

# WHEN LAW DOESN'T RULE

## STATE CAPTURE OF THE JUDICIARY, PROSECUTION, POLICE IN SERBIA

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**Written by:**

Transparency Serbia

Center for Investigative Journalism, Serbia

**Authors<sup>1</sup>:** Branko Čečen, Nemanja Nenadic, Dino Jahić, Ivana Jeremić, Milica Stojanović, Dina Đorđević, Vladimir Kostić, Milica Šarić, Anđela Milivojević, Zlatko Minić, Srđan Cvijić.

Open Society European Policy Institute - OSEPI, Brussels, EU

Center for Investigative Journalism of Serbia

Transparency Serbia

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<sup>1</sup> Branko Čečen, Dino Jahić, Ivana Jeremić, Milica Stojanović, Dina Đorđević, Vladimir Kostić, Milica Šarić, Anđela Milivojević, from CINS, are authors of the case studies. For each individual case study, the author in question is mentioned under that specific section. The author of an individual case study takes full responsibility for observing the duties and responsibilities related to ethical journalism and the application of a factual and objective methodology in conducting his or her research and writing of the case study. Nemanja Nenadić, Zlatko Minić, from Transparency Serbia, and Srđan Cvijić, from OSEPI, wrote the analysis of the legal and institutional framework.

**Remove justice, and what are kingdoms  
but gangs of criminals on a large scale?**

– St Augustine



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## EXECUTIVE SUMMARY

Politicians in Serbia exert a great deal of influence over its judiciary and police. The country is currently ruled by the Serbian Progressive Party (SNS) and its leader Aleksandar Vučić, who is the President of the Republic.

This influence manifests itself through many and varied cases of institutional abuse. For example, police have exerted pressure on leaders of independent bodies, the opposition, and people who have criticised the authorities. Moreover, the police practice of disseminating information and misinformation to discredit critical individuals or groups is widespread. The independence of the institutions is further compromised by the police being prevented from carrying out their work in certain “politically sensitive” cases, including the infamous Savamala demolition case and by its farcical epilogue in court. While the police are politicised, the prosecution has sometimes refused to investigate cases in which suspects belonged to, or were close to, the authorities and government. Finally, unlawful decisions by the courts – some almost certainly motivated by political considerations – remain a serious problem. Political influence over law enforcement bodies and courts is exerted through the violation of regulations, poor enforcement, the abuse of legal loopholes, ambiguous rulings that can be interpreted in different ways, and the fact that some laws still contain norms that allow direct political influence over the judiciary and police.

This research, commissioned by the Open Society European Policy Institute (OSEPI) and Open Society Foundations Serbia, and conducted by Transparency Serbia and the Center for Investigative Journalism Serbia, identifies **seven ways in which political control is exerted over Serbian’s independent institutions, or in which systemic weaknesses in the rule of law are exploited**. In some instances, the inefficiencies and abuses of the system enable politicians to gain sway over the judiciary, prosecutors, and police.

1. **Limited accountability:** the system for holding judges and public prosecutors accountable is ineffective and inconsistent; a lack of proactive disciplinary bodies and insufficient transparency helps hide political pressure. (Illustrated in case studies **4, 5**)
2. **Political appointments:** Political bodies are involved in appointing public prosecutors and court presidents. Similarly, the criteria and selection process for police officials are not transparent. Political influence is further exercised through a reluctance to appoint certain key positions in the police on a permanent basis with a full mandate. (Illustrated in case studies **2, 11**)
3. **Too much discretion:** Law enforcement bodies have significant discretionary powers when they decide whether to investigate and prosecute a given case. Similarly, they do not provide adequate explanations of why they have decided to abandon an investigation. This means possible political motivation can be hidden behind apparently routine police and prosecutorial decisions. (Illustrated in case studies **3, 6, 10**)
4. **Media manipulation and discrimination:** Inappropriate relationships between the media and law enforcement agencies, judiciary and politicians take several forms: leaking information, using the media for defamation, violation of the presumption of innocence in criminal matters, favouring some media and shunning others, selective attacks on media, and inconsistent court decisions in media-related cases. (All these are illustrated in case studies **1, 4, 10**)
5. **Misuse of statistics:** Manipulation of statistics about the outcomes of police work, prosecutors and courts for political gain. (Illustrated in case studies **2, 9, 12**)

6. **Abuse of political powers:** Politicians directly influence the work of repressive state apparatus (e.g. the participation of politicians in coordinative law enforcement bodies, political influence over the appointment of senior police etc.) (Illustrated in case studies **9, 7, 11**)
7. **Dysfunctional criminal investigations:** Weaknesses in the handling of criminal investigations (misuse of the statute of limitations, failure to remove obstacles in laws, procedural mistakes, and ungrounded decisions), followed by the suspicion that a decision or omission is politically motivated. (Illustrated in case studies **2, 7, 9, 11**)

The report illustrates these seven administrative and systemic weaknesses through 12 case studies.

## Case studies

**CS 1: The murder of singer Jelena Marjanović** in April 2016. This story led the tabloids for 18 months, and is one of the best illustrations of the inappropriate relationship between repressive state apparatus and the media. It includes the more serious problems of deliberate leaks and “information placement” in order to influence the public. The violation of the presumption of innocence in criminal matters, including by the highest political authority in the country - the President of the Republic and government members - is another systemic problem highlighted by this story.

**CS 2: The trial of Mirjana Marković**, wife of former president Slobodan Milošević, which has been going on for 14 years and has been through several retrials. This case exposes two systemic problems of political influence on Serbian judiciary: manipulation of statistical data, and weaknesses in the functioning of the prosecution system.

**CS 3: Investigation into Mlađan Dinkić**, a former Minister of Finance and Economy, who was in coalition with the party of former president Boris Tadić and then with the party of the current president Aleksandar Vučić. This case illustrates the arbitrariness of decisions about whether a state body should act in a case of misconduct. Here, political motivations could have had an impact on the prosecuting authorities, both at the beginning and at the end of the proceedings.

**CS 4: The case of judge Vučinić**, who left the judiciary as a result of pressure to influence his decisions in the trial of businessman Miroslav Mišković, who was the poster child of the ruling party’s anti-corruption campaign. The story illustrates several systemic problems: the inappropriate relationships that law enforcement, judiciary and politicians have with the media, the inadequate measures for addressing the problem in the Action Plan for Chapter 23 in the EU Accession negotiations, and the inefficient and inconsistent way judges and public prosecutors are held accountable.

**CS 5: Case study with statistical data of complaints on the work of judges and public prosecutors.** This illustrates the inadequacies of disciplinary proceedings - resulting in a disproportionate number of sanctions in relation to the volume of complaints.

**CS 6: The cases of minister Goran Knežević, the ruling SNS party in Zaječar** and others. These show the arbitrary nature of prosecution decisions in situations involving campaign financing and politicians’ declarations of assets. They also reveal other weaknesses in the prosecution system: the statute of limitations, continuing shortcomings in legal provisions, procedural errors and unreasonable decisions. Political influence on the courts, prosecutors and police is suspected to have played a role.

**CS 7: New data on how misdemeanour courts work** sheds light on an often ignored and extremely important area in the fight against corruption – misdemeanour trials, administrative infractions and regulatory offences. Anti-corruption laws rely on these working well. But in many misdemeanour cases the statute of limitations is reached. The dysfunctional system for serving court summons and an out-of-date system for recording citizens' residency are often to blame. The widespread failure to serve summons is particularly egregious when the suspects were well-known, such as MPs, ministers, and other officials.

**CS 8: Analysis of the judicial reforms in Serbia** identifies systemic weaknesses in the selection of judges and prosecutors, especially when the National Assembly appoints them to their first term of office. As well as direct political influence, criteria are vague, procedures are openly breached, and court presidents and head prosecutors exert influence. The current moves to reduce political influence over judicial and prosecutorial appointments through constitutional change is inevitably a slow process and will allow this undue influence to continue for years. Instead, we suggest alternative ways to reduce political influence over the prosecution and the judiciary.

**CS 9: The cases of businessman and politician Bogoljub Karić and businessman Stanko Subotić** illustrate possible dual political influence on the work of prosecution authorities, with particular emphasis on the statute of limitations and other systemic weaknesses exploited by the police, judiciary and prosecution. In addition, it shows politicians directly influencing the manipulation of statistical data to serve political ends.

**CS 10: The cases of the weekly newspaper NIN and daily Informer** show how courts handle cases against critical media and those supporting the party in power differently. Additionally, the data analysed highlights the inappropriate relationship of law enforcement with the media, and shows how it lengthens court proceedings.

**CS 11: The case of the decorated police officer Dalibor Karanović, Zvezdan Jovanović, the assassin of the Prime Minister Zoran Đinđić, and data on citizens' complaints against the police** partly relates to the systemic problem of unclear criteria for the selection of executives, dismissal decisions and promotion in the police. It also demonstrates how politicians exert direct influence on law enforcement and the opaque nature of police work, in particular when it comes to internal control of the police.

**CS 12: New data on law enforcement** and an analysis of its misuse for political promotion reveals how political interference in the work of independent law enforcement agencies has become more frequent in the last few years. This worrying trend can be ascribed to ruling parties' desire to claim credit for the perceived achievements of independent institutions in fighting crime and corruption. Mass arrests are made, but few of them lead to charges or convictions.

## Conclusions

The overall conclusion of the research, based on both analyses of the legal and institutional framework and case studies, is that there is no genuine political appetite to curb political influence over the police, prosecutors and judges in Serbia.

The process of preparing Serbia to join the EU continues, although there have been significant delays in the implementation of legislative measures, and an absence of visible improvements in practice. **Political influence on the judiciary and law enforcement is recognised by both the EU and Serbian**

**authorities.** Measures aimed at overcoming this problem were put forth in the 2013 Judicial Reform Strategy and in the Action Plan for Chapter 23, which was adopted in April 2016. The revision of that document, scheduled for 2018, should trace the Serbian path to achieve rule of law standards until 2025 (i.e. the earliest expected accession date, as identified by the European Commission on 6 February 2018: “A credible enlargement perspective for and enhanced EU engagement with the Western Balkans”).<sup>2)</sup> The cornerstone of the reforms is the planned constitutional changes, aimed at excluding politicians from decisions on judges’ and prosecutors’ appointments and dismissals. However, the first drafts of these constitutional amendments seek to replace the current system with one where political influence on the judiciary will continue, just in a less direct way.

While reforms of the legal framework, with long-term effects, are undoubtedly necessary, **there are measures that Serbian politicians could implement immediately**, but do not. For example, the minister of justice and the chairperson of the parliamentary judicial committee do not have to seek ways to change the Constitution in order to remove themselves from the High Judicial and State Prosecutorial Council. They could simply stop attending judicial council sessions. Moreover, contrary to the stated reform goals, the executive branch has continued to control the judiciary budget directly, denying the judiciary branch any financial independence. Senior politicians still comment on judicial decisions. They have also shifted the overall narrative on judicial reform – from protecting judges from political influence, towards “protecting the citizens” from “corporatism”, i.e. the alleged threat of the judiciary that “wants to be independent from the state”.

In addition, for some of the seven systemic problems identified in this research, there are no proposed solutions in the existing EU accession negotiations action plans or other strategic documents of the Serbian government. Bearing in mind the manifest unwillingness to make progress on a national level, there is a strong need to broaden and intensify EU oversight.

## Policy recommendations to the European commission and EU member states

- › In order to prevent the exercise of political influence on the judiciary, public prosecutors and police in Serbia, the European Commission and member states should ask Serbian authorities:
- › To significantly improve current Action Plans for chapters 23 and 24 (already not met, in particular when it comes to not respecting deadlines) during their 2018 revision, by making them more ambitious, impact-oriented and verifiable, and to include activities that could achieve stated goals within the timeframe of Serbian EU integration;
- › To substantially improve the coordination and oversight of the implementation of the European agenda in Serbia;
- › To demonstrate political will to resolve identified problems by fully implementing existing laws, rather than seeking a “magic wand” solution through adoption of new laws, regulations and codes;
- › To abstain from practices that severely compromise reforms, such as seeking indirect channels of political control over the judiciary or stifling public debate about constitutional changes.

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2 [https://ec.europa.eu/commission/sites/beta-political/files/communication-credible-enlargement-perspective-western-balkans\\_en.pdf](https://ec.europa.eu/commission/sites/beta-political/files/communication-credible-enlargement-perspective-western-balkans_en.pdf)

The structural recommendations include **13 concrete recommendations**:

1. Constitutional reform that is directly related to judicial independence should be fostered by publishing an explanation of the government's draft proposals. This would include arguments that take into consideration all the proposals received from the public. An explanatory note should include information that goes beyond the minimal standards set by the Venice Commission, with an emphasis on relating these standards to the specific Serbian context.
2. The Government and Parliament should demonstrate their willingness to remove political influence from the process of appointing and removing judges and prosecutors, even without - and before - constitutional or legislative changes. This means the Minister of Justice and the Chair of the Justice committee should not participate in the work of the High Judicial Council (HJC) and the State Prosecutorial Council (SPC). They should accept HJC and SPC proposals, act on them as quickly as possible, and transfer financial management powers to HJC and SPC.
3. HJC and SPC should maintain and publish their own list of all inappropriate comments on ongoing court cases and criminal investigations that might threaten judicial independence and the presumption of innocence, in particular when they come from public officials or political parties.
4. HJC and SPC should take a proactive stance towards protecting judges and prosecutors from improper influence and threats, but also in identifying judges' and prosecutors' misconduct in an impartial manner.
5. All 'leaks' of potential criminal investigation data, based on information published in the media, should immediately be identified by internal police authorities and the Public Prosecutor of the Republic, and followed by their own internal investigation.
6. Legislative reforms and the practice of police and prosecutors' work should exclude or significantly limit the ability of politicians (including the Prime Minister, Minister of the Interior, President of the Republic and members of parliament) to obtain privileged information about ongoing criminal investigations.
7. Information about criminal investigations and arrests should be published by the public prosecutor or professional police officials, and not by the Minister of the Interior or other elected officials.
8. Statistics published by the police, prosecution and courts, as well as by the SPC and HJC on disciplinary issues, should be more comprehensive, more comparable and published in a timely manner.
9. The powers of court presidents and heads of public prosecution offices should be limited, and their decision-making should be more transparent.
10. Public prosecution offices should explain fully why they have decided not to investigate a case, or not to pursue it after an indictment.
11. The power of the Minister of the Interior regarding the internal management of the police and appointment of its staff needs to be limited.
12. The public prosecutor of the Republic, in cooperation with other stakeholders, should initiate legislative changes, based on identified reasons, that restrict the abuse of the statute of limitation.
13. Consider measures that could limit the potential for corruption to occur during delays in carrying out criminal sanctions, probation periods, the implementation of plea bargaining and other Criminal Procedure Code mechanisms.

# INTRODUCTION

## Context

The EU's limited political focus on enlargement countries in the Western Balkans has allowed some states, including Serbia, to make progress in the accession negotiations, while backsliding in the field of rule of law.

The European Commission has been monitoring Serbia's progress in this area through generic country reports that focus on legislative changes and broad reform processes. This approach, despite the improved methodology introduced in 2015, has failed to 1) note concrete examples of backsliding on the rule of law and 2) hold the government accountable for its failures and wrongdoings. These failures, in turn, have contributed to the rapid fall in the EU's legitimacy in Serbia. According to a survey regularly published by the Ministry of European Integration,<sup>3</sup> 73% of citizens supported EU accession in November 2009. This fell to 41% in December 2012 and 41% in June 2016. In June 2017, 49% supported accession. The survey of the NGO Belgrade Centre for Security Policy from March 2017 shows weaker support for Serbia's EU membership – just 43% backed it.

The latest research shows that a small majority of citizens favours integration into the EU (52%) while 24% see “no benefit in joining”. However, EU membership for Serbia is considered “a good thing” by only 42% of respondents, while 34% are neutral. The EU mainly represents “more employment, a better future for young people and more travel opportunities”. The major reforms, according to Serbian citizens, are in anti-corruption, healthcare and the justice system, and they should be implemented regardless of the EU membership process (64%).

## Methodology

The research methodology includes:

- › desk analysis of Serbia's legal and institutional framework
- › a review of recent academic studies on high level corruption and state capture of the police and judiciary in Serbia
- › analysis by NGOs and international organisations - in particular, the research includes all available materials related to EU integration, notably chapters 23 and 24 (screening report, action plans, negotiation positions, periodical reports on implementation of action plans, enlargement strategy, GRECO reports)
- › analysis of Serbia's relevant national strategies pertaining to the work of the police, the prosecution and courts, and related reports on implementation of these strategies and action plans.
- › Whenever possible, Transparency Serbia has used information obtained from other organisations dealing with the implementation of various anti-corruption laws (e.g. public procurement, freedom of information, party financing etc.). Additionally, it recorded evidence from citizens and entrepreneurs who approached Transparency Serbia's Advocacy and Legal Advice Centre with various problems.

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3 <http://www.mei.gov.rs/eng/information/public-opinion/>

Based on these sources, the researchers defined key systemic problems surrounding political influence on the police, prosecutors and judges. These were further examined and confirmed through case studies from The Center for Investigative Journalism of Serbia (CINS). New information - obtained during the case study work and additional sources based on individual cases - was taken into account when identifying the systemic problems. In particular, the research sought to draw on concrete case studies. As far as possible, given the time constraints, the researchers informally consulted current or former police officers, prosecutors and judges, as well as representatives of supervisory institutions, in order to check the plausibility of the conclusions and fine-tune the recommendations.

We hope these recommendations will influence the ongoing EU integration process whenever possible, and in particular, the need to apply or amend any part of the Action Plans for the negotiation of Chapters 23 and 24. As far as possible the recommendations also follow the existing structure of the European Commission's Report on Serbia.

## CS 1: MEDIA REPRESSION – LEAKING OF INFORMATION

*The murder of a previously little-known singer, Jelena Marjanović, in April 2016 dominated the tabloids for 18 months. It illustrates the extent of media repression in Serbia (systemic problem 4). As well as showing how the practice of leaking information from criminal investigations works, it reveals the means by which politicians are able to manipulate the media in order to discredit investigative authorities and individuals, prejudice their decisions and those of judges, and generally attack and discriminate against media organisations.*

### No Political Will to Prevent Information Leaks

*Written by: Vladimir Kostić*

The singer Jelena Marjanović was killed in April 2016 in the Belgrade neighborhood of Borča, and it was some time before the police found the culprit. This case attracted a vast amount of coverage in Serbian tabloids, and the privacy of the Marjanović and Krsmanović families suffered greatly.<sup>4</sup>

In mid-September 2017 Zoran Marjanović, Jelena's husband, who was appearing on the Pink TV reality TV programme Zadruga,<sup>5</sup> was arrested on suspicion of her murder. A few weeks earlier, in August, the tabloid *Informer*<sup>6</sup> had claimed that Zoran would be arrested on-air. *Informer* quoted the editor of TV Happy, Milomir Marić<sup>7</sup> who confirmed the story. Marjanović's arrest was thus announced two weeks before it took place.

It is difficult to determine which of the published details from the Marjanović case were discovered during the investigation, and which were the results of tabloid speculation, but the pre-announcement of Zoran's arrest is a notable example of what has already been established in Serbian society as a normal phenomenon – leaking.

This term includes all cases in which data from institutions - even that marked as secret - ends up in the public domain, most often through the media.

For many years, the Serbian public has found out details of ongoing investigations, indictments that have not yet been announced and closed trials. This happens on an almost daily basis. It can involve anything from divorce cases to allegations of high-level corruption and organised crime.

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4 Krsmanović was Jelena Marjanović's maiden name.

5 Pink is a pro-government private television station that frequently broadcasts reality TV programmes. For years it has been one of the largest tax debtors in Serbia, but nevertheless it receives financial assistance from the state.  
<https://www.cins.rs/english/news/article/pink-received-at-least-7-million-in-loans-from-the-state>

6 A pro-regime tabloid that regularly runs campaigns against investigative journalists in Serbia, calling them foreign mercenaries and spies.

