international human rights law, especially the European Convention on Human Rights and law of the European Union. As a still relatively new institution, the JTC faces considerable challenges in securing adequate funding and lacks sufficient staff and resources necessary to service the more than 15,000 legal professionals, as well as court employees and support staff that are eligible to receive training.