7 "The crown of this reality show should be the arrest of Zoran Marjanović as the murderer of his wife," said the editor of TV Happy, Milomir Marić.

Nenad Stefanović, the deputy public prosecutor in Belgrade's Third Basic Prosecutor's Office, says that information goes to the media first, and only later do the police inform prosecutors.<sup>8</sup> According to him, the police leak most information from preliminary investigations. The minister at press conferences should not discuss police actions and arrests before the prosecutor assesses evidence and eventually raises the indictment. In the current situation, the prosecutor's office is reduced to providing basic procedural information - that someone was detained for 48 hours or that an order was issued, say - and should not disclose police work, Stefanović says.

### **The problem of “creating” information**

Leaking and misrepresenting information is serious enough: worse is the creation of news for political purposes. In the Marjanović case, the live arrests suggest that the state possibly colluded with a TV station that is close to the government in order to boost its ratings.

The Ministry of Interior of Serbia (MUP) refused to talk to journalists from the Center for Investigative Journalism of Serbia (CINS). Despite repeated requests, CINS journalists have been unable to secure an interview with the police for more than two years.

Earlier CINS research<sup>9</sup> confirms the way in which senior state officials from previous and current authorities announced arrests, prejudiced outcomes and announced successful steps in the fight against crime and corruption. The actual results were largely inconsistent with the political announcements.

### **Leaking official secrets**

In the *Progress Report on Serbia for 2016*, the European Commission mentions in several places the problem of leaks. They say they happen often and that, in addition to threatening ongoing investigations, the practice violates the presumption of innocence. The report also says politicians are commenting in public on investigations and incomplete trials.

For example, after the arrest of Zoran Marjanović, the President of Serbia, Aleksandar Vučić, spoke of him as the murderer, although no indictment had yet taken place. Vučić even gave details of Jelena Marjanović's fatal injuries, saying that there were several holes in her skull.

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8 "Last night, for example, I was on call and read this morning in the newspapers that there was a fire in Novi Beograd, where one person died. Nobody contacted us", Stefanović said in an interview he gave to the CINS at the end of August.

9 <https://www.cins.rs/english/news/article/fight-against-corruption-spectacle-on-camera-silence-in-courtrooms>

## How do politicians get information?

When a president, minister, prime minister, MP or other politician publicly and openly discloses information from the investigation, the key question is this: how is it possible that the information reached them at all? The solution is to stop representatives of the executive or legislative authority from even being able to legally access data about the investigation, rather than simply warning them that disclosing such data is not allowed. Of course, the main problem is the absence of political will to enforce the existing rules. As long as the EU membership process reports mention some (even inadequate) progress in adopting an act or procedure, even as none of the violations has been thoroughly examined and punished, there will be little incentive to solve the problem.

Saša Đorđević, a researcher at the Belgrade Centre for Security Policy (BCBP), points to a front page of the *Kurir* newspaper about the arrest of Veljko Belivuk, one of the leading Partizan football fans, the night before the police informed the public of his arrest. According to Đorđević, institutional independence, especially the police and prosecutor's offices, is the most important way to prevent leaks. Part of the responsibility also lies with politicians, who need to protect institutions.

Đorđević says that since Slobodan Milošević's regime was overthrown in 2000, all the political parties have been "in love" with the police and security services and used them to their advantage. He adds that it must be clear who has access to data, and that leaks should attract criminal proceedings. Those that involve high-ranking staff from the police, the prosecutor's office or the Security Information Agency (BIA) should be thoroughly investigated.

Branko Lazarević was the Chief of Staff of the current First Deputy Prime Minister and Minister of Foreign Affairs, Ivica Dačić, at the time Dačić was the Minister of Interior.<sup>10</sup> There is an ongoing procedure against Lazarević before the Special Department for Organised Crime of the Higher Court in Belgrade. He is suspected of providing information to Rodoljub Radulović and Radovan Štrbac, associates of Darko Šarić - charged with money laundering and international drug trafficking - from the proceedings against them. Although the indictment was raised in September 2014, the trial has not yet begun.<sup>11</sup>

Data from the Republic Public Prosecutor's Office reveals that it received three new charges of disclosing official secrets in 2016. In the same period, two charges were rejected, and one was resolved by applying the principle of opportunity - by which, instead of charges, for example, money is donated to humanitarian causes.

As CINS has already written,<sup>12</sup> the Commissioner for Information of Public Importance and Personal Data Protection, Rodoljub Šabić, filed charges against the Minister of Health, Zlatibor Lončar, after a request was sent from his office to the Dr Laza Lazarević Clinic for Psychiatric Diseases asking for information about the diagnosis of Aleksandar Kornic, the former director of daily newspaper *Kurir*. This information was

10 Ivica Dačić is the President of the Socialist Party of Serbia, which for years has been a part of the coalition in power in Serbia, and whose long-time leader was Slobodan Milošević. He held several ministerial positions in Serbia. From 2012 to 2014 he was the Prime Minister.

11 The case against Branko Lazarević for disclosing official secrets is infinitely postponed and there is no sign it will ever come to court. "There must be one case, one trigger, which will establish good practice and indicate that leaking or servicing information is not possible", explains Saša Đorđević from BCSP

12 <https://www.cins.rs/english/news/article/citizen-privacy-for-disposal-for-years>

published several days later in a show called “Overthrowing Vučić - the Last Act” on TV Pink. The editor of the *Informer* newspaper, Dragan J. Vučićević, took out Kornic’s medical file and read the findings.<sup>13</sup>

The case against Lončar has been dropped due to the statute of limitations.

Charges were also filed against the Minister without Portfolio, Slavica Đukić Dejanović, because at that time she was the director of the Dr Laza Lazarević clinic. Pursuant to the first-instance ruling, she was given a warning, instead of a legally prescribed cash fine.<sup>14</sup>

Prosecutor Nenad Stefanović also initiated a case of unauthorised disclosure of information from the trial. Part of the trial of the former leader of the Surčin gang, Ljubiša Buha Čume, was closed to the public. Consequently, any disclosure of information was a criminal offence, as all those present in the courtroom were warned.

However, details of the trial – and even entire courtroom exchanges – appeared on several occasions in different media outlets. Because of this, the Third Basic Prosecutor’s Office, where the prosecutor Nenad Stefanović works, filed criminal charges before the First Basic Prosecutor’s Office in Belgrade.

In a reply to the CINS, the First Basic Prosecutor’s Office stated that there were no grounds for initiating criminal proceedings - that is, they did not find any probable cause that “in the actions of a person all the essential elements of any criminal offence prosecuted *ex officio* are acquired.”

### **Criminal charges against the Ministry of Interior and the Ministry of Defence**

The Commissioner for Information of Public Importance and Personal Data Protection filed criminal charges against unknown officials from the Ministry of Interior and the Ministry of Defence at the beginning of September 2017, for the criminal offence of unauthorised collection of personal data on the president of the opposition New Party (Nova Stranka) and Member of Parliament, Zoran Živković.

The incident concerned took place several months earlier, in June 2017, when the MP of the ruling Serbian Progressive Party (Srpska napredna stranka), Aleksandar Martinović, revealed the reasons why Živković did not serve in the army by reading from confidential army and police documents during a parliamentary debate.

The Commissioner got a reply from the Ministry of Defence, but the Ministry of Interior did not provide the requested documentation.

<sup>13</sup> Aleksandar Kornic had previously filed criminal charges against Dragan J. Vučićević, and the director of the company that owns the newspaper, Damir Dragić, accusing them of asking him to “tell lies” about the owner of *Kurir*, Aleksandar Rodić, and promising him “all sorts of things” in return. In the charges, Kornic claimed this happened in a restaurant in Belgrade, and that the then Serbian Prime Minister Aleksandar Vučić and his brother Andrej were also present. This happened immediately after *Kurir* published Rodić’s article titled “Serbia, I am sorry” on its front page, stating that he was involved with Vučićević and Željko Mitrović (the owner of TV Pink) in the “project of beautifying reality”, helping the election staff of Aleksandar Vučić. For some time after this *Kurir*’s reports on the authorities were markedly negative, which later changed, but during the summer of 2017 they again became critical of the authorities and Vučić. *Kurir*’s staff subsequently claimed that they lost advertising from the institutions as a result, and that the tax administration blocked their accounts for the same reason.

<sup>14</sup> Particulars of the judgement of the Misdemeanour Court in Belgrade states that a warning was ruled issued instead of a legally prescribed cash fine because it “can be expected that she will refrain from making violations in future”.  
<https://www.cins.rs/srpski/news/article/opomena-za-slavicu-djukic-dejanovic-i-kliniku-laza-lazarevic>

## The responsibility of journalists

People have different motives for leaking secret information to the public.

The editor of the portal *Južne vesti* and the president of the Association of Online Media, Predrag Blagojević, says they are mostly political or financial. Blagojević describes how at one point anonymous sources offered information about police activities in exchange for money.<sup>15</sup>

One of the motives can be to push an investigation in a particular direction. Prosecutor Nenad Stefanović says media are given partial information which then becomes the focus of the coverage. Consequently, the questions raised may not have anything to do with the investigation.

In its 2016 Annual Report, the European Commission noted that media owners and editors must pay more attention to respecting professional standards, with the support of the Press Council.

Blagojević shares this opinion and adds that the police and the prosecutor's office have legal responsibilities, but that moral responsibility lies with the media and journalists. He believes that journalists must be aware of the position of their source and his or her motives, and whether it is possible to verify information, i.e. to confirm it from another source.

When investigating whether leaks took place during a murder and rape trial concerning a village near Zaječar, the Commissioner for Information of Public Importance, Rodoljub Šabić, examined information from the Ministry of Interior, the Police Administration in Zaječar and the Higher Public Prosecutor's Office in Zaječar. He found that the data published in the media differed significantly from that in the official documentation. While there was no leaking, the media simply published incorrect information.

Predrag Blagojević says that he has no doubt that there are cases in which the media, quoting an institutional source, fabricate information.<sup>16</sup>

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<sup>15</sup> In order to demonstrate the reliability of his information, several times he sent us was sending us information about fights, accidents, and it happened that sometimes our journalists came to arrived at the scene before the police, which was extremely unpleasant. Having realised that our anonymous 'source' is actually someone from the system, I ended further cooperation", said Predrag Blagojević.

<sup>16</sup> That is how stories emerge about thousands of Albanians buying flats in Nis, hens whose flesh glows in the dark, hundreds of female students from Vranje and Leskovac selling sex in Kosovo, etc. These are stories that cannot be retracted, which disturb the public, and whose sources are often cited as 'from the police and prosecutor's office'", Blagojević explains.

## Questionable facts

While the leaking of actual information about criminal investigations and pre-investigative actions is a serious matter, the issue of its truthfulness is even more serious. Once the disclosure of unverified facts about investigations becomes commonplace, and not just in tabloids of questionable credibility, it becomes much easier to report not only information about actual events (and which should have stayed confidential), but also complete misinformation.

In some instances, even very senior Serbian officials, including the Minister of Interior, the President and other members of the government, are publishing completely unverifiable (and highly improbable) information about serious crimes.

The newly-formed Data Security and Protection Service (created by the reorganisation of the Ministry of Interior at the beginning of 2016) is responsible for collecting, processing, analysing and exchanging operational data, as well as for handling and exchanging foreign classified information. Its purpose is to prevent the outflow of confidential information at all levels in the Ministry. This seems a promising development, but is problematic for two reasons.

Firstly, the Data Security and Protection Service can scarcely prevent the political abuse of information that comes from the police. The Service is directly subordinate to the Minister of the Interior, who is a representative of the executive authority and usually a member of the ruling political party. Consequently the Head of the Service is responsible only to the Minister of the Interior. In no other service is this the case. For example, the Service for Combating Organised Crime is within the Criminal Police Directorate. This means that the Data Security and Protection Service is not independent, which is crucial for the effective control and prevention of political misuse of information coming from the police. Secondly, the creation of the Data Security and Protection Service has complicated the internal management of the Ministry of the Interior. It is now the fifth organisational unit in the Ministry.<sup>17</sup>

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17 [http://www.bezbednost.org/upload/document/procena\\_integriteta\\_policije\\_u\\_srbiji\\_2016.pdf](http://www.bezbednost.org/upload/document/procena_integriteta_policije_u_srbiji_2016.pdf)

## CS 2: MANIPULATION OF TRIALS AND FLAWS IN THE PROSECUTION SYSTEM

*The Belgrade Higher Prosecutor's Office failed to correct mistakes in the indictment against Slobodan Milošević's wife and nine other indictees, which is why the 14-year trial has been further delayed. In total, 533 trials for crimes in Serbia have lasted more than 10 years.*

**The case of the trial against Mira Marković** illustrates two systemic groups of problems of political influence on the Serbian judiciary. The first involves the manipulation of statistics and results (SP 5). When there are no reliable and verifiable data on the work of investigating authorities, it is easy to shape statistics for political and other ends.

The second group of problems in the system are weaknesses in the functioning of the prosecution system (SP 7). Obsolescence is probably the most reliable way to avoid criminal responsibility because the culprit is unconditionally acquitted. If this is someone else's fault – witnesses who did not respond to summons, a prosecutor who did not specify the indictment – so much the better.

### The prosecutor's office in the case against Mira Marković disregarded the court for more than a year

*Written by: Milica Stojanović*

The indictment alleging that Mirjana (Mira) Marković and nine others suspected of abuse in allocating state-owned apartments had material errors. The Higher Court had warned the Belgrade Higher Prosecutor's Office of these errors for months. It finally submitted the amended indictment in October 2017. In total, the trial has lasted for 14 years, the indictment has been amended on several occasions, and the entire trial has been restarted at least five times.

As well as Marković,<sup>18</sup> the wife of former Yugoslav President **Slobodan Milošević** and the director of the Yugoslav Left's Directorate (*Jugoslovenska levica*), the following people were charged: **Mihalj Kertes**, former Director of the Federal Customs Administration,<sup>19</sup> Jovica Stanišić, former Head of the State Security

18 Another investigation was led against Mira Marković in Serbia: she was suspected of organising the smuggling of cigarettes in Yugoslavia between 1996 and 2001, together with her son Marko. The investigation started in 2007. An indictment against several people was raised in 2010, but the investigation against Marković and her son has been suspended since they are not in Serbia. One other person was convicted and four acquitted, including the former Director of the Federal Customs Administration, Mihalj Kertes. An appeal is underway.

19 Mihalj Kertes was a communist official and associate of Slobodan Milošević. In the early 1990s, he was appointed head of the State Security Service and Assistant Minister of the Interior, and became the director of the Federal Customs Administration in the wake of the war in the territory of former Yugoslavia - he remained in that position until the political changes in Serbia in 2000. Apart from the charges relating to the flats, five different court proceedings were brought against him: three for smuggling cigarettes (one conviction, one acquittal and one statute of limitation), one for expropriating state money to Cyprus (statute of limitation) and for assisting in the murders of four officials of the Serbian Renewal Movement (SPO) (of which he was convicted). At the end of 2015 he left the SPS and joined the ruling Serbian Progressive Party (SNS). He was soon acquitted of charges of abuse of office and of moving money to Cyprus.

Service of the Serbia's Ministry of Interior,<sup>20</sup> and former officials of the state-owned real estate rental company Dipos and the municipality of Novi Beograd.

The correspondence with the Higher Court had been going on since the Prosecutor's Office filed a new consolidated indictment in April 2016, referring to the sums of money that some of the defendants' relatives and friends allegedly gained. The Higher Court in Belgrade asked the Prosecutor's Office to state what the figures referred to and to correct any errors. In July 2016 the trial judge, Snežana Nikolic Garotić, told the Higher Prosecutor's Office it was necessary to check the sums stated in the indictment. The defendants were Živka Knežević, former Secretary General of the government of Serbia, and the members of the Board of Directors of Dipos (three former officials of the Municipality of Novi Beograd, Milutin Milošević, Miloš Batina and Zoran Perić).

According to the indictment, the four took part in the illegal allocation of four flats, while Knežević was charged with illegally allocating a further two, one of which went to a female relative of Slobodan Milošević. The indictment was divided into six sections, one for each flat.

For four of the six apartments, the value of the property and the amount of money for which it was subsequently sold was indicated. In the other two, the alleged material gain did not match the difference between the flat's value and the money paid to the state to buy it. Knežević was charged with making a 1.8m dinar profit, but this was the same amount alleged to have been made from the sale of all six flats, and it was therefore unclear what the three officials were accused of having gained.

The Prosecutor's Office told the court that the defence attorneys had already objected to these amounts, but that they were denied by the court in 2003.

However, in another memo the Court insisted that the figures be amended: "Regarding the response to check the amounts (...) I am restating that, regardless of the fact that the indictment was confirmed, technical errors in typing and calculation can and must be corrected because amounts in the indictment were obviously incorrectly entered due to a technical error."

The Prosecutor's Office responded identically as before, and did not correct the amounts.

In February 2017, the court asked the Prosecutor's Office to state how they came to the amounts presented in the indictment. The Prosecutor's Office replied that these figures resulted from analysis of evidence, and restated that the defence attorneys' objections to this were denied in 2003.

After unsuccessful addresses to the Prosecutor's Office, the High Court requested an expert review of the disputed amounts. The calculation was eventually carried out at the trial itself, when it was established that the sum amounted to 1.17m rather than 1.7m dinars.

In October, the Prosecutor's Office filed an amended indictment in which, according to the prosecutor, the dates and figures were "harmonised". Since not all the defendants received the amended indictment, the main hearing was postponed until December 13 2017.

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20 Jovica Stanišić, also a close associate of Slobodan Milošević, had worked in the Serbia's State Security Service since the mid-1970s, and in 1991 he became the head of service, where he remained until October 1998. He was arrested in 2003 and delivered to the International Criminal Tribunal for the former Yugoslavia in the Hague, where in 2013, together with his deputy, Franko Simatović, he was acquitted of war crimes committed from 1991 to 1995 in Bosnia & Herzegovina and Croatia. However, in 2015 the verdict was overturned, the trial was remanded and the proceedings are still ongoing.

In addition to the long wrangle over the correct figures, a journalist from the Center for Investigative Journalism of Serbia (CINS) found the indictment incorrectly stated that Knežević had committed the criminal offence of abuse of office “described under items 1-a, 1-b, 1-v, 1-g, 1-d i 1-đ.” There are no points 1-g, 1-d and 1-đ in the indictment, but points 2-g, 2-d and 2-đ.

In addition, an error on the first page of the indictment was identified. One of the defendants was named as Mihalj Kerkez, instead of Kertes. Kertes is well-known to the general public.

The Higher Prosecutor’s Office did not reply to the CINS’s questions on the subject, stating that “when proceedings are in progress, they are not commented on by the prosecutor’s office in the media.”

## Fewer old cases

Since the autumn of 2016, when the Marković trial was restarted, nine of the scheduled 18 main hearings have been held. At one of the hearings it was decided that the trial of two of the indictees should be conducted separately.

From its beginning, this case has been conducted slowly and inefficiently.<sup>21</sup> Hearings have been postponed more than 50 times, with the non-attendance of witnesses the most common reason.

Of the 12 initial defendants, two cases were dropped because of a statute of limitations for the offences of which they were accused. These are Bratislava Morina, former Minister for Refugees, Displaced Persons and Humanitarian Aid, and Petar Zeković, a former official in the Ministry of the Interior.

Long-term trials<sup>22</sup> of serious crimes that end without a conviction are not unusual in Serbia, which makes the judiciary ineffective and is a burden on the budgets of judicial institutions.

At the end of 2016 there were 1,703 criminal cases that had lasted over five years and 533 cases lasting over 10 years (taking the indictment date as a starting point). Compared to the end of 2015, there has been an improvement: at that time, there were a total of 583 trials lasting over 10, i.e. 2,188 over five years.<sup>23</sup>

### The importance of statistics

Statistics are crucial in this area. Rather than serving to inform the public, they can be deliberately selective. With a mass of data, it is very easy to find statistical information that can “prove” anything - for example, that a trial has been deliberately delayed, because there are too many older cases to be solved; that courts are becoming more efficient and the number of unresolved cases falling, when this is in fact because of a change in the law.

<sup>21</sup> <https://www.cins.rs/srpski/news/article/beskrajni-procesi-za-krivicna-dela-sudjenje-miri-markovic-50-puta-odlagano-tokom-13-godina>

<sup>22</sup> All courts submit programmes for the resolution of old cases by 31 January each year. According to the court rules of procedure, the term “old cases” means all cases more than two years old, and they are kept in annual programmes under two criteria: the date of indictment and the date when the case was received by a particular court. The annual programmes were introduced in 2014, but the Ministry of Justice at the end of 2015 found that there was an error in the calculation formula by date of receipt - the mathematical sign for “less or equal” (<=) was missing in the formula. The Annual Court Report of the Supreme Court of Cassation states: “In January 2016 the formula for calculation of old cases by the date of receipt was amended, which led to a change in the number of outstanding old cases by the date of receipt at the beginning of the reporting period.”

<sup>23</sup> Collection and verification of such data lasts for several months, since in most cases it is necessary to send a separate request for access to information of public importance to each court.

## Litigation

At the end of 2016 there were 9,276 litigation cases that had been going on for more than five years – and 1,490 cases lasting over 10 – before the courts in Serbia.

Milan Antonijević, Director of the Lawyers' Committee for Human Rights (YUCOM), told the CINS that the drop in number of cases did not surprise him – but that it was still a high number.<sup>24</sup>

In a single year in the First Basic Court in Belgrade, the number of cases lasting over five years was reduced by 160, and those over 10 years by 23. According to the court data, 70 of the cases lasting over five years resulted in convictions and 33 in acquittals. Other cases ended because they were dropped by prosecutors, due to the statute of limitations, or because indictments were merged.

During 2016 the Basic Court in Niš completed 159 cases that had lasted more than five years. The majority of them (139) ended with a ruling. The court told the CINS that the number of new cases had been reduced, so judges scheduled hearings more often, and processes such as plea bargaining used more frequently.

At the end of 2015 in the Basic Court in Prijepolje, 33 cases had lasted longer than five years, and 25 were resolved. Of the latter, 20 were ended by a ruling, and in two cases the trial was halted by a statute of limitations. The court said that the resolution of old cases was influenced by additional engagement and a rise in the number of judges, as well as the appointment of an interpreter for the Bosniak language.<sup>25</sup>

“Application of procedural actions ensured the presence of a certain number of defendants, who were not previously available to the court. For a number of them who remained unavailable, at the proposal of the public prosecutor, the trial was conducted in absentia,” stated the Basic Court in Prijepolje.

## Pre-2000 abuses

Unlike other cases – in which the statute of limitations is invoked after court delays – the Markovic case seems to be politically motivated. Not only were proceedings slow and the prosecution unable to advance the case, but almost all the trials of alleged abuses in the 1990s have been abandoned, or failed. The politicians who were ousted in 2000 have now become very useful to the cohort who replaced them. Of course, it is possible that political influence was brought to bear from the other side – that prosecutors, after the October 5<sup>26</sup> changes and the initial enthusiasm to punish those who had ruined Serbia, were given a task beyond their ability. If the quality of evidence against the defendants was not good enough, prosecution was bound to be ineffectual.

24 “We can see that the hearings begin to be scheduled where they previously did not, many things become a priority, which is quite positive,” Antonijević says, adding that the “return to life” of some multi-year cases also resulted from constitutional complaints regarding the trial within a reasonable time.

Protection of the right to a trial within a reasonable time means that any party to the proceedings who thinks that proceedings are taking too long may file an objection to the court for the purpose of speeding up, appeal or request for just satisfaction (monetary, or the declaration of a ruling).

25 Although the Bosniak and Serbian languages are practically identical and easy to understand for both groups of speakers, the court proceedings involving Bosniaks were delayed for some time because the Bosniaks requested an interpreter/translator, claiming that they did not understand Serbian.

26 Refers to the 5 October 2000 democratic revolution in Serbia that resulted in the downfall of Slobodan Milošević's regime.

### Disciplinary violation

According to the law, unlawful non-scheduling of a hearing or a trial, or an unreasonable delay in proceedings, is a disciplinary violation. The violation is a serious one if there has been a material disturbance in the performance of judicial authority or work assignments in the court, or the public's trust in the reputation of the judiciary has been significantly impaired. This is especially so if a statute of limitations is invoked because of the judge's failings, and if the property of one of the parties is negatively affected.<sup>27</sup> If a judge is deemed to have committed a serious disciplinary offence, the Disciplinary Commission initiates the **procedure for their dismissal**.<sup>28</sup>

Similarly, the Law on Public Prosecution stipulates that the public prosecutor and the deputy public prosecutor can be dismissed, *inter alia*, if they have committed a serious disciplinary violation. This happens if there has been material disorder in the performance of their duties or tasks in the public prosecutor's office, or the public's trust or the reputation of the judiciary has been **significantly impaired**. **Again, if the statute of limitation is involved**, or if there has been a repeated violation, the offence is more serious. Disciplinary violations include a violation of the principle of impartiality and **endangering the confidence of citizens in the public prosecutor's office**.

### A misleading impression of the judiciary

The European Commission's approach has unfortunately contributed to a misleading impression of the Serbian judiciary. This is because the Commission often assesses its performance on the basis of efficiency rather than quality. There is a clear tension in efforts to reduce the case backlog and high-profile cases, where the statute of limitations tends to be invoked. In other instances, 'efficiency' comes at the price of the human rights of prisoners. For example, the law on the execution of criminal sanctions can be abused by the courts, medical experts and criminals themselves in an effort to delay punishment.

The case of Ivan Pavlović Iker, a convicted drug dealer, is instructive. When he was arrested in July 2017 for cocaine possession he had already been waiting nearly a year to serve a nine-year prison sentence for reportedly smuggling 274kg of the drug from South America. The arrest took place several days after a bomb was discovered under his Maserati car in a Belgrade garage. His sentence had been decided in June 2016. Pavlović was then at liberty waiting to be sent to prison. After the 2017 arrest, Pavlović pleaded guilty and signed an agreement with the Prosecutor's Office, after which he was transferred to prison to serve his sentence.

Sale Mutavi, another of the smugglers, also delayed his sentence several times, in the meantime working as a bodyguard for the managers of FC Partizan at public events, such as football matches. He requested a suspended sentence on health grounds. In Serbia a convicted criminal cannot begin their sentence until any application for a delay has been decided.

<sup>27</sup> Article 90

<sup>28</sup> Article 92

## CS 3: ARBITRARY DECISIONS - THE DINKIĆ CASE

*The investigation of Mlađan Dinkić, the former Minister of Finance and Economy - who was in coalition with the party of former Serbian President Boris Tadić and the current President Aleksandar Vučić - illustrates one of the systemic problems that afflict Serbian prosecutors. The decision of whether a state authority will act or not can be arbitrary (SP 3). The police and the prosecutor's office have a degree of freedom to assess whether a case justifies their intervention, and the extent of that intervention. If there are no criminal charges, but only the suspicion of wrongdoing or a report in the media or from another state authority, they enjoy a great deal of discretion. This environment is fertile ground for corruption and political influence.*

*During 2006, the then MP of the Serbian Radical Party (SRS), and now the President of Serbia, Aleksandar Vučić waved a prison uniform bearing the name Mlađan Dinkić in the Serbian Parliament. Dinkić later sued him twice, subsequently withdrawing the lawsuits. After he had left power, Dinkić was suspected of abusing his office, but the investigation was suspended.*

*Political influence could have played a role in the decision to start the investigation - since Dinkić's party was then no longer in coalition, and because of pressure on Aleksandar Vučić from the EU to resolve the '24 privatisations'<sup>29</sup> case.<sup>30</sup> Similarly, the decision to drop the case came when Dinkić was reportedly close to a number of ruling politicians.*

### The Case of Mlađan Dinkić - Investigation without a Judicial Epilogue

*Written by: Ivana Jeremić*

The Prosecutor's Office for Organised Crime launched an investigation against Mlađan Dinkić at the end of 2014, but two years later suspended it. Allegations that Dinkić had abused his position as the Governor of the National Bank were subsequently dismissed.

Although he was frequently criticised by senior politicians and charged with "destroying the Serbian economy", Dinkić managed to join every government from 2000 to 2013.

29 In 2011, the European Commission asked Serbia to solve 24 cases of corruption, problematic privatisations and the sale of state-owned companies, which were commonly referred to as the "24 controversial privatisations." Representatives of the government, led by Aleksandar Vučić, often referred to these cases as if they had already been closed, but most of the cases have not been resolved to date.

30 <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2014-0039+0+DOC+XML+V0//EN>

### Dinkić's duties

From November 2000 to February 2003, Mlađan Dinkić served as the Governor of the National Bank of Serbia, and from March 2004 to October 2006 he was the Minister of Finance. He was appointed Minister of Economy in May 2007, and he kept this role when the next government was formed in 2008, and he became Deputy Prime Minister. At the beginning of 2011 Dinkić left office.

In the 2012 parliamentary elections, his party G17 Plus was part of a wider coalition called the United Regions of Serbia (URS), after which the movement became part of the ruling coalition alongside the Serbian Progressive Party (SNS) and the Socialist Party of Serbia (SPS). In the new government, Dinkić was in charge of finance and the economy since July 2012. In August 2013 the URS was expelled from the ruling coalition and after parliamentary elections in March 2014, where the URS remained below the parliamentary threshold, Dinkić resigned as party leader.

Dinkić's example is only one of a number of cases of alleged serious corruption that have never been tried in court, although the media and politicians have portrayed them as closed. In Serbia, the Center for Investigative Journalism of Serbia (CINS) has said the fight against corruption is often reduced to media announcements and arrests on TV.

These arrests are followed by numerous criminal charges, fewer indictments, and even fewer convictions, with minor cases of corruption more likely to be punished. Sometimes criminal charges have a political purpose.

In 2006, the current President of Serbia, Aleksandar Vučić, then an MP and a representative of the Serbian Radical Party,<sup>31</sup> promised that Dinkić would be sent to jail. He even brought a prison uniform bearing Dinkić's surname to the Assembly.

Dinkić sued Vučić in 2007 for reputational damages, and the First Municipal Court in Belgrade ruled in December 2008 that Vučić must pay damages of 800,000 dinars and litigation costs. The court also ordered that the ruling must be published in the daily press. Vučić appealed, and in June 2010 the case was transferred to the Higher Court in Belgrade.

Dinkić withdrew the lawsuit four months later and the case was mothballed. CINS journalists were unable to access the documentation.

Dinkić had also sued Vučić for libel in March 2008, but in late 2009 he withdrew his claim. CINS journalists requested a copy of the documentation in this case, but the Third Basic Court in Belgrade said they could not locate the case file.

None of this prevented Vučić and Dinkić from forming a ruling coalition in 2012 with the Socialists. Although Dinkić was left without a ministerial portfolio in August 2013 when the government changed, Vučić appointed him as his deputy in the Governmental Committee for Cooperation with the United Arab Emirates.

<sup>31</sup> The Serbian Radical Party (SRS) participated in the war propaganda and clashes during the breakup of Yugoslavia in the 1990s, and its president, Vojislav Šešelj, is on trial for war crimes in The Hague. The current and past Presidents of Serbia, Aleksandar Vučić and Tomislav Nikolić, came out of the SRS and founded a new and, in principle European-oriented, Serbian Progressive Party (SNS) that has been in power since 2012.

## Investigation for abuse of office

The Prosecutor's Office for Organised Crime launched an investigation against Dinkić in late 2014. He was suspected of abusing his office as the Governor of the National Bank by awarding over 730 million dinars to the following banks: Nacionalna Štedionica, Delta banka (legal successor is Banca Intesa), Komercijalna banka, Panonska banka (Banca Intesa), Meridijan banka (Credit Agricole Bank), Agro banka, Credi banka, Novosadska banka (Erste Bank), Vojvođanska banka, MB banka Niš, Metals banka (Development Bank of Vojvodina), Kulska banka (OTP Bank) and Prva preduzetnička banka (LHB Bank NLB).

### Abuse of office

The criminal offence of abuse of office is very wide. It includes situations in which an official oversteps their authority or neglects official duties, but also when they "merely exploits their official authority". In other words, it is not necessary to have violated a regulated pre-existing procedure in order to be criminally liable; it is enough that someone abused their position to benefit themselves or others, or seriously violated someone else's rights.

In this case, the prosecutor's office would have had to prove that Dinkić, as the Governor of the National Bank, intentionally used one of his powers (to conclude a contract on the disposal of public property) in order to benefit the banks that were granted the right to use the property of the former SDK (the Social Accounting Service) free of charge. This would be easier if the prosecutor's office could prove that procedure was in some way violated. Had the Property Directorate and the Public Attorney agreed, they too would have overstepped their responsibilities.

The only information that appears to justify dropping the criminal prosecution is the findings of an expert report. It states that the value of the free leases the banks enjoyed from the state was less than the amount the state would have owed in severance payments to the bank employees. However, this arrangement was likely to be solely in the banks' interest (otherwise they would not have concluded a lease contract with the takeover of employees). The proper measure of the benefit they enjoyed is not the potential loss to the state through the implementation of the contract, but in the advantage they enjoyed over banks competing in the same market. Only if all banks had had the opportunity to enjoy this arrangement could it be argued that Dinkić's deal did not represent an unfair advantage.

According to the Prosecutor's Office, Dinkić gave the banks the right to use property controlled by the then National Bank of Yugoslavia, for three years and without compensating the National Bank. This amounted to 19,000 square metres of furnished office space. The agreement meant the banks needed to take on a number of employees from the National Bank's Institute for Calculation and Payments.

However, a Ministry of Interior report from October 2014 says that the governor did not have the authority to make agreements with banks without the prior agreement of federal or republic authorities.

CINS journalists discovered that Rodoljub Milović, the then head of the Criminal Police Directorate, signed a request in October 2012 to obtain information on whether the National Bank had sought the permission of the Republic Public Attorney's Office (the former Federal Public Attorney's Office) to use the premises.

A week later the Public Attorney's Office said they had no information on this. The Republic Property Directorate also said it had no information about the matter.

The witnesses in the case included Dušan Lalić, the former Director of the Directorate for Legislative and Legal Affairs of the National Bank, Nebojša Skorić, the former Assistant General Manager of the General Directorate for Administrative and Common Affairs of the National Bank, Miroljub Labus, the former Governor of Yugoslavia at the World Bank, Minister for Foreign Economic Relations and Deputy Prime Minister of Serbia, Radovan Jelašić, the former Vice-Governor and Governor of the National Bank, Božidar Delić, the former Finance Minister, and Vesna Arsić, the former Vice-Governor of the National Bank.

### **The council reported on this case in 2004**

According to the Anti-Corruption Council's report on the National Savings Bank (Nacionalna Štedionica), which was submitted to the Government of Serbia and the Republic Public Prosecutor's Office in 2004-05, Mlađan Dinkić gave the National Savings Bank permission to use the equipment and business premises of the former Institute for Calculation and Payments.

He also allegedly arranged for a payoff to be given to the National Savings Bank using a large portion of the old foreign currency savings, and provided numerous other privileges without competition.

## **Expertise almost a year after launch of investigation**

Although the investigation was launched at the end of 2014, a request for economic and financial expertise was only issued on 29 October 2015, and supplemented several days later.

The financial expertise was to determine the exact listing of the business premises, and the amount of money that the banks would have paid if the cost of the lease had been in line with the city authorities' recommendation. It also sought to find out the amount that would have been paid in redundancy payments to employees of the Institute for Calculation and Payments, who had to move to work for other banks.

In January 2016 the court expert provided findings to the Prosecutor's Office, and soon Mlađan Dinkić's counsel filed objections to them. In May, the expert responded. The case made no further progress until 15 December 2016, when the Prosecutor's Office issued an order to complete the investigation, before terminating it on 26 December.

Although the governor did not have the authority to draw up agreements with the banks, according to the Ministry of the Interior's report, the Prosecutor's Office stated that Dinkić's actions had not been of a criminal nature.

The investigation had shown that the unrealised profit from the unpaid lease for the National Bank's premises was lower than the redundancy payments for which it would have been liable.

The State Public Attorney's Office of Serbia objected to the termination of the investigation, but on 29 December 2016 the Republic Public Prosecutor's Office rejected their objection. Just two weeks later, on 10 January 2017, Dinkić was questioned again. The Ministry of the Interior told CINS journalists that the

case was at a preliminary stage, while the Prosecutor's Office for Organised Crime said Dinkić had given information about several cases as a citizen.

They were unable to disclose more information because the preliminary criminal proceedings were ongoing and the case was still unofficial.

Dinkić refused to talk to the CINS journalists.

### Independence of Prosecutors

The Law on Public Prosecution stipulates that the Public Prosecutor and their deputy act independently from the executive and legislative authorities. The Public Prosecutor and the Deputy Public Prosecutor are obliged to maintain trust in the autonomy of their work. No one outside the Public Prosecutor's Office has the right to decide matters on their behalf, or to influence their decision-making. They are answerable only to the competent Public Prosecutor.<sup>32</sup>

The Anti-Corruption Council's Report on the Current State of the Judiciary summarises several examples of the executive authority's influence over the independence and autonomy of the judiciary, and repeats its earlier warnings to politicians who violate the presumption of innocence, and announce arrests before the prosecutor's office gets involved: "The Council was following statements of politicians and found that the influence of politicians to the judiciary and violation of the presumption of innocence continued in the same extent as before." Examples included:

- › The Prime Minister at the time (now President of the Republic) called Miroslav Mišković a 'criminal' and Dragoslav Kosmajac 'the biggest drug dealer', even though criminal proceedings against them had not yet begun;
- › The Prime Minister also said that Siniša Mali, at the time Mayor of Belgrade, now Finance Minister, is innocent of any offence - he neither owned nor bought apartments in Bulgaria, and his signature was a "forgery", relieving him of any guilt and responsibility;
- › He exonerated two ministers and a general from any responsibility for a helicopter crash in bad weather conditions; the route was changed at the last minute.

"The question is .. can judges and prosecutors dare to ignore it when politicians make extraordinary and politically-motivated requests to them to prosecute?"

"Any such statement amounts to an instruction and a warning for prosecutors and judges on how to act if they want to satisfy politicians in power – the people on whom their livelihoods depend."

The Council suggests that judges and prosecutors are intimidated, and that there are good reasons for them to be afraid. The High Judicial Council (HJC) and the State Prosecutorial Council (SPC) do not protect them from pressure from politicians. (The Anti-Corruption Council's Report on the Current State in the Judiciary of the Government of Serbia)<sup>33</sup>

32 Article 45

33 <http://www.antikorupcija-savet.gov.rs/en-GB/reports/cid1028-3082/the-report-on-the-current-state-in-the-judiciary>

## CS 4: THE POLITICISATION OF THE JUDICIARY, POOR ACCOUNTABILITY, AND AN UNSATISFACTORY RELATIONSHIP WITH THE MEDIA

*Attempts to politicise the judiciary have become an everyday occurrence in Serbia, and politicians are not held to account for them. A **journalist's report** about the case of Judge Vučinić, who left the judiciary due to the pressure he suffered and because his independence was not protected, reveals several systemic problems (SP 1 and 4). Vučinić led the trial against businessman Miroslav Mišković. For the authorities, the trial was a crucial symbol of the fight against corruption, and understood as such by European officials and many Serbian citizens.*

### The politicisation of the judiciary in the Mišković case

*Written by: Dino Jahić, Dina Đorđević*

In September 2017 the Court of Appeal in Belgrade confirmed a decision by the Special Department of the Higher Court in Belgrade that Miroslav Mišković should be acquitted of charges of corrupt behaviour in relation to road company contracts. The Court of Appeal also annulled a Higher Court ruling which had sentenced Mišković to five years in prison and a fine of eight million dinars for helping his son Marko evade tax. The trial had to start all over again.<sup>34</sup>

The trial of Mišković, the owner of Delta Holding, started on 14 September 2013. In December 2014, it was restarted after being merged with the trial of Milo Đurašković, a former road company owner. He and his associates were charged with inflicting financial damage on road companies. Then the panel of judges was changed.

In December 2015, Mišković's trial was separated from the others because he was in poor health. The first-instance ruling was handed down on 20 June 2016.

Mišković<sup>35</sup> had been arrested in December 2012, at a time when the Serbian Progressive Party (SNS) had strengthened government in Serbia. Since his arrest, during the trial, and even after the decision of the

<sup>34</sup> The Court of Appeal found that the Higher Court violated the law by basing Mišković's convicting first-instance ruling conviction on the interpretation of the Law on Corporate Income Tax and the Law on Tax Procedure and Tax Administration, as well as on the notice of the Ministry of Finance and Economy. The Higher Court addressed asked the National Assembly of Serbia and the Ministry of Finance and Economy in the form of a letter, asking for answers to questions about whether the capital gains were realised and whether there was an obligation of tax reporting and payment calculation to report tax and payments.

According to the Court of Appeal, this is contrary to the Criminal Procedure Code. Also, the right to a fair trial under Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms was violated, as well as Article 4 of the Serbian Constitution, which established the principle of the division of power and guaranteed independence of the judiciary with respect to the executive and legislative authorities. "Therefore, in the specific case, it is not only a formal and legal deficiency (who is authorized to seek interpretation), but a fundamental violation of the law, since the court requires the body of another branch of authority to interpret a legal provision, of which, ultimately, the decision in the ongoing court proceedings will depend," states the decision of the Court of Appeal. <http://www.bg.ap.sud.rs/cr/archive/ok-donete-odluke/2017/9>

<sup>35</sup> In 2011 the CINS published a series of articles about Mišković's secret shares at Universal Bank, but this was never the subject of an investigation, although it intended to possible violations of the Serbian Law on Banks. <https://www.cins.rs/news/srpski/article/miroslav-miskovic-i-komplikovano-vlasnistvo-nad-univerzal-bankom->

Court of Appeal, the tabloids have portrayed Mišković as a tycoon and a criminal who has been trying to overthrow the government and has plotted against the leader of the SNS - the former Prime Minister, and now the President of Serbia, Aleksandar Vučić. Vučić himself has made similar allegations.

In its 28 September 2017 issue, the day after the Court of Appeal's decision, *Informer* led with the headline: "Definitive Proof That Courts in Serbia Do Not Judge by Law: Tycoons Ride Again - Mišković Ruling Annulled." On the same day, *Večernje novosti* wrote: "President Vučić on the case of Mišković: Here are your tycoons, let them steal everything that was being created."

### Political benefit at the expense of justice

At the most obvious level, this case illustrates the unsatisfactory relationship between the state, politicians and the media, particularly when it comes to communicating data from investigations, commenting on court proceedings and other ways of manipulating the judiciary for political ends. In this case the political interest was paramount and the court proceedings of secondary importance. When the president presents himself as a fighter against "tycoons", he is making a blatant attempt to win over a section of the public. The outcome of a case is less important than whether it can be instrumentalised for political purposes.

Nikola Selaković, the Secretary General of the President of Serbia and Minister of Justice from 2012 to 2016, told Radio-Television of Vojvodina that he saw no pressure on judges in Vučić's statement and that the President had only expressed his views. He added that, as someone who respects the rule of law, he accepted the judgment of the Court of Appeal on Mišković, "no matter how much he thought privately that this decision was embarrassing".

The next day the cover of *Srpski telegraf* said: 'Tycoons Stronger Than the State: Mišković, Đilas and racketeer Rodić OVERTHROWING VUČIĆ', and *Informer* took a very similar line, with the addition: 'The President Does Not Intend to Give Up: VUČIĆ'S FIERCE RESPONSE · Closing the investigation of the largest thefts from the state · In the New Year the war against serious crime and corruption begins · Possible arrests of tycoons, former ministers, judges.'<sup>36</sup> *Informer* ran a similar headline on 22 December 2015: 'Tycoon in Unprecedented Panic - Vučić To Make Arrests in the New Year.'

The Judges' Association of Serbia issued a statement on the media coverage of the trial. This behaviour, it said, "which is repeated with every judicial decision that does not correspond to the outcome previously unlawfully announced in the media, presents an openly unlawful message to judges on how to judge, not only in specific cases, but in all other cases of public interest and about which politicians and the media issued their "judgement" before and during court proceedings. This encourages citizens to distrust the judiciary. It also means judges feel less and less secure, and increasingly intimidated as they try to rule impartially, professionally and conscientiously."<sup>37</sup>

36 Apart from Mišković and Vučić, Dragan Đilas (a former Belgrade Mayor and former President of the Democratic Party (DS)), and Aleksandar Rodić, the owner of the Adria Media Group, who issues a competing daily *Kurir* and who at that time had a poor relationship with the authorities and had criticised the Serbian Progressive Party (SNS) and Aleksandar Vučić, were also referred to negatively.

37 <http://www.sudije.rs/index.php/aktuelnosti/vesti/257-2017-10-02-09-14-58.html>

Commenting on arrests, investigations, court proceedings and their outcomes is a frequent occurrence in Serbian politics.<sup>38</sup>

In June 2016, after the first-instance ruling for Mišković, Vučić told the *Blic* that he could not comment on the rulings, but nevertheless added that the ruling represented significant progress in the fight against corruption. In 2012, Vučić had commented that releasing Mišković from custody would have been a personal defeat. In November 2015, he described him on the *Radio-Television of Serbia* as “the symbol and paradigm of parasitic Serbia.”

### The Kosmajac case

At a press conference in June 2014, Aleksandar Vučić described Dragoslav Kosmajac as “the biggest drug dealer in Serbia”. Kosmajac, also referred to in the White Book in which the police list potential criminal gangs, was arrested in November of that year, but not because of drug trafficking.

He is accused of illegally obtaining about 7.5 acres of land, and the trial is ongoing. A second indictment charged him with tax evasion amounting to approximately 4,000 euros, but this was rejected because the Belgrade First Basic Court found that it was a misdemeanour, not a criminal offence.

According to Tanjug, Interior Minister Nebojša Stefanović told a pre-election rally in Sremska Mitrovica in March 2014 that Serbia would not have “a corrupt and criminal political-tycoon soup cooked by Đilas, Mišković and Pajić and all the rest.”

On 14 February 2017 on the TV show *Upitnik* on Radio-Television of Serbia, Aleksandar Vučić, at that time the Prime Minister, was asked by the host Olivera Jovičević: “Which tycoon who robbed Serbia is in prison?” He replied by quoting several names, including Đurašković and Mišković.<sup>39</sup>

According to the Code of Conduct of the Government, adopted in June 2016, members of the government are obliged to respect the presumption of innocence, even when “this assumption is not respected by one or more media outlets”.

Article 2 of this Code states that the government members are obliged to respect the authority and impartiality of the court: “A member of the government may not, in public statements and public appearances, during the course of criminal proceedings, present ideas, information or opinions that anticipate the outcome of that procedure or the procedural value of the evidence, which has been or is to be presented in that proceeding, in such a way that may influence the outcome of the criminal proceedings.”<sup>40</sup>

38 <https://www.cins.rs/srpski/news/article/pritisci-na-pravosudje-zaplasene-sudije-i-tuzioci-i-sapate-politicara-osluskuju>

39 <https://www.cins.rs/srpski/news/article/koliko-je-zaista-uspesna-borba-protiv-korupcije-i-kriminala>

40 <http://demo.paragraf.rs/WebParagrafDemo/?did=308562>

### Accusations against Vučić

Members of the opposition parties often accuse government members of wrongdoing and impropriety, even when no court case has been initiated.

In March 2017, for instance, Saša Radulović, the former minister of economy and leader of the *Dosta je bilo* (It's Enough) movement, filed a criminal charge against Aleksandar Vučić and his brother Andrej. This was quickly dismissed by the Prosecutor's Office for Organised Crime. Radulović told the TV show *Pravi ugao* on Radio-Television of Vojvodina that he filed the charge for "taking over the drug market in Serbia" and accused the brothers of racketeering and money laundering.

He said that got his information from police officers who were unable to make it public themselves.

Likewise, Boško Obradović, the leader of the *Dveri* (Gates) movement, has repeatedly accused Aleksandar Vučić and the authorities of links with crime.

### Disciplinary action against Judge Vučinić

One of the most famous examples of a disciplinary action against a member of the Serbian judiciary is the case against Vladimir Vučinić, the former President of the Special Department of the Higher Court in Belgrade, who chaired the panel in the proceedings against Mišković.

After the decision to temporarily return Mišković's passport, which was taken away after he was released from custody, Vučinić came under a great deal of pressure. He eventually left the bench to become a lawyer.

In June 2015 the High Judicial Council issued a public warning to Vučinić and accused him of a disciplinary violation for commenting on a court decision in the media. Vučinić had explained to the *Politika* daily the reasons for returning Mišković's passport, stating that he had complied with the law and procedures.<sup>41</sup>

### Political influence

Largely unnoticed and unpunished, the Serbian judiciary is exposed to political pressure. In a more accountable judicial and justice system, it would be much more difficult to hide political pressure or self-censorship by judges and prosecutors in order to appease senior politicians. Judge Vučinić did not receive protection from the High Judicial Council when it was most needed. Furthermore, the disciplinary bodies imposed a sanction on him for something that was not a violation. The subsequent decision of the Administrative Court brought Vučinić moral satisfaction. However, at that point, he was no longer a judge.

<sup>41</sup> In an earlier interview with the CINS, Vučinić said he would make the same decision again and that he was guided by the law and principle of the presumption of innocence. He did not hide his disappointment that very few of his colleagues supported him, adding that this may have been an opportunity for them to show integrity. In a new subsequent interview, Vučinić told the CINS journalist that at that time he was defending his profession, thereby preventing nobody from doing their job: "A judge is obliged to protect his reputation, honour, vocation, profession in at every opportunity."

After being sanctioned, Vučinić appealed to the Administrative Court of Serbia, which in July 2017 annulled the decision on disciplinary action and returned the procedure to the High Judicial Council. The following month, the High Judicial Council annulled its original decision and quashed the disciplinary action.<sup>42</sup>

Vučinić also sued the High Judicial Council before the Administrative Court for refusing to accept his complaint that he came under pressure from the President of the Higher Court, Aleksandar Stepanović for returning Mišković's passport.

The High Court stated in a press release in December 2013 that “no pressure was brought to bear against Judge Vučinić in any way over his conduct and decision-making in the case of the accused Miroslav Mišković, or in any other case.”

The Administrative Court has not yet ruled on Vučinić's second complaint, although at the beginning of 2017 he filed a motion for a quicker resolution for this case, and for the case in which the disciplinary action was annulled.<sup>43</sup>

Recently, Vučinić has officially entered politics by becoming a member of the opposition People's Party (*Narodna stranka*).

### Information leaks and pressures

This case also shows the inadequacy of the Action Plan for Chapter 23, which was adopted by the Government of Serbia after it agreed to open negotiations with the European Commission. Not only did the action plan not set out adequate measures for addressing the problems during investigations and pressure on the judiciary, but the heads of the executive branch were directly involved in some of the most serious violations.

42 Vučinić says he expected such a decision by the Administrative Court, that it restored his faith in the judiciary and showed that there are judges “who will not think whether their decision will be approved by someone, but will make a decision in accordance with the law and their judicial conviction.” He adds: “This is the biggest trap in the judiciary - if you are afraid that you will not make progress if you make a decision that is lawful and in accordance with your belief. It is horrible. It has been proven that, unfortunately, such decisions do exist.”

43 Vučinić says that, bearing in mind the passage of time, any decision by the court gradually loses its meaning and adds: “I hope that I will persevere in this process as well. (...) I have no motive because I am no longer a judge, but I am still working on behalf of the judicial profession that I have been a member of for 25 years.”

## CS 5: DYSFUNCTIONAL SYSTEM OF ACCOUNTABILITY (SP 1)

*Of the 2,731 complaints about the work of judges and 523 complaints about the work of public prosecutors and their deputies in 2014-2016, judges were sanctioned just 34 times and prosecutors 10. It is possible that not all the complaints were justified. However, the relatively small number of sanctions does not mean that very few judges and prosecutors have breached professional standards of conduct. If it is true – as some say – that the majority of complaints about judges and prosecutors are undocumented and imprecise, and filed by people unhappy with the outcome of their case, this does not mean that others do not go unreported.*

### Judges and prosecutors - hundreds of complaints and just a few fines

*Written by: Dina Đorđević*

In mid-January 2016, Slavka Mihajlović was dismissed as judge of the Court of Appeal in Belgrade because of unreasonable delay in the trial against Sreten Jocić, better known as Joca Amsterdam. This case ended up in the Court of Appeal and Jocić was sentenced to ten months of imprisonment for unauthorised possession of weapons. Because of the delay, the proceedings were barred by a statute of limitations and Jocić was eventually acquitted.<sup>44</sup>

The decision to dismiss of Slavka Mihajlović was made by the High Judicial Council, the body which decides on the termination of judicial office and disciplinary sanctions against judges.

The case of Judge Mihajlović is one of 13 cases of judicial dismissal between January 2014 to December 2016. Five of these cases were the result of a personal request. In the remaining eight the judge was dismissed because of a disciplinary violation.

The Disciplinary Prosecutor of the High Judicial Council received 2,731 disciplinary charges against judges over the three-year period, and 78 procedures were conducted, mostly in 2014 (41). In 32 cases, the judge received a sanction.

#### Rising numbers of charges against judges

831 disciplinary charges were filed before the High Judicial Council during 2016, 956 the year before, and 944 in 2014. This is a significant increase compared to 2013, when there were 540.

The High Judicial Council report for 2014 states that this is the result of a larger number of regular and well-founded disciplinary charges, and not more judicial violations. The Supreme Court of Cassation filed more complaints against the decisions of lower courts.

<sup>44</sup> At this time Jocić was already in prison after being convicted of ordering the murder that took place in 1995. He was arrested in several countries, and he served a prison sentence for shooting at police in the Netherlands. He was also charged with the murder of Ivo Pukanić, the editor of Croatian weekly *Nacional*, but was eventually acquitted.

Any individual may file a charge if they are dissatisfied with a judge's work.

The disciplinary bodies of the High Judicial Council are the disciplinary prosecutor, their three deputies and the Disciplinary Committee with a President, two members and deputies, all from the ranks of judges. The procedure against a judge is conducted by the committee, based on the motion of a disciplinary prosecutor and the charge against the work of the judge. If one of the parties files an appeal, the High Judicial Council decides on the proceedings as the second instance body.

Dragana Boljević, the President of the Judges' Association of Serbia, told the Center for Investigative Journalism of Serbia (CINS) that it is not unusual to have a large number of charges. She claimed that they usually come from parties unhappy with the results of their litigation. In some cases, she added, the Constitutional Court annulled decisions on the dismissal of judges, pointing out that the High Judicial Council did not take into account the working conditions and whether a judge was able to respect the deadline.

In the 2014-16 cases in which no sentences were imposed, the reasons varied - such as the death of a judge, statute of limitations or departure of the disciplinary prosecutor. In 13 of 78 cases, the High Council as the second instance body dismissed the motion to conduct the proceedings, while in some cases from 2016 the decision is still pending. In three cases the High Judicial Council, after the appeal was filed, confirmed the Disciplinary Committee's decision to reject the motion to conduct the proceedings.

The High Judicial Council did not respond to a request for an interview with CINS journalists on this topic.

## Unreasonable delays

Disciplinary sanctions may be a public warning, a pay cut of up to 50% for up to a year, and a ban on promotion for up to three years. If it is established that a judge is responsible for a serious disciplinary violation, the commission initiates a dismissal procedure.

Most of the Disciplinary Commission's sanctions for the period 2014-2016 were pay cuts, mostly of 20% for different periods of time. Public warnings followed, while in four cases the Committee imposed a promotion ban - though in two cases the High Judicial Council changed this to a salary reduction, and dismissal.

During the three-year period the most common reason for conducting disciplinary proceedings, including those in which judges were dismissed, was unreasonable delay in ruling, and unreasonable delay in the proceedings. Most of the charges were against judges in Basic Courts.<sup>45</sup>

The Law on Judges obliges court presidents to report a judge as soon as they notice that he or she is not doing their job properly. The High Judicial Council report for 2014 says that some court presidents did not file disciplinary charges. The 2015 and 2016 reports do not address this issue.

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<sup>45</sup> Dragana Boljević states that judges, especially in basic courts, are burdened with a large number of cases, which is why the reason for the delay of the case may be that the judge needs much more time to study a complicated case.

Dragana Boljević explained that court presidents may not file charges because they are aware of their colleagues' caseload and difficult working conditions – for example, a shortage of court clerks, or limited internet access. She added that presidents may calculate that reporting a particular judge is too risky.<sup>46</sup>

## Ten disciplinary sanctions for deputy prosecutors

The disciplinary accountability of the judiciary was regulated for the first time in Serbia by the adoption of a set of judicial laws in 2008, which includes the Law on Judges and the Law on Public Prosecution. The High Judicial Council appointed disciplinary bodies two years later in December 2010, and the State Prosecutorial Council in May 2013.

Like the High Judicial Council (HJC), the State Prosecutorial Council (SPC) has its own disciplinary bodies, and the principle of filing a charge and conducting a procedure is similar. The disciplinary prosecutor acts upon the charge and submits a proposal to the Disciplinary Committee to conduct the proceedings against the public prosecutor or his deputy. The SPC has the same sanctions at its disposal as the HJC.

A prosecutor can be dismissed if, for example, their violation damaged the reputation of the prosecutor's office, or barred criminal prosecution by a statute of limitations.

In the 2014-16 period, the Disciplinary Commission of the SPC received 523 charges against the work of prosecutors and their deputies. Proceedings were initiated in 18 cases, of which only one resulted in dismissal. Sanctions were imposed in nine more cases. Only once was the ban on promotion applied. Based on information the CINS received, the SPC did not sanction or dismiss any public prosecutor, but only their deputies.

The Commissioner for the Independence of Public Prosecution, Goran Ilić, told the CINS that the main reason why a large number of disciplinary charges were filed was because the public distrusted the judiciary and, by extension, the public prosecutor's office itself.<sup>47</sup>

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46 Dragana Boljević says: "The National Assembly elects presidents of courts. We, the judges, see presidents of the court presidents largely as someone who is a transmission of transmits political influence on to the judiciary. On the other hand, there may be their calculation that they may decide a certain judge is powerful, so he will pay them back in some other way enough to pay them back in some way and they are afraid of their career." Boljević points to a possible abuse of disciplinary accountability due to the composition of the High Judicial Council, which includes "people who are under political influence" and who then elect disciplinary prosecutors: "We, as judges, are facing the fact that disciplinary accountability is actually misused in order for a judge to be disciplined, in the negative sense of the word."

47 "The low level of public confidence is partly justified, since in some cases that the public was interested in, that attracted public interest the prosecutor's office did not give the impression that it was "at its best performance working at its best". On the other hand, it seems to me that the lack of confidence of citizens in the work of the prosecutor's office is largely the result of stems from various media campaigns in the media that were often not based on facts, but were the result of sensationalism or were politically inspired," explains Goran Ilić. He adds that it is strange that there were no procedures against the heads of prosecutor's offices, especially if one has bears in mind that the prosecutor's office is a more senior body and that, since the powers of public prosecutors are greater, so is their accountability.

SPC data for the period 2014-16 show that in most cases the deputies of the municipal public prosecutor's offices were sanctioned.<sup>48</sup> The most frequent sanctions imposed on them were a temporary 10% pay cut and public warnings.

In eight of the 18 procedures initiated between 2014-16, the disciplinary violations were a failure to make decisions and to apply legal remedies within the prescribed deadline.<sup>49</sup>

### **Dismissal due to the ruling for the prosecutor**

According to the Law on Public Prosecution, a prosecutor can be dismissed without disciplinary proceedings if they perform unprofessionally (determined on the basis of an evaluation of their work) or when the prosecutor has been sentenced to a prison term of at least six months. Such a case occurred in 2013. SPC dismissed Časlav Maslarević, the Deputy Public Prosecutor in Požega, who was sentenced to three years imprisonment and a fine of 300,000 dinars for taking a bribe. He was also banned from serving as a judge for five years.

## **Imprecise charges**

More than a third (181 of 523) of cases against prosecutors and their deputies over the past three years did not constitute disciplinary charges, or did not refer to the work of prosecutors and deputies. The cases were therefore merged with others or delivered to the High Judicial Council or to the competent public prosecutor.

In 2014, 2015 and 2016, the SPC could only confirm the nature of the violation precisely in 229 cases. In their response to the CINS, the SPC explained that applicants usually state Article 104 of the Law on Public Prosecution, which lists all disciplinary violations, as a violation. They do not state the exact paragraph of this article, so it is unclear which they want to invoke. In some cases, no name was filed in the charge, but in general they identify prosecutors and their deputies in one or more public prosecutor's offices.

Goran Ilić added that in a number of cases disciplinary charges are filed because the complainant is unhappy with the prosecutor's decision, or in an effort to put pressure on them, especially with repeated charges involving offensive and slanderous statements.

The High Judicial Council noted similar problems with complaints. Their 2015 report says that most complaints relate to the party's dissatisfaction with a court decision, and want the HJC to amend, change or evaluate its legality.

<sup>48</sup> Goran Ilić explains that the problem in these prosecutor's offices is the so-called "irreconcilable inflow" of cases: "Delays, or insufficient efficiency or omissions in the work can occur more often at the basic level because the basic prosecutor's offices are mostly flooded with too many cases".

<sup>49</sup> Goran Ilić explains that in some instances the deputy public prosecutor is in charge of 1,500 cases. There are other issues, such as the lack of court clerks, so in many prosecutor's offices, deputies can carry out hearings and interrogations only once or twice a week, as they cannot type the record.

### **Insufficient data available**

Usually the work of judges, and especially public prosecutors, is invisible to the public eye. It is only by reviewing documents – many of which are not available to the public – that alleged violations can be properly investigated. Even when a case comes before the disciplinary bodies, there is not enough publicly available information to understand it properly. Journalists have to rely on the HJC and SPC's own evaluations. Publishing detailed data on the institutions' websites would make judges and prosecutors – and the HJC and SPC themselves – more accountable.

Secondly, these institutions are not proactive enough. They fail to spot and act upon potential violations in the courts and prosecutors' offices.

## CS 6: FAILURES OF THE PROSECUTOR'S OFFICE (SP 3 AND 7)

*As already discussed, prosecutors sometimes fail to investigate politicians' financial affairs and campaign financing. This is a systemic weakness in the Serbian justice system. Police and prosecutors enjoy a degree of freedom to assess whether a situation merits further investigation, although they are obliged to examine a case involving criminal charges. When allegations have only been made in the media, however – or a report has been filed from a government body – they do not always decide to investigate.*

*The case study shows that when he or she wishes to do so, the public prosecutor can initiate proceedings without waiting for a criminal charge. The crime concerned was apparent to a large number of viewers. It is still unclear whether the fact that there were hundreds of thousands of witnesses for the criminal offence had influenced the public prosecutor to initiate the proceedings. In other words, it is unclear whether, in the absence of clear legal rules on when the prosecutor must show initiative, there are still some other rules (binding instructions within the prosecutorial hierarchy, for example) that would stop a prosecutor invoking their discretion – in order to hide the fact the decision had been made as a result of political influence.*

*In the case of Zaječar's election campaigning costs, media publication is again an important factor in the criminal prosecution. It shows that the public prosecutor had failed to act, even after obtaining information that suggested another state authority had broken the law. In other words, the prosecutor's office responded solely in order to create an impression of action, and to minimise reputational damage. The prosecutor argued that the investigation had not taken place earlier because his office "receives a large amount of information on a daily basis". Even if this is true, it does not justify inaction, but means that there is a need to establish clear rules about which "information" must be acted upon (when the information is serious enough to merit criminal charges). It is no less important to keep a precise record of "information" received, and on self-initiated checks.*

*Prosecutors will not become more proactive – as the 2013 Criminal Procedure Code requires them to be – unless their work is made more transparent and they have less discretion about which cases to pursue. Although they now have more opportunity to help the police detect criminal offences, they still have a great deal of leeway over whether to act.*

*Sometimes media reports can be misleading. This should not be an excuse for prosecutors failing to act or to investigate a case properly. On the contrary, even a classic criminal charge can be based on insufficient understanding of key facts. The only difference is that in the event of malicious intent, it is possible to prosecute someone who falsely reports a criminal offence, but not the person who placed the text, picture or footage indicating the commission of a crime.*

*Although they have the authority to do so, prosecutors are not proactive in investigating the source of politicians' assets and campaign funding.*

## Prosecutor's offices in Serbia: new obligations, old problems

Written by: Milica Šarić

In April 2015 a fight took place on “Parovi”, one of the most popular TV reality shows in Serbia. The singer Hasan Dudić hit the director Jelena Golubović several times. After the incident, Dudić was thrown out of the reality show, and the Third Basic Public Prosecutor's Office in Belgrade looked at the footage and – although no criminal charges had yet been filed – initiated proceedings. Dudić was charged with violent behaviour and breach of the peace, but was subsequently acquitted.

Regardless of the final outcome, prosecutor's offices in Serbia are not always so proactive.

The Center for Investigative Journalism of Serbia (CINS) revealed that in 2013 the Serbian Progressive Party (SNS) paid for its campaign in Zaječar with cash, which is contrary to the Law on Financing Political Activities. In June 2014 the Anti-Corruption Agency passed the case to the Basic Prosecutor's Office in Zaječar, but the then prosecutor and his deputy did not record the meeting and took no further action.

The Prosecutor's Office only acted when the CINS published a story in March 2016.<sup>50</sup> Reporters asked them whether they would start proceedings against the SNS. The prosecutor then asked the police to collect evidence, but it was already too late. The case was soon barred by a statute of limitations<sup>51</sup> because the three-year limit for criminal prosecutions had been reached.

In its official note, the Prosecutor's Office stated that the facts of the case showed a misdemeanor liability was involved. The statute of limitations does not apply to this type of offence. In March 2017 the Agency initiated a misdemeanor proceeding in the Belgrade Misdemeanour Court, which is still in progress.

Prosecutors individually assess whether they will launch an investigation into a particular event or person, and this can be done even if they have relatively few grounds for suspecting an offence has been committed. If the charge is filed, prosecutors are obliged to check its allegations and decide whether to begin an investigation. In practice, the problem arises when the charge does not exist.

Because prosecutors have so much discretion over whether to act, media coverage can play an important role.

Ivan Marković, the deputy prosecutor at the Third Basic Public Prosecutor's Office in Belgrade, says that prosecutors do go over the available evidence to decide whether a case merits investigation. He explains that in the case of “Parovi”, the proceedings were initiated “by having a newspaper article published, and then we examined the recorded material, publicly available on YouTube, and only when we saw that there really was something for a potential action (...) did we form a case, although, for example, no one reported it.”<sup>52</sup>

Asked by the CINS why the Basic Public Prosecutor's Office in Zaječar did not initiate a procedure to check the legality of SNS campaign finances before the 2013 elections, despite receiving information from the Anti-Corruption Agency, Mirko Petković, the then prosecutor, said that they received large amounts of information on a daily basis.

50 <https://www.cins.rs/srpski/news/article/srpska-napredna-stranka-prikrila-troskove-izborne-kampanje>

51 [https://www.cins.rs/srpski/research\\_stories/article/slucaj-protiv-sns-a-zastareo-tuzilastvo-i-agencija-prebacuju-odgovornost](https://www.cins.rs/srpski/research_stories/article/slucaj-protiv-sns-a-zastareo-tuzilastvo-i-agencija-prebacuju-odgovornost)

52 According to Marković, it is impossible to check all newspaper articles, because they do not have enough people for this staff, and “these texts are mostly undefined (...) some speculations, assumptions, drawing some conclusions, where documents and witnesses are mainly not mentioned.”

Miodrag Majić, the judge of the Court of Appeal in Belgrade, says that the Criminal Procedure Code, which came into force in 2013, changed the role of prosecutors, who are now expected to be more proactive: “Not only to prosecute a case before the court, but – together with the police – to detect crimes and prepare for prosecution.”

A key problem is that prosecutors have the authority but not the obligation to be proactive.

### **The prosecutor’s office is proactive, but Bagzi’s son had a toy Heckler**

A video that emerged in early 2017 shows Nemanja Milenković, the 23-year-old son of a former member of the “Zemun Gang”, Dejan Milenković (aka Bagzi) shooting a Heckler submachine gun in front of his friends. The video appeared on the internet after media reports of the incident, which led to the Third Basic Public Prosecutor’s Office launching an investigation. Milenković was then detained to prevent him from influencing the witnesses.

Ivan Marković, the deputy prosecutor, explains what happened next: “It turned out that we were wrong. We found a single bullet. The gun was a quite expensive toy which looks exactly the same and produces all the same sounds. I want to say – one can be wrong there as well, but at least it looked as though it was the case.” The case is ongoing, Marković adds, and another person took responsibility for the bullet that was found.

## **Stop-go procedures against officials and parties**

When they initiate and conduct proceedings, prosecutors should act according to their conscience and the law, without political or other interference. Experience shows that prosecutors find it hard to decide to investigate the property of officials and the funding of parties, even after receiving information from other institutions, or finding information during court proceedings. In some cases, investigations of high-ranking people are never initiated or they are promptly dismissed.

In 2009 Goran Knežević admitted in court that he had received more than 160,000 euros in cash for his party, which he kept in a vault<sup>53</sup> but neither the court nor the prosecutor’s office have ever addressed this. Even the revelation from a witness that he had on several occasions donated 45,000 euros to Knežević to finance his party did not prompt investigation.

Knežević is now Minister of Economy in the Government of Serbia and Vice President of the SNS, and when arrested by the police in 2008, he was an official of the current opposition Democratic Party (DS) and Mayor of Zrenjanin. That year he was suspected of alleged abuses involving construction land, but he was acquitted of the charges.

The Belgrade High Court’s acquittal stated that the money in the vault was intended for the party’s electoral activities, but that “the existence of money (...) is not the object of the charge”, while the Prosecutor’s Office for Organised Crime, in response to the CINS, said they did not accept Knežević’s statements, and they did not check “the legality of financing of political parties, including the Democratic Party mentioned in the case.”

53 <https://www.cins.rs/news/srpski/article/buduci-ministar-knezevic-drzao-u-sefu-preko-160-hiljada-evra-za-finansiranje-ds-a>

The case of Goran Knežević is very significant for what it tells us about the prosecution of corruption in Serbia. This was one of the rare criminal proceedings against members of the ruling party, and it was often interpreted as an internal party showdown. The prosecutors were clearly not proactive and did not act on the information presented to them. Given the same laws are applied throughout Serbia, and that the work of local government is monitored by (equally ineffective) state authorities, it seems unlikely that the kind of abuse of public procurement and building land rules that went on in Zrenjanin has not happened elsewhere – especially as land is relatively cheap there. Yet there is no evidence that prosecutors investigated the possibility of similar violations elsewhere.

The Knežević case has a further twist. He claimed that the money found in his vault was intended for (the illegal) financing of his party. The prosecutor did not accept this, maintaining the money was a bribe. Knežević was therefore not charged with illegally receiving money for party finance. Even when he had been acquitted of bribery, the prosecution did not charge him with the illegal financing that he had admitted to in his defence.

Four days after the parliamentary elections in 2014, the Anti-Money Laundering Administration told the Anti-Corruption Agency that a number of pre-election donations to the SNS could be linked to money laundering, according to a study by the Balkan Investigative Reporting Network (BIRN).<sup>54</sup> In 135 banking transactions, users paid 40,000 dinars into their accounts, and immediately transferred the same amount to the SNS as a donation. Several donors have acknowledged that the money was given to them by party members, contrary to the Law on Financing of Political Activities.

A similar pattern occurred before the presidential elections in 2017, when 98% of almost 7,000 donors gave identical amounts to Aleksandar Vučić's campaign.

When the Higher Prosecutor's Office in Belgrade received the 2014 report, they returned it to the Agency for additional verification, but refused to comment further on the case. No investigations have so far been made into the 2017 case.

In September 2017 the Crime and Corruption Reporting Network (KRIK) published a report<sup>55</sup> submitted by the Anti-Corruption Agency in December 2015 to the Prosecutor's Office for Organised Crime. It concerned the financing of the purchase of an apartment in Zvezdara by Defence Minister Aleksandar Vulin.

The Prosecutor's Office waited a year and a half for the police to respond. One month after obtaining the requested information, and two years after the Agency's report, the Prosecutor's Office established that there was no basis for the claim that Vulin abused his office or accepted bribes.

During the pre-investigative procedure, the police did not speak to Aleksandar Vulin, nor his wife's aunt in Canada,<sup>56</sup> who allegedly lent him money for the apartment. After the police submitted a report to the Prosecutor's Office, the Prosecutor's Office did not ask more evidence to be collected, but decided to suspend the proceedings. A part of the case was forwarded to the First Basic Prosecutor's Office to check if there were violations of the law under their jurisdiction.

54 <http://javno.rs/analiza/partijske-igre-sns-i-prijava-za-pranje-novca>

55 <https://www.krik.rs/tetka-iz-kanade-platila-vulinu-stan/>

56 <https://www.krik.rs/kako-je-tuzilastvo-vulinu-oprostilo-tetku-iz-kanade/>

Goran Ilić, the President of the Association of Public Prosecutors and Deputy Public Prosecutors and the Commissioner for Independence with the State Prosecutorial Council, says that the investigation starts when there are grounds for suspecting that a crime has been committed: “Public prosecutors are often faced with a dilemma. Do the facts and evidence at their disposal suggest an offence has been committed, and justify investigation? If it is any comfort, prosecutors have the same problem in other countries.”

A particular problem is that prosecutor’s offices do not publish enough information about the reasons for dropping an investigation, even when the public already has a lot of information about a case from other sources, and when that information arouses suspicion that the law has been violated.

## Resourcefulness of prosecutors

According to the State Prosecutorial Council, since the new Criminal Procedure Code came into force in October 2013, the workload of prosecutor’s offices has more than doubled. Yet the justice system has not become more efficient.

Goran Ilić says that 40,000 cases went from courts – which had previously conducted pre-investigative actions – to prosecutor’s offices, and for a number of prosecutors the workload proved insurmountable.<sup>57</sup>

Ivan Marković, the deputy prosecutor at the Third Belgrade Prosecutor’s Office, says the new powers conferred on prosecutor’s offices have contributed to the problem. In terms of staffing, “the situation is ... quite unsatisfactory, both in terms of numbers and the organisation of space and everything else.”

These new obligations include additional hearings and the ordering of expertise, and offices have to pay the costs from their own budget, explains Marković. In the Third Basic Prosecutor’s Office, hearings must be completed in two days due to lack of space.

If a prosecutor’s office decides to start a pre-investigative procedure, the work of prosecutors largely depends on the police who collect evidence for them. However, they cannot influence police activity.

On the night of 24 April 2016, a group of hooded men bulldozed several buildings in Savamala in the centre of Belgrade, an area earmarked for real estate development.<sup>58</sup> People who were in Savamala at the time reported abuse and violence by the group. They said they had been tied up and their mobiles confiscated. The police did not respond to their calls that night.

During the pre-investigative procedure in this case, the police did not submit evidence to the Higher Public Prosecutor’s Office for 14 months, which was why the work of the Prosecutor’s Office was delayed. After four requests for submission of evidence and information about police conduct, at the end of September 2016 the Prosecutor’s Office sent an urgent appeal to the police. More than eight months later, in June 2017, the requested report arrived at the Prosecutor’s Office, but the people who carried out the demolition were never caught.

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57 “The Prosecutor’s Office was forced to “be resourceful” from the very beginning of application of the Code’s application. By this regulation, a number of new jurisdictions were assigned to the Prosecutor’s Office, but they were not accompanied by any increase in the budget, more courtrooms, prosecutor’s offices, an increase of the number of deputy public prosecutors, or the securing of premises, etc.”

58 <http://rs.n1info.com/a155616/Vesti/Vesti/Ko-je-srusio-Miksaliste.html>

Goran Ilić says daily communication between the police and the prosecutor's office poses no problems, but adds that "the relationship between the prosecutor's office and the police is paradoxical... The authorised police officers in the pre-investigative procedure are obliged to act solely on the orders of the public prosecutor, that is, they 'work for' the public prosecutor. On the other hand, police officers report to police chiefs."

Ilić explains that problems arise in a small number of high-profile or politically sensitive cases: "It is logical – the police do not act, or do not act effectively enough, upon the order of the prosecutor, because politics has some bearing on the prosecutor's case. To clarify, it is unlikely that the police officer will act upon the prosecutor's order if his senior officer has different expectations."

Breaking off one part of the police and joining it to the prosecutor's office could be a solution, he suggests. Alternatively, the prosecutor's office could include investigators, people with police authorities, who would act "only in situations where the police cannot be expected to be efficient enough, or to act upon the prosecutor's order at all."

Judge Miodrag Majić notes that, according to the new Code, prosecutors have the opportunity act independently to collect evidence.<sup>59</sup>

### **What is the solution?**

Only by introducing clear accountability can this problem be solved. A certain period of time after the public or a public prosecutor has been notified of a case, he or she must explain how it has been investigated. This should be done periodically. Clearly, this extra duty will require additional staff.

Prosecutor's offices are understaffed and will need to hire more people if they are to become more proactive. As the Savamala case shows, the degree of cooperation between police and prosecutors has a significant effect on their work. Ilić's suggestion of hiring investigators would help to address this.

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59 "If the police do not do something that he (the prosecutor) thinks is needed, he can address their superior and, if he sees that this thing is not going to work, he should go and ask for documents from a business or from the police. (...) especially in situations where the prosecutor's offices complain that the police do not respond to their requests. Nothing prevents the prosecutor in such situations, and in others, from acting independently," says Majić.

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## CS 7: PROCEDURE FOR PROTECTION OF POLITICIANS (SP 7)

*One very important - and often neglected - area in the fight against corruption is the prosecution of misdemeanors. Although the penalties are much less than in criminal cases, misdemeanor liability has a much wider application in anti-corruption laws - notably in laws designed to prevent wrongdoing (public procurement, conflict of interest, access to information, financing of parties).*

*The statute of limitations for misdemeanors comes into force earlier than it does in criminal offences. Here, we discuss one of the main reasons why it is invoked - the failure to deliver court mail to the parties in the proceedings. Essentially, the courts' postal delivery system is dysfunctional. The failure to deliver court summons to MPs, ministers and officials - when they appear on TV daily - highlights the absurdity of the situation.*

*In February 2016, new rules were introduced, including the stipulation that if a summons were posted on a court noticeboard it had effectively been received. Nonetheless, only one of the three Serbian courts with the largest number of misdemeanor cases introduced the new rules. Excuses included the need to use up old supplies of envelopes, and that the Post Office had yet to introduce the necessary technology.*

*Incomplete court statistics mean precise data is impossible to obtain, but earlier research indicates that public office holders were very successful in avoiding court mail, and thereby avoiding appearing in court to answer charges. Since the delivery failures were never investigated, it is unclear whether political officials or court staff were ultimately responsible for them. In any case, the implications for the justice system are alarming.*

*Even more concerning is the failure to address the problem, even though it has been going on for decades. Statistics about the scale, costs and damage done are lacking, and we do not know how often the statute of limitations was invoked as a result nor how often post never arrived. Only one court has data on total delivery costs.*

*Whether the latest attempts to solve the problem will be successful is unclear. If they are, political pressure may come to bear just before court proceedings are due to begin.*

*Almost 11% of all cases in the misdemeanor courts in Belgrade, Niš and Novi Sad over five years were barred by a statute of limitations - partly because of the inability to deliver court mail to the parties involved.*

### Changes to court mail delivery are slow to take effect

*Written by: Dina Đorđević*

Between 2012 and 2016, numerous cases before the misdemeanor courts in Serbia were barred by a statute of limitations, because the parties could not be found at their registered addresses.

Courts used the Post of Serbia or other courier services for the delivery of summons and other documents. The practice was to send letters to the parties on several occasions, until delivery was made - either personally, or to an adult member of the household. When the letter was not delivered, it would be returned to the Post, and then to the courts. They would then send them back.

This principle was applied “at the expense of efficiency, promptness of procedure and budgetary costs,” the president of the Misdemeanor Court in Belgrade, Milan Marinković told the Center for Investigative Journalism of Serbia (CINS).

Amendments to the Law on Misdemeanors in February 2016 took a first step towards resolving this problem. They stipulated that if the letter was not delivered it should be placed on the noticeboard and the court’s website. It would then be considered to have been delivered.

The Technological Instruction on the Receipt and Delivery of Court Mail was adopted in April 2017. In July of the same year, the Post of Serbia passed a supplementary instruction specifying special envelopes for each of these procedures.

The envelopes are followed by a notice that is left at the person’s address with the first delivery, if the addressee is not there. The notification for misdemeanor cases states that the letter was returned to the court and can be collected there within 15 days. If it is not collected, the copy will be placed on the noticeboard and the court’s website for eight days. After that, the notice is deemed to have been served.

### Similar problems elsewhere in Serbia

Veroljub Stevanović, the former Mayor of Kragujevac, did not respond to a summons by the Basic Prosecutor’s Office in Kragujevac for an interrogation. He was not found at his place of residence. For some hearings, he asked for a delay due to his obligations as an MP in the National Assembly.

Stevanović’s interrogation was then entrusted to the Kragujevac Police Directorate, but the Basic Prosecutor’s Office told the CINS in November 2017 that it had not yet taken place.

In an interview with the CINS, Dejan Garić, Deputy President of the Second Basic Court in Belgrade, said that some proceedings lasted for years because the suspects and complainants could not be brought for trial at the same time. The problem, he said, was that people could not always be traced to their registered addresses, and that correspondence with the police about address checks could take over a month.

Ivana Ramić, the judge and spokesperson of the First Basic Court in Belgrade, says that non-delivery of letters to witnesses is one of the reasons why hearings are postponed.<sup>60</sup> She adds that the First Basic Court had received the new envelopes and begun to apply the new rules.

Milan Marinković, the President of the Belgrade Misdemeanor Court, said that the new system should cut the time it takes to bring a case to trial, especially as, for misdemeanors, the minimum statute of limitations deadline is usually two years.

It is as yet unclear what effect the new rules are having.

<sup>60</sup> “When it comes to a witness, there is not much you can do, by law, if he does not turn up. You can give him a cash fine or bring him in if he has received the summons, and has not justified his absence. But you must definitely postpone the hearing.”

Of the three misdemeanor courts in Serbia with the largest number of statutory limitation cases in 2016, only the Misdemeanor Court in Niš introduced the new practice, while Belgrade and Novi Sad did not.

The Novi Sad Misdemeanor Court says that, according to the agreement with the Post of Serbia and the courts in May 2017, courts with stocks of old envelopes will continue to use the old system until they run out.

Milan Marinković said that, by his estimate, all Serbian courts should have started using the new envelopes by early 2018, but that it depends on how many old ones they have. He added that it would be cheaper and more efficient if the High Judicial Council arranged a public procurement process for the new envelopes.

## **On TV every day - but never available to attend court**

CINS investigations have revealed how suspects were able to delay their trials or even invoke the statute of limitations because they could not receive post – yet some of them were officials in the National Assembly, whose proceedings are broadcast on TV.

Rasim Ljajić and Saša Dragin, both ministers, had their cases barred by the statute of limitations before the Misdemeanor Court in Belgrade because the defendant “is unavailable for the court” - that is, “temporarily unavailable”. In total, 40 of the 159 misdemeanor cases filed by the Commissioner for the Protection of Personal Data, Rodoljub Šabić, were barred. The accusations concerned the irresponsible behaviour of officials towards citizens’ personal data.<sup>61</sup>

During 2011 and 2012 the Misdemeanor Court in was unable to reach Čedomir Jovanović, the President of the Liberal Democratic Party (LDP) and an MP. The proceedings against him - for a failure to transfer company management rights - were suspended. The court summoned Jovanović to the main hearing via his home, the LDP and the National Assembly on several occasions, but the summons could not be personally served and he “avoided” receiving it.

The police tried several times to reach Jovanović by going to his home, but could not find him there. In the meantime, more than two years had passed since the alleged violation, so the proceedings were barred due to the statute of limitations.<sup>62</sup>

Milan Marinković, the President of the Misdemeanor Court in Belgrade, commented: “If I see you every day on television, it is illogical that the court cannot reach you. Unfortunately, that is how it is. Whether it’s singers, actresses, politicians – some of them, it does not apply to everyone.”

Misdemeanor courts in Belgrade, Niš and Novi Sad do not keep records on the effectiveness of delivery of court post. These courts did not provide the CINS with a record of the extent to which the proceedings resulted in statutory limitations due to non-delivery of summons. The Niš and Novi Sad Misdemeanor Courts do not have it, while in Belgrade they are unable to submit data because of the overwhelming nature of the request.

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61 [https://www.cins.rs/srpski/research\\_stories/article/privatnost-gradjana-godinama-na-izvolite](https://www.cins.rs/srpski/research_stories/article/privatnost-gradjana-godinama-na-izvolite)

62 <https://www.cins.rs/srpski/news/article/cedomir-jovanovic-vodio-poslove-dok-je-bio-na-funkciji>

Between 2012 and 2016 in Belgrade 178,436 of 1,456,550 misdemeanor proceedings were barred by the statute of limitations; in Niš, it was 17,411 of 228,592 and in Novi Sad 51,252 of 571,437 cases. This means that almost 11% of all cases before these courts were barred by the statute of limitations.

If only resolved cases are counted, the percentages are even worse. In 2016 alone, in the Belgrade Misdemeanor Court 35,468 cases were barred by the statute of limitations (27% of all cases solved). In the same year, in the Misdemeanor Court in Novi Sad 6,983 (27%) were barred, and in the Niš Misdemeanor Court 6,611 cases (25%).

Out of the three misdemeanor courts from which the CINS requested data, only Niš had information on how much money was spent on sending court summons - 8,973,085 dinars from 2012 to 2016. This amount represents more than a fifth of the money spent on postal services (39,567,818 dinars).

The price that the misdemeanor courts in Belgrade and Niš paid for sending a letter through the Post of Serbia amounted to RSD 46.40 in 2012-16. The Misdemeanor Court in Novi Sad sent letters through the Sloga Youth Cooperative, at a price of 40 dinars for each delivered letter.<sup>63</sup>

The Post of Serbia did not respond to a request for an interview with the CINS.

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63 "The problem is that the Post was paid not to deliver the letter," says Milan Marinković for the CINS .

## CS 8: APPOINTING JUDGES AND PROSECUTORS (SP 2)

*The appointment of judges and prosecutors in Serbia is deeply problematic. This is particularly so when it comes to their first term, which is decided by the National Assembly. As well as direct political influence, weaknesses are reflected in unclear appointment criteria, which are explicitly ignored.*

*This has important implications for European integration and the rule of law. Changes in the law, or new legislation, are often presented as the solution to these problems. In the case of the judiciary in Serbia, particular constitutional norms have been identified as the source of the problem. These give representatives of the executive and legislative branches a specific role in electing and functioning of the High Judicial Council (HJC) and State Prosecutorial Council (SPC) – the very bodies that ought to guarantee the independence of the judiciary and the prosecution.*

*Changing constitutional law is a slow process and allows political influence to drag on for years – even though practical short-term measures could have mitigated it. In particular, when it comes to eliminating the influence of the Minister of Justice and President of the Parliamentary Judiciary Committee, the obvious solution would be for the two politicians not to attend meetings of the HJC and the SPC at all – or perhaps to attend sessions (if needed for the quorum), but not take part in voting and discussions. Before the constitution or laws had even been amended, political influence would be removed or drastically reduced. When the government is considering candidates for prosecutorial positions, it can follow the recommendations of the SPC but not forward the entire list to the Assembly. When MPs were electing candidates for prosecutorial positions, they could then choose the best from the list.*

*The current pattern of political influence dates back to 2009, when judges and prosecutors were ‘reappointed’. Some were removed without clear criteria or public scrutiny. As recently as 2016 the Minister of Justice, as a member of the HJC, took part in the voting and proposed a candidate who had not even been listed. They were subsequently elected.*

*On one occasion in the SPC the Republic’s public prosecutor proposed a candidate ranked seventh – showing that politicians are not the only ones who can abuse the inadequate criteria in order to make discretionary appointments. Indeed, these discretionary authorisations are the chief problem, whether they are made by politicians or other stakeholders in the process.*

*A qualified majority of MPs have to approve amendments to the constitution. If that amendment proposed removing their power to vote on the appointment of judges and prosecutors, and leave it entirely to the HJC and SPC, it seems unlikely it would win their support. In 12 out of 29 cases they have failed to support the candidates put forward.*

*Sure enough, there has been little political will to change this in recent discussions on the amendments to the Constitution. Neither has the Government put forth proposals for discussion. Deadlines have been missed. There are concerns that additional channels of political influence could be opened by empowering the role of the Judicial Academy. This would indirectly boost the role of the Ministry of Justice, and potentially the President of the Republic, in the appointment process. These concerns should not be disregarded. The unsuccessful reforms of 2009, some of which removed judges and prosecutors deemed unfit to practise, were based primarily on the 2006 Constitution and its twisted interpretation. Any future constitutional amendments should bear in mind the well-known dictum – *primum non nocere* (first do no harm). After that, possible improvements are welcome.*

*For years, politicians have meddled in the election of prosecutors and judges in Serbia, and the announcements of possible constitutional changes – which should put an end to this sort of practice – do not inspire confidence that it will actually happen.*

## Politics – the judge, jury and executioner

*Author: Vladimir Kostić*

Dragana Boljević, the president of the Judges' Association of Serbia, was among hundreds of judges who lost their jobs after the 're-election' in 2009, which was conducted by the Democratic-led government. The re-election of judges and prosecutors was conducted through a so-called reform of the judiciary. It turned out to be a way to remove those deemed unfit to practice, but it lacked clear criteria and was subject to considerable political influence.

Most of the judges whom the High Judicial Council (HJC) removed from office at the time later sued the state. Some were compensated for unfair dismissal.

Criminal charges for alleged abuse of office during the judicial reforms - for estimated damages of 1.5 billion dinars - were filed against the members of the HJC, but dismissed in December 2014.

Three years after the reforms, in 2012, the Serbian Progressive Party (SNS) came to power. The political pressures to the judiciary have not abated.<sup>64</sup>

The executive and legislative branches continue to influence the system by which judges and prosecutors in Serbia are elected. The National Assembly largely decides on the membership of the judiciary, and the chief prosecutors and court presidents are elected to the Assembly. Anyone lacking the support of the political majority in the Assembly is unlikely to be elected.

Furthermore, before the list of proposed candidates arrives at the Assembly - at least in the case of prosecutors - they undergo yet another political filter, the Serbian Government. This may forward the the State Prosecutorial Council's list to the Assembly for election, though it is under no obligation to do so.

Radovan Lazić of the Prosecutors' Association, who is also a member of the SPC, told the CINS that politics should be excluded from the process of election of all judicial office holders - both the Government and the National Assembly.

According to Lazić, the strict hierarchy of the prosecution exacerbates the problem. A public prosecutor may issue a mandatory instruction to his/her deputy, and the deputy must act upon it. The case can then either be forwarded to someone else or resolved alone.<sup>65</sup>

## Independent bodies?

The High Judicial Council (HJC) and the State Prosecutorial Council (SPC) are the bodies involved in appointing judges and prosecutors. Appointments are based on the ranked lists of their Commissions, which assess candidates' work, and allocate promotions. It is their job to protect the independence and autonomy of judges and prosecutors. However, even these two bodies, which should be bringing together the best of their profession, are under political influence, since the Minister of Justice and the president of the Parliamentary Committee of Justice are among their members.

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64 "As judges, we were supposed to reap the results of our efforts - knowing that we had built a dam and that politics will not be able to meddle in any way. Only then did we realise that those colleagues of ours were the ones who shamelessly stepped all over the rule of law, by connecting to political power," said Dragana Boljević.

65 "Each public prosecution case can effectively be accessed through the hierarchical structure", says Lazić.

Although six of the 11 members of both bodies are judges, Dragana Boljević and Radovan Lazić say politicians are able to exert pressure on them too.

The appointment of judges to the Commercial Court of Appeal in September 2016 is a case in point. It reflects how the Minister of Justice may have a decisive role in their appointment.

From the minutes of the HJC meeting, it is clear that the Committee, established by the Council itself, compiled a list of six candidates. The candidates were rated according to how much time they needed to reach a decision, the percentage of their quashed decisions, and the number of cases they were able to resolve as a proportion of the total. The Committee considered another two candidates who, each for separate reasons, were not officially proposed.

However, the Minister of Justice, Nela Kuburović, challenged the second-ranked on the list, Danijela Dukić, saying that she did “not dispute the exceptional results of her work, but that bearing in mind the judges who have 15 or 20 years of judicial service... she should wait.”

Kuburović then suggested Jovan Kordić, one of the two judges who were not even on the list. In his case, the problem lay in the fact that he was the President of the Commercial Court in Belgrade, and according to the minutes from the meeting, the Council had earlier decided that “the presidents of the court are not to be appointed for a judge of higher court, while holding the office of the president.”

The members of the Council then voted on all six candidates, including the Minister of Justice’s preferred candidate – Jovan Kordić.

Although he was not on the original list, Kordić was elected.

In response to a CINS question, the Ministry of Justice said that the decision on the elected candidate is reached by the HJC, which is comprised mostly of judges, and that the influence of the executive branch is not an issue, since the Minister of Justice has only one vote.

“At one of the following competitions, Judge Danijela Dukić was appointed to the judicial office at the Commercial Court of Appeal, based on the positive opinion and the voting for the election of the Minister of Justice”, says the Ministry’s response.

However, Dragana Boljević says that this is “an obvious example of informal influence, when what the Minister of Justice proposes is later adopted at the meeting of the High Judicial Council.” She also added that the judges themselves should be held accountable, as well as those who elect the members of the Council, and the members themselves.

The prosecutor Radovan Lazić says that at the meetings of the State Prosecutorial Council (SPC), the minister did not directly propose candidates, but that sometimes the top-ranked nominees were not elected.<sup>66</sup>

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<sup>66</sup> “I personally always voted for the candidate first on the rating list, but sometimes that candidate would get only five votes rather than six”, says Lazić, “In such cases, another candidate is voted for, one proposed by one of the members.”

In July 2017, the State Council elected the deputy of the Higher Prosecutor's Office in Užice. The deputy prosecutor of the Basic Public Prosecutor's Office in Valjevo, Vukašin Vujičić, had headed the list. Yet he failed to secure the necessary six votes to be elected.

The presiding judge - the Republic Public Prosecutor, Zagorka Dolovac - then proposed Rastko Živadinović, acting public prosecutor of the Basic Prosecutor's Office in Prijepolje. Despite the one-point difference between him and Vujičić, Živadinović was ranked seventh out of the eight candidates.

In her justification, Dolovac mentioned all his former positions, as well as the seminars he attended and that the "difference in the assessment he obtained, once the procedure was conducted, was minimal between him and the candidate who was first on the list ... his exceptional results gave him the advantage."

The SPC then unanimously elected Živadinović. It remains unclear why none of the better-rated candidates from the list were proposed.

After the voting, the Minister of Justice, Kuburović spoke positively about Živadinović, praising his results in the Basic Prosecutor's Office in Prijepolje.

Even in situations where candidates are voted on by the SPC, the National Assembly has the final say. Thus, in May this year, MPs elected public prosecutors for 25 basic and four higher prosecutor's offices throughout Serbia. Almost half of the prosecutor's offices (12) were left without public prosecutors because none of the proposed candidates received the support of the majority of parliamentarians.

## Changing the Constitution – a solution or a problem?

In its negotiations with the EU, Serbia has pledged to change the constitutional provisions on the judiciary and the administration, so that political influence is completely removed from the process of appointing judges, public prosecutors and deputy public prosecutors. The Assembly is no longer to elect judges and deputy public prosecutors, but to have the HJC and SPC (or their successors) do so. No political representatives will sit on the bodies. However, there is little confidence that these changes will take place.

Various professional associations - including the Prosecutors' Association, the Judges' Association, the Association of Judges' and Prosecutors' Assistants, the Center for Judicial Research, Lawyers' Committee for Human Rights - YUCOM, and the Belgrade Center for Human Rights - withdrew from the Ministry of Justice's consultation on changes to the constitution in October 2017. They said they did not want to participate in the debate because the government has not proposed an initial basis for the amendment of the Constitution, and that the process focuses on mechanisms that will make the judiciary even more dependent on political power. The associations asked the Ministry to submit its changes to the Constitution and enable a comprehensive debate.

The Ministry of Justice informed CINS that the consultation process was still ongoing and that when it was completed draft amendments would be prepared. These will be available for public scrutiny and forwarded to the Venice Commission for an opinion. On 22-23 June 2018, at its 115th session, the Venice Commission issued the "Opinion on the draft amendments to the constitutional provisions on the judiciary".<sup>67</sup> Without the final compliance with the recommendations of the commission, the changes will not be adopted.

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67 [http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2018\)011-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2018)011-e)

“It is exactly the aim of the public consultation to hear the views and opinions of all interested parties on a given subject, and (the Ministry) once again invites all professional associations which have withdrawn from the consultation process to return to the public debate and take an active part in it,” stated the Ministry of Justice.

Dragana Boljević was among those who have sounded warnings about the potential problems. She says that the Ministry of Justice is trying to remove political influence, but also build a new route through which to exert it.<sup>68</sup>

According to Boljević, the aim is to grant a leading role to the Judicial Academy, an institution intended to train future judges and prosecutors. Those who complete its courses will have a direct route into the judiciary. In effect, she explains, this means that judges will be picked when they are admitted to the Academy, and a third of the Academy’s board of directors will be elected by the Ministry of Justice.

Rather than the Assembly later appointing these candidates as judges, she adds, the proposal is to appoint them by decree of the President of the Republic.

The Law on the Judicial Academy<sup>69</sup> stipulates that the Management Board shall manage the Judicial Academy of the Republic of Serbia (PARS). Members of the Board shall be: four members appointed by the HJC from the ranks of judges, two members appointed by the SPC and three members appointed by the Government.

In hindsight, it is possible to see that the executive branch is attempting to strengthen its influence on the judiciary through PARS. The initial PARS Act had provisions for appointments to the position of the basic or misdemeanor court, i.e. deputy public prosecutor. In addition to the general and specific legal requirements put forth, an additional requirement has been made – the completion of initial training at the Judicial Academy. Only if there are no candidates who have completed this training may HJC and SPC propose people who meet the general requirements stipulated in the Law on Judges and the Law on Public Prosecution. The Constitutional Court of Serbia declared this unconstitutional in 2014. It is interesting to note that, although the PARS Act was passed in 2009, the Constitutional Court only began acting on the initiative in September 2012, requesting a statement from the National Assembly. The decision was handed down in February 2014.

The Ministry of Justice stated that the European Commission’s position is that the completion of PARS training should be the only way to enter the judiciary. However, because of the large number of judicial and prosecutorial assistants who are eligible to run for these positions under the current law, the Ministry must find an interim solution.

They also say that the option of having the President of the Republic appoint judges and prosecutors has never been considered as a solution, nor has “this view ... been set forth during the public debate.”

68 “We do understand that we will have an uncrowned king in this case. This should not be accepted in our case, since it gives rise to authoritarian tendencies that should be weakened, not strengthened. This would definitely be abused.”, warns Dragana Boljević.

69 Official Gazette of RS, no.104/2009, 32/2014 – decision of CC and 106/2015

“On the contrary, it is clear that the High Judicial Council and State Prosecutorial Council should be solely in charge of the selection of judges and prosecutors,” stated the Ministry of Justice’s response to the CINS.

### Pressures continue even after elections

Political pressures are apparent not only during the appointment of judges and prosecutors. Goran Ilić, the commissioner for the independence of prosecutors and member of the SPC, found that the members of one party in the ruling coalition put pressure on the prosecutor who worked on a case involving falsification of the electoral register.

According to *Insajder*, the prosecutor was - through informal contacts and then through friends - sent messages warning her to think hard about the decision she had to reach and not to go against “you know who”. Complaints were then filed about her work. Ilić said that he is checking another similar case. He added that prosecutors have informally complained to him of the indirect pressure they are under, such as the failure of the police to act based on their orders. Prosecutors interpret this as a signal to stop working on a particular case.

### The police take orders from the Minister, and not the prosecutor<sup>70, 71</sup>

Eight out of ten deputy public prosecutors are thought to be under the influence of politicians, according to the latest survey of the Association of Prosecutors and Deputy Public Prosecutors (UTS) and the Open Society Foundations in Serbia.

According to the respondents, political influence is usually manifested through media pressure (44%) and informal suggestions by their superiors (34%). The research shows that half of the interviewed deputy prosecutors had been in a situation where a politician in power commented on the case on which they were working.

A quarter of the deputies who have found themselves in this situation are said to have been upset and worried about how political interest in the case would affect their career. When asked about the relationship between prosecutors and police, the overwhelming majority of deputy prosecutors surveyed (77%) said there was a risk the police would be politicised. More than half of respondents believe that prosecutors have no control over the police in pre-investigative procedure, while 20% of them believe that public prosecutors have very little control. Thirty-six percent believe that control, to a great extent, is in the hands of the Minister of Interior and the police would rather act according to their chain of command than by order of the public prosecutor. More than 40% of the deputies said that they found themselves in a situation where the police refused to comply with their orders, because their superior had issued a contradictory order. An additional 25% of the deputies had not found themselves in this situation, but had heard of it happening to others. However, a third of the deputies had never found themselves in this situation, nor had they heard of it from colleagues.

70 <https://insajder.net/sr/sajt/vazno/7652/Utvr%C4%91en-politi%C4%8Dki-uticaj-na-tu%C5%BEioca-Lokalni-politi%C4%8Dari-slali-%E2%80%9Cporuke%E2%80%9D-preko-prijatelja.htm>

71 <https://www.mpravde.gov.rs/files/ROLAN-predlog%20izmene%20Ustava.pdf>

### What's hiding in the constitution's latest packaging?<sup>72</sup>

If constitutional changes lead to the realisation that judges and prosecutors must become more independent, what are the likely consequences?

Most likely - well aware that international standards demand it - the executive branch will, with a heavy heart, accept the exclusion of one or both representatives of the non-judicial authorities on the High Judicial Council. It may be that they remain but are deprived of voting rights over judicial appointments. However, it is probable that influence will shift elsewhere and this would be very damaging.

The creation of the Judicial Academy has been presented as a way to clarify the selection criteria for judges. It has been supported by a strong campaign led by a number of interested parties in the executive branch.<sup>73</sup> They have attracted considerable coverage in the media and will no doubt exert strategic influence on the efforts to amend the Constitution.

However, the Academy will in fact serve a very different purpose. In all probability, it will be presented as an obligatory entry point for all future judges in the judicial system. It is not difficult to conclude that in this way, a backdoor system will ensure future judicial office holders are carefully preselected. The particular danger of corruption here lies in the fact that the process of selecting future judges can be controlled by appointing a Judicial Academy management that is sympathetic to the government.

The Judges' Association of Serbia conducted a survey of 1,585 judges (nearly 2,800 of the total in Serbia). Only 54% of those interviewed believe that judges are impartial, 57% think judges are professional, 72% of judges considered that the evaluation of their work is poorly regulated, 53% believe judicial appointments to be non-transparent, while 65% of judges are not familiar (either insufficiently or not at all) with the criteria for promotion. In other words, judges mostly do not believe that their progress really depends on formally prescribed criteria.

Only 8% of judges thought the HJC ensured their independence. Indeed, 83% of judges considered that the Council pursued its own interests and those of political parties. The fact that 44% of judges at some point were pressured to make a certain decision is quite disturbing. Even more so is the finding that more than a fifth of the judges said that though they felt under pressure, they did nothing to protect themselves.

<sup>72</sup> [http://www.danas.rs/drustvo.55.html?news\\_id=359632&title=Policija+slu%C5%A1a+ministra%2C+a+ne+tu%C5%BEioca](http://www.danas.rs/drustvo.55.html?news_id=359632&title=Policija+slu%C5%A1a+ministra%2C+a+ne+tu%C5%BEioca)

<sup>73</sup> Author's text of the Appellate Court Judge Miodrag Majić  
<http://misamajic.com/2017/10/21/sta-se-krije-u-najnovijoj-ustavnoj-ambalazi/>

It is generally agreed that the constitutional framework for the judiciary has a number of shortcomings, and that it allows politicians to influence the judiciary in at least three ways (the National Assembly appoints judges to their first three-year term, appoints all court presidents and all eleven members of the HJC, who then appoint all judges on a permanent mandate). Almost all the judges feel that politicians (the Minister of Justice and a representative of the National Assembly) should not be members of the HJC. Nonetheless, the study found that only half of the judges supported the change in the constitution.

“Judges are convinced that even in the existing constitutional framework, independence would be possible if the political will existed. This is why they believe it is not necessary to wait for constitutional amendments for the state of affairs to improve.” (Dragana Boljević, Judges’ Association of Serbia, research<sup>74</sup>).

During the Group of States against Corruption (GRECO) visit to Serbia, the team of evaluators were told that politicians and the media are putting pressure on the judiciary, and judges and prosecutors are afraid and lack confidence as a result. The institutional framework and the appointment process, as well as the harmful consequences of the 2009 reform, are to blame for these problems. GRECO therefore recommends that the composition of the High Judicial Council be changed. The National Assembly must be excluded from the appointment process, and at least half of the members should be judges chosen by their colleagues. Members of the executive and legislative branches should not be *ex officio* members.

Alternatively, specific measures could be taken in order to develop the role of the HJC as the real, self-regulatory authority of the judiciary, which would act proactively and transparently. Therefore, the Constitution needs to change too. (Group of States against Corruption (GRECO), Fourth round of evaluation: Preventing corruption among members of the parliament, judges and prosecutors – Serbia, CoE Doc. Greco Eval IV Rep (2014) 8E, 2 July 2015, Council of Europe, paragraph 95.)

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74 [http://www.sudije.rs/files/Drutvo\\_sudija\\_Srbije\\_-\\_Jaanje\\_nezavisnosti\\_i\\_integriteta\\_sudija.pdf](http://www.sudije.rs/files/Drutvo_sudija_Srbije_-_Jaanje_nezavisnosti_i_integriteta_sudija.pdf)

## CS 9: PRESCRIPTION OF OFFENCES DUE TO POLITICAL INFLUENCE (SP 7,5 AND 6)

*This section deals with weaknesses in the functioning of the prosecution, including abuse of the statute of limitations, political influence and the manipulation of statistics by the authorities.*

*The statute of limitations is a serious problem and occurs more frequently in criminal offences which attract more lenient punishments. Politicians also rely on the statute of limitations to avoid going to court.*

*The case of Bogoljub Karić suggests possible political influence on the work of the prosecuting authorities. When proceedings were first taken against him, the political motives seemed obvious: Karić had entered politics and represented a threat to the interests of the ruling coalition at the time. Then, after his party joined the ruling coalition in 2012, attempts to bring him to trial were dropped and eventually, in 2016, the statute of limitations brought an end to the case.*

*Proceedings are sometimes so slow that even Higher Court cases have to be abandoned.*

*In corruption cases, the statute is most often invoked when there are a number of defendants, where abuse of office is alleged, and where it was necessary to conduct financial investigations. According to Goran Ilić of the Faculty in Law in Belgrade, the statute of limitations depletes trust in judicial institutions: “they are not sufficiently willing, able, qualified (...) even independent and autonomous enough to cope with these problems.”*

*Less directly, the case of Stanko Subotić shows the possible extent of political influence. Along with the director of the Customs Administration, Mihalj Kertes, and 13 others he was charged with illegally importing cigarettes. Subotić was first sentenced in October 2011, when he had loudly denounced the government. In February 2013, after a change of government, he was acquitted during retrial.*

*In the case of the students’ file – which is very likely to be subject to the statute of limitations – it is not entirely clear whether political influence was present. What is certain is that the indictment was poorly drafted, with too many defendants and procedural obstacles to hold the trial.*

*Lack of data means it is unclear whether the authorities have done everything they could to ensure the defendants appeared in court before the statute of limitations came into force. This makes it easy to hide political influence. It also means responsibility is passed from the absent defendants to the judiciary as a whole, further eroding confidence in them.*

*Between 2015-16 in Serbia a total of 930 criminal cases were subject to the statute of limitations – the majority of them minor offences before the basic courts. They included some of considerable public interest, either because of the offences or the people involved.*

## Serbian judiciary: The bigger the case, the greater the chance the statute of limitations will be invoked

Author: Milica Stojanović

Ten years after criminal proceedings against Bogoljub Karić<sup>75</sup> began, the statute of limitations ended them. The investigation into Karić was launched by the District Prosecutor's Office in Belgrade (the current Higher Prosecutor's Office), for allegedly taking money from Mobtel. Karić's company BK Trade and the Serbian state-owned company PTT founded Mobtel in 1994.

Karić and 15 other people were indicted in 2010. His trial never took place and in January 2016 the Higher Court ended proceedings against him.

According to the Supreme Court of Cassation during 2015 and 2016, a total of 930 criminal cases were subject to the statute of limitation, including the Karić case. Of these, 898 lapsed in the basic courts, and 32 cases in higher courts.<sup>76</sup> Because higher courts deal with more serious offences, the public are often under the impression that this figure is higher.

### Suspension of the second investigation into Karić

At the end of 2016, the second investigation against Bogoljub Karić was completed. Karić had been under investigation for a decade for allegedly inflating the value of BK Trade's assets before it became part of Mobtel. The Prosecution for Organised Crime suspected that Karić and his associates had transferred Mobtel's profits into their accounts using private companies. However, the prosecution went no further after they announced the evidence did not confirm their suspicions.

According to CINS research into the investigation in June 2017, documents went untranslated for seven years and efforts to obtain other documents took months or even years. Between 2007 and 2015,<sup>77</sup> not one hearing was held.

In a statement from December 2016, the Prosecutor's Office said that the main reason for suspending the investigation was the fact that new information, received the previous year, had shown that BK Trade had not profited unduly. This document had in fact already been analysed in 2011.

Police announced they were seeking Karić on 4 February 2006. He returned to Serbia after the investigation was suspended, a few days before the end of 2016.

75 The Serbian businessman and politician Bogoljub Karić left Serbia for years because of the investigations into his conduct. During the 1990s he was close to Slobodan Milošević's regime and made his fortune. His family took an active part in politics in 2004, when Karić was a candidate for president of Serbia. In the same year he formed a party, which is now called Pokret Snaga Srbije – BK (Serbian Strength Movement). His wife Milanka Karić was a presidential candidate in 2008. Karić's brother Dragomir and his wife Milanka have been members of the Serbian Parliament since 2012, as part of the coalition led by the Serbian Progressive Party. At the last presidential election this party supported the candidacy of Aleksandar Vučić, and after his return to Serbia at the beginning of 2017, Karić took an active part in Vučić's campaign.

76 The Darko Šarić group, suspected of smuggling cocaine from South America to Europe and money laundering, has been on trial since 2010. Šarić himself was arrested in 2014, while Radoljub Radulović, who is suspected of being at the top of Šarić's drug cartel, is still at large. The lawsuit against Darko Šarić was recently postponed for the 14th time, and one of the three proceedings against Šarić, for the forgery of travel documents, reached the time limit for the statute of limitations in October 2017. <https://www.krik.rs/tag/darko-saric/>

77 Bogoljub Karić told the CINS: "Politicians held up this case with the aim of preventing it from entering and reaching the court. If it had reached the court, we would have instigated proceedings and proven our innocence (...) the State would suffer tremendous damage. Then the governments change. In any event the case would be subject to statute of limitations."

According to CINS data, between January 2015 and August 2017 at least 19 cases lapsed in the higher courts. They included seven corruption offences involving giving and receiving bribery, embezzlement, violations by judges and prosecutors, influence peddling and abuse of office.

Usually cases of severe corruption that become subject to the statute of limitations involve a large number of defendants and a financial investigation. Judicial inefficiency and the complexity of these cases tend to explain why they go on for so long.

### Calculating the statute of limitations

According to the Criminal Code, the statute of limitations can be both relative and absolute. The time limits on criminal prosecutions or rulings are determined according to the amount of the fine or sentence imposed. Each new activity within the proceedings (bringing charges, the start of the trial, etc) changes the calculation.

The relative statute of limitations is calculated as:

- › 25 years from when the offence was committed, if it would attract 30-40 years in prison;
- › 20 years, if it would attract a prison term of 15 years;
- › 15 years, if it would attract a prison term of 10 years;
- › 10 years, if it would attract a prison term of more than 5-10 years;
- › 5 years, if it would attract a prison term of 3-5 years;
- › 3 years, if it would attract a prison term of 1-3 years;
- › 2 years, if it would attract a prison term of less than a year, or a fine.

The 'clock' on the statute of limitations can be restarted by certain events (e.g. the bringing forward of charges), but under no circumstances can the total exceed twice the relative limit above. This is referred to as the absolute statute of limitations.

The case of Stanko Subotić<sup>78</sup> shows the power of the statute of limitations. Subotić was first indicted in 2007 for cigarette smuggling carried out during the 1990s, but the case against him ended in his acquittals and partial dismissal of charges due to the statute of limitations.

Together with the former director of the Federal Customs Administration, Mihalj Kertes and 13 other people, Subotić was accused of importing cigarettes into Yugoslavia in 1995 and 1996 with forged customs documents. The state lost about 22m Deutschmarks in potential revenue as a result.

<sup>78</sup> Stanko Subotić is a Serbian businessman who was involved in the clothing trade during the 1980s. In the 1990s he began trading cigarettes, and was the owner of two duty-free shops on the Macedonian border. He then became a distributor for foreign manufacturers such as Philip Morris. In 1997 Subotić moved to Montenegro, and after the 2000 political reforms he bought various companies. In 2004 he founded Futura plus, the largest kiosk network in Serbia. Since 2001 the Croatian magazine Nacional has reported allegations that Subotić was heavily involved in organised crime – not just smuggling cigarettes, but weapons. Police identified Subotić as the major cigarette smuggler in the Balkans in the period between 1995 and 1999, and he was subsequently indicted.

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In October 2011, 13 people, including Subotić, were sentenced to prison terms and two were acquitted. In February 2013, the Court of Appeal in Belgrade quashed the verdict on the basis that photocopied documents could not be used as evidence, and the trial was restarted.

The Higher Court acquitted the defendants of some of the charges in 2014. Those relating to 1995 were dismissed as the statute of limitations now applied. The Court of Appeal upheld this ruling in November 2015.

However, after a prosecution appeal the Supreme Court of Cassation found that the acquittal was illegal and had worked in Subotić's favour, since the Court of Appeal still did not accept photocopies as evidence.<sup>79</sup>

Mihalj Kertes was also acquitted. Charges against him for transferring state funds to Cyprus during the 1990s lapsed.

According to Lidija Komlen Nikolić of the Prosecutor's Association, the delay between an offence and its prosecution is one of the reasons why cases so often expire under the statute of limitations.<sup>80</sup>

### Some prosecutor's offices lack data

During the corruption trials, CINS attempted to collect data about the use of the statute of limitations. The prosecution reported that over a two and a half year period, investigations into 34 people ended in this way. The data did not include offices such as the Belgrade Higher Prosecutor's Office because they said their electronic records did not log it.<sup>81</sup>

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79 <http://www.blic.rs/vesti/drustvo/pristrasno-pravosudje-blic-istrazuje-cane-nezakonito-osloboden-za-sverc/c8c1r2r>

80 "We can conclude that a significant part of the evidence, which was easily available soon after the offence was committed, is harder to obtain and means a longer trial," stated Lidija Komlen Nikolić.

81 "There are no statistical data at the level of the prosecution, in regard to statute of limitations, because in more than 90% of the cases, the statute of limitations is determined during the court proceedings," explains Lidija Komlen Nikolić from the Prosecutors' Association. According to her, the prosecution offices should have data on these cases.

## The “student’s file affair”

In 2007 a total of 94 people - including professors from the Law Faculty in Kragujevac - were accused of taking whiskey, perfume and money in exchange for advance copies of exam papers and higher grades. A decade later, after several postponed hearings and the suspension of proceedings against more than half the defendants, there has still been no judgment. It was 2009 before the defence statement appeared and 2013 when written evidence was received.

Since the offences were alleged to have taken place between 2002 and 2007, the Higher Prosecution Court in Smederevo says the ten-year statute of limitations now applies.

“Due to the application of the new Criminal Procedure Code, the lawyers’ strike in 2014, and the appointment of lay judges, the main hearing reconvened in early 2015, but the criminal proceedings were not completed. We are now presenting and examining written evidence,” the court said in a written reply.

Here, the large number of defendants contributed to the delays in the trial.<sup>82</sup>

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82 “Try and include almost 100 names in one prosecutorial act, and the mere idea of having God knows how many people, present in the courtroom, and then problems with the courtroom occur - you do not have to be much of a criminal procedure wizard to understand that something like that is doomed to become statute-barred,” says Goran Ilić, professor of the Faculty of Law in Belgrade.

## CS 10: INAPPROPRIATE RELATIONSHIPS: MEDIA IN COURT (SP 4 AND 3)

*In Serbia, media outlets can be prosecuted by the state if, for example, they publish hate speech. They can also be sued for libel and defamation by people and businesses. The problems arise when the state fails to treat all media publications equally, regardless of their editorial policy.*

*Political influence may manifest itself in the decision about whether to pursue a case, and the systemic problem is that there is no formal obligation to proceed in a certain manner to avoid bias.*

*Judicial rulings are uneven and proceedings against the media can be lengthy. In the cases of NIN and the Informer – the former critical of the authorities, the latter supportive – the first editor was deemed liable for his front page, while the second was acquitted. NIN's prosecutor was the Minister of the Interior and Informer's was an opposition lawyer. Confusion over which journalist was acting as editor-in-charge played a part in both cases.*

*Given both first-instance rulings have been quashed by the Court of Appeal, it is difficult to draw firm conclusions about the extent of political influence. Nonetheless, all media disputes were brought under the remit of the Higher Court in Belgrade in 2014 precisely to avoid these kinds of judicial discrepancies.*

*The number of actions against the media has increased slightly, and more than half the cases that began in 2015 have not yet been resolved – even though media disputes are treated as urgent within the Serbian justice system. The fact so few judges work on these cases means that they proceed slowly, and decisions are more likely to diverge. Overworked judges may come under pressure to rush out a poorly-reasoned ruling. On the other hand, political pressure can be deployed to speed up or slow down a case – and delays are explained away by staff shortages. The failure of witnesses to appear at hearings – which is endemic in Serbia – is another problem.*

*Given the damage misinformation can do, the fact that it can take years to correct a libel is devastating for those affected. It can be almost impossible to repair the damage, and a single correction so long after the original publication is manifestly inadequate.*

*Since the beginning of 2014, 4,491 lawsuits have been filed against the media in Serbia. The media groups most often sued (1,930 times) are Ringier Axel Springer, the Adria Media group and the daily Informer. These actions are lengthy and the case law is not consistent.*

### One law for NIN and another for the *Informer*

*Author: Anđela Milivojević*

The confused state of Serbian case law means that the Higher Court in Belgrade held one editor (Milan Čulibrk of NIN) responsible for the front cover of their newspaper, while another (Dragan J. Vučićević of the *Informer*) was not – in the same month. Both media were fined for defamation.

The case against the *Informer* was instigated in March 2015 by Ivan Ninić (a lawyer, former journalist and associate of the Anti-Corruption Council) after six articles claimed he was hired by the EU to prove that

media in Serbia were being censored. Judge Vladimir Vrhovšek imposed a 120,000 dinar fine on *Informer* for defaming Ninić. However, the case then went to a retrial at the Court of Appeal.

In June 2016 Nebojša Stefanović, the Minister of the Interior, sued *NIN* for a cover story describing him as “the leading phantom of Savamala”. The article held Stefanović responsible for demolishing buildings in the Savamala district of Belgrade. Judge Slobodan Keranović imposed a 300,000 dinar fine on *NIN*. However, the Court of Appeal went on to dismiss Stefanović’s claim as unfounded.

These two cases are among 4,491 lawsuits filed between the beginning of 2014 and October 2017, according to the Law on Public Information and Media. All media proceedings go to the Higher Court in Belgrade.

In most cases the media, editors and journalists are the ones being sued, but the defendants also included unions, politicians, political parties, journalists’ associations and various public figures. Most complaints relate to damage to reputation, honour and privacy.

Case law analysis drafted by the Journalists’ Association of Serbia (UNS) has shown that in media matters the case law is inconsistent - which poses an even greater problem than the length and costs of the trial: “Very similar disputes lead to different rulings, and the differences are particularly noticeable in determining damages.”<sup>83</sup>

## Who is the *Informer*’s editor-in-charge?

At the beginning of 2015, the Anti-Corruption Council, a monitoring agency founded by Serbian government, announced the publication of its report on the control of media in Serbia. Ivan Ninić was among the authors. Shortly before the report was published, the tabloid *Informer* ran a series of articles critical of it and suggesting that Ninić had been working, under EU instruction, to portray Serbia as corrupt. The *Informer* accused Ninić of being under investigation “for unlawfully obtaining as much as 937,088 dinars” at his previous workplace, the state Privatisation Agency. By the end of March 2015, Ninić sued the *Informer*’s publishing company, Inšajder tim, identifying its editor-in-charge Dragan Vučević as among those responsible.

Ninić demanded Vučević pay 600,000 dinars in damages for damage to his reputation, publish the judgment in the printed edition and permanently delete the articles concerned from the internet.

All three requests were dismissed because the court concluded that Vučević was “*no locus standi*” as a party to the proceedings, and that he was not responsible for the articles because he was not the editor-in-charge, but only the editor-in-chief. However, according to the Media Registry as of September 2015, it is clear that he was registered as the editor-in-charge.

The court noted that the *Informer* itself describes Damir Dragić as its director and the editor-in-chief as Dragan Vučević. Other members of the editorial staff include Milan Dobromirović (political editor) and Aleksandar Ignjatović and Novica Popović (web editors). The ruling concluded that the newspaper therefore had an editor-in-charge as well as an editor-in-charge for politics (Dobromirović) and in this instance the articles dealt with socio-political events.

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83 <http://www.uns.org.rs/novinari-na-sudu/sudska-praksa/43695/visi-sud-ekspeditivniji-ali-sudjenja-novinarima-i-medijima-i-dalje-predugo-traju.html>

Questioned as a witness, Dobromirović said he was unaware of the reasons why the dispute had gone to court, and that he was not familiar with articles published between 31 October 2014 and 27 February 2015. The article in question, which was published on 31 October 2014 in the printed edition of *Informer* and headlined “Ambassador Andrew Devenport frames Andrej Vučić”, was prepared by the *Informer* daily newspaper team, of which he was not a member.

The ruling says the court took this evidence into account but that greater attention was paid to other evidence.

The Law on Public Information and Media<sup>84</sup> says “the editor-in-chief of a media outlet also acts as editor-in-charge of the same outlet” and that publications can have an editor-in-charge for specific editions, and columns and other sections.

When trying to determine who was responsible for specific headlines and articles in the *Informer*, the court relied on conclusions of meetings of the basic and higher courts under the jurisdiction of the Court of Appeal in Belgrade. This says, that “when the publication does not specify an editor-in-charge, but only the editor-in-chief, then the editor-in-chief is legally responsible.”

Judge Vrhovček concluded that, given that the publication listed Dobromirović as a member of the editorial staff, the editor-in-charge should be held responsible for the articles about Ninić.

The ruling does not say why Vučićević is not responsible for editing the front page, headlines and articles. He was not called as a witness, as Ninić requested, because this would “only lead to delay ... and to ... unnecessary costs, because it would not provide the basis for a different decision “.

The Court of Appeal in Belgrade quashed the first-instance ruling in May 2017 and the entire proceedings were brought back for retrial.

Among other things, the Court of Appeal noted that it was unclear on what basis the trial court found that Vučićević was not legally responsible for paying damages. Since the court had refused to call him, it was unclear whether he had been involved in editing the articles.<sup>85</sup>

## Different rules for *NIN*

In June 2016 the front page of *NIN* identified the Minister of the Interior, Nebojsa Stefanovic, as the ‘chief phantom’ in the Savamala case. In other words, it held him responsible for ensuring the police did not respond when a gang of masked men bulldozed buildings in an area of Belgrade earmarked for luxury real estate development. The men allegedly tied up passers-by and confiscated their mobiles. People called the police, but they did not arrive.

“*NIN*’s front page and story are another monstrous and scandalous invention by this weekly, which has published notorious lies about me and my role”, said Stefanovic at the time.

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84 [http://www.paragraf.rs/propisi/zakon\\_o\\_javnom\\_informisanju\\_i\\_medijima.html](http://www.paragraf.rs/propisi/zakon_o_javnom_informisanju_i_medijima.html)

85 “Dragan Vučićević’s hearing was wrongly assessed as unnecessary, since at the time of publication as editor-in-chief, he could have had knowledge of the way in which the disputed information was collected,” said the Court of Appeal’s hearing.

During the hearing Stefanović said that journalists Sandra Petrušić and Milan Čulibrk were responsible for the front page and the text. *NIN*'s lawyer said Čulibrk could not be held responsible since he was not editor-in-charge at the time, and not been since February 2016, when the the positions of editor-in-chief and editor-in-charge were separated. The editor-in-charge was Nikola Tomić.

However, Judge Keranović ruled that Čulibrk was listed in the media registry as editor-in-charge and *NIN* had failed to produce any document proving the contrary.

The Court of Appeal later quashed this judgment, finding the headline a “sarcastic way of pointing out [Stefanovic]’s political responsibility”.<sup>86</sup>

## Claims against the media have increased slightly

Ringier Axel Springer was sued 411 times - more than any other publication - between 2014 and late 2017. Its publications include *Blic*, *NIN* and the daily newspaper *Alo*.<sup>87</sup>

Adria Media, which owns the daily newspaper and portal *Kurir*, has been sued 304 times in the same period. The Insider Team company, publisher of *Informer*, was the subject of 193 complaints.

About half these cases have been resolved in one way or another, but a significant number of them have lasted for more than a year. Of the 413 cases from 201, just less than half (205) have been resolved to date.

Exact details of those who have sued the media are confidential and cannot be obtained from the High Court, despite the efforts of the CINS. However, one of the most frequent litigants was the leader of the opposition movement “Dosta je bilo” (Enough), Saša Radulović.

In a statement from 2016, Radulović said he had filed complaints against the pro-government outlets *Informer*, *Pink*, *Kurir*,<sup>88</sup> *Studio B*, *Tyeprompter*, *Tanjug*, *Alo* magazine, *Novosadski Reporter* and *Srpski Telegraf* and that they were filed “due to the notorious lies and insults” aimed at Radulović and his family members.

The second most frequent litigant was a former model, Katarina Rebrača, who had been accused of appropriating 37m dinars from her charity, which was set up to educate women about breast cancer. The third was the singer Svetlana Ceca Ražnatović, whose private life was the subject of tabloid coverage.

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<sup>86</sup> <http://www.bg.ap.sud.rs/cr/archive/dg-donete-odluke/2017/4>

<sup>87</sup> In early July 2017, the daily *Alo* ceased to be part of the media group Ringier Axel Springer, becoming an independent company bearing the same name, and the owner became Saša Blagojević. Blagojević is the director and co-owner of the marketing and consultancy agency Trilenium. The Serbian public does not know much about him, since he is a relatively new player in the Serbian market. However, the media in Serbia have stated that Saša Blagojević is close to the governing Serbian Progressive Party. <https://serbia.mom-rsf.org/rs/mediji/detail/outlet/alo/h>

<sup>88</sup> Aleksandar Rodić, the owner of the Adria Media Group, within which is *Kurir*, published an open letter at the end of 2015 in which he apologised to Serbia for being part of the project of “flowering up” the reality together with TV *Pink* and the daily magazine *Informer*. He claims that the media in Serbia are not free and are exposed to immense pressure. <http://www.kurir.rs/vesti/drustvo/2008557/aleksandar-rodic-srbijo-izvini>  
Tensions between the governing Serbian Progressive Party and the group Adria Media, which has reportedly come under political pressure, were briefly interrupted when Aleksandar Vučić – who was running for president as SPP candidate – visited the editorial offices of *Kurir* only a month before the elections. He was running for President as the candidate of the Serbian Progressive Party. <http://www.kurir.rs/vesti/politika/2860801/aleksandar-rodic-ulazi-u-politiku-srbija-se-dize-pocinje-borba-protiv-diktatorskog-rezima-citajte-u-kuriru>

## Lawsuits as an effort to silence the media

Most litigants sue the media in the hope of receiving damages. The sums claimed ranged from 1,000 to 20m dinars in 2017, with the highest amount sought from *Informer*.

Among the claims is one of four lawsuits filed by Minister Without Portfolio Nenad Popovic against the investigative journalism portal *KRIK*, for one million dinars. Popovic sued the editor of *KRIK* and four journalists who worked on the “Paradise Papers” international investigative project, which revealed that he owns an offshore company and properties worth over 100 million US dollars. In total, Popovic sought four million dinars in damages from *KRIK*.

Despite the digitisation of the courts’ websites, complete data about media-related litigation and the sums awarded is still unavailable to the public. Damages are usually lower than requested and do not normally exceed 300,000 dinars. On average, they range from 80,000-150,000 dinars.

“As a result of inconsistencies in the case law, some journalists fear for their jobs, while the rest publish illegal content with impunity,” says the Journalists’ Association of Serbia. It concluded that for some publications these payouts were a routine business cost; for others, they threatened their survival. For a tabloid, a fine of several hundred thousand dinars is a drop in the ocean.

Furthermore, suing a publication can be an effective way for politicians to drain troublesome publications of money and obstruct their work. “Public officials and people close to them often initiate legal proceedings which, whatever the outcome, exhaust the media financially. These publications cannot get money from the state and sources of private sector funding often depend of people close to power,” says an analysis by the Lawyers’ Committee For Human Rights (YUCOM).

## Undeveloped case law

Since 2014, all proceedings against the media in Serbia are administered at the Higher Court in Belgrade. The decision to centralise these cases was the result of years of problems, which led to conflicting court decisions and fines that cost the media millions of dinars..

Fifteen Higher Court judges are assigned to these cases. The same team work on copyright cases, civil and family disputes and those involving the judicial protection of whistleblowers.

The media can be sued for publishing:

- › Information that violates the presumption of innocence
- › Hate speech
- › Material that damages the rights or interests of minors
- › Pornographic content
- › Material that infringes the right to human dignity, privacy, or not to be misrepresented in the media

The law treats media disputes as urgent. The deadline for a response to a lawsuit is eight days rather than the usual 30. The deadline for appeals is half the normal period. Cases tend, therefore, to conclude more quickly than in other areas of law – two to three years, although journalists' associations feel this is still too long.

In an analysis of court cases from 2016, the Journalists' Association of Serbia said that first-instance hearings take so long because too few judges are assigned to work on them.

The failure of parties and witnesses to appear causes further delays. In 2016, Dragan J. Vučićević sent the court a medical certificate to excuse himself, and appeared on TV Pink a few hours later.

In the same year, Vukašin Obradović, the editor of the *Vranje* newspaper, sued Vučićević and *Informer* – as well as the former president of the Independent Journalists' Association of Serbia (NUNS) and the owner and chief editor of TV Pink, Željko Mitrović – for defamation.

Obradović's case against Mitrović has been dismissed, but the procedure against Vučićević is ongoing. Obradović complained to CINS journalists "that the judiciary is an active and very important part of the mechanism that has deprived the media of any responsibility for its publications."<sup>89</sup>

In contrast, Nebojša Stefanović's case against *NIN* was completed in four months and after a single hearing. All the parties to the proceedings appeared before the court, avoiding any delay.

Media organisations are not always treated equally under the law in Serbia. Sometimes one company, or its advertisers, are inspected by the state while others are not. Much more rarely, an editor might be persecuted by the police or prosecution authorities. On the other hand, the media often appear before the court. Most often this is due to the claims for damages for publishing false information. Here it should be noted that requesting reimbursement of damages from the media implies, to a certain extent, specific rules.

The law gives priority to non-monetary forms of removal of the inflicted damages – by posting corrections when the media receives such a request.

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<sup>89</sup> Obradović says it will have taken two years for witnesses from Pink and *Informer* to appear – providing they do obey the court summons. "We can conclude that today, in Serbia, the most disgusting lies and insults can be said or written against you, your moral and professional integrity may be damaged... It will take three years to get a final ruling from the court."

## CS 11: WHAT IS KNOWN ABOUT THE WORK OF THE POLICE INTERNAL CONTROL DEPARTMENT? (SP 2, 6 AND 7)

*Much of the internal workings of the Serbian police are hidden from public scrutiny, including decisions about promotion and dismissal. This makes political manipulation easier. We highlight here the case of policeman Dalibor Karanović, who was suspended after a convicted assassin complained to the Minister for the Interior about him. Details of the police Internal Control Department's (ICD) investigation into the incident were not released to either the Ombudsman or the public.*

*The main problem lies with the Minister of the Interior's authority to exercise control over the ICD. This could be solved by depoliticising the management of this important unit.*

Internal control of the work of the police and other employees of the Ministry is conducted by the Internal Control Department (ICD). The form and the manner of internal control are prescribed by the Minister. ICD acts upon its own initiative, at the request of the competent public prosecutor, based on the notifications and other information that has been collected, notices in written form, submitted by police officers and other employees of the Ministry, as well as complaints of natural persons and legal entities. The Chief of the ICD, shall, without delay, in writing, notify the Minister of the actions/failure to act, for which he/she believes are contrary to the law and he/she shall take necessary measures and actions in order to eliminate irregularities.

The Chief of the ICD shall report directly to the Minister for his/her own work and the work of the ICD. The Minister shall control the work of the chief and the employees of the ICD. The Minister shall provide the ICD with guidelines and mandatory instruction for work, except in actions undertaken in preliminary and investigative procedure, at the request of the competent public prosecutor. (Law on Police).

*This case is not the only one of its kind. The Ministry of the Interior has remained silent on the ICD's investigations into the Savamala demolition case and the failure of the police to respond to emergency calls from the public. The fact that the ICD's chief has since been replaced has led to speculation about his part in the unpublished findings. In Serbia – and not just in the police, but other public services and state authorities – there is no legal or practical obligation to explain why one candidate is chosen over another for a senior role. This lack of transparency makes discretionary decisions easier and hides political influence.*

*The media were right to question the abrupt dismissal of several police chiefs in 2014 at the behest of the most powerful politician in the country (and now its president), Aleksander Vučić. He claimed they had been leaking information. In the absence of an official explanation, it is reasonable to assume that the tabloid campaign against the heads of the Criminal Police Directorate led to the sackings. However, we note that the complaints against their main target, Rodoljub Milović, came from convicted criminals and suspects. Most of the Serbian public believe the police are in hock to vested interests rather than the public, and incidents like this do nothing to dissuade them of that opinion.*

*During 2016 the police ICD filed 201 criminal charges. But the details of these remain almost unknown to the public – even when they touch on the transparency and impartiality of the Ministry of Interior.*

## Lack of information about the work of the Police Internal Control Department

*Author: Ivana Jeremić*

Dalibor Karanović is a policeman from Bačka Palanka who allegedly pointed a gun at a man who had been brought to the local police station after refusing to identify himself. The man was Nemanja Jovanović, the son of Zvezdan Jovanović, who was sentenced to 40 years' imprisonment for assassinating the Serbian prime minister Zoran Đinđić in 2003.

Zvezdan Jovanović was a former member of the Ministry of the Interior's Special Operations unit.<sup>90</sup> When he heard about the incident in Bačka Palanka, he wrote to the police minister, Nebojša Stefanović, demanding he "restrain the raging dogs".

Karanović was suspended. An MP from the opposition Democratic Party, Balša Božović, subsequently intervened to demand Stefanović's resignation.

Once the affair became known, the Ministry of the Interior disclosed part of the documentation relating to the case. It showed that Jovanović's wife complained about Karanović's conduct in late 2016 and the police ICD asked the Novi Sad Police Directorate to launch an investigation. It concluded the allegations against Karanović were unfounded. Stefanović, however, was dissatisfied with this report and ordered further checks.

Miloš Oparnica, then the Chief of the Internal Control Department, told a press conference that the initial report had contained incongruities and the ICD therefore checked the Jovanović family's allegations. He also revealed that police officers had acted irregularly during the investigation.

CINS asked the Ministry of Interior to provide information about the results of the Novi Sad Police Directorate's investigation, the ICD's subsequent checks and why Karanović had been suspended, but the Ministry of the Interior declined the request.

In the meantime, Karanović remains suspended, and the ICD filed a criminal report against him to the Basic Public Prosecution in Bačka Palanka, on the basis of abuse and torture in April 2017. The report about his treatment of Nemanja Jovanović was transferred to the Basic Public Prosecution in Novi Sad, and additional checks are underway. The Ombudsman investigated the ICD's handling of the case in May 2017 but its findings have not yet been made public.

The prEUgovor (coalition of CSOs) Report on the Progress of Serbia in Chapters 23 and 24 of the EU accession negotiations says this case highlights the problematic provisions of the 2016 Law on Police. These authorise the Minister of the Interior to control and supervise the ICD. The report adds that the system of internal police control is poorly established and the competences of the various internal bodies have not been adequately defined.<sup>91</sup>

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<sup>90</sup> The Special Operations Unit was active during the 1990s during the conflicts in the former Yugoslavia. Its leader, Milorad Ulemek, (Legija), was convicted of planning Đinđić's murder, and was sentenced to 40 years of in prison.

<sup>91</sup> <http://www.preugovor.org/lzvestaji/1382/lzvestaj-koalicije-prEUgovor-o-napretku-Srbije-u.shtml>

## The Internal Control Department's findings in major cases are still unknown

Although the Ministry of the Interior claims transparency is one of its priorities, the work of the ICD is shrouded in mystery. The Ministry argues that the fact the public perceives the police as corrupt stems from the fact that they are unwilling to disclose instances of corruption in the ranks.

### Citizens believe that police serve politicians

A recent poll conducted by the Belgrade Center for Security Policy (BCSP) shows that citizens think the police are highly politicised. A quarter of the population of Serbia believes that politics affects all police work, while a further 46% think it has a lot of influence. Just over a third of respondents (37%) believe that the police work in the public interest, while others think they serve the political elite and senior officers.<sup>92</sup>

The Karanović case was not the only instance in which the work of the ICD came under scrutiny. In September 2017 Miloš Oparnica was replaced as ICD chief by Dragan Kujundžić, and the media questioned whether these cases played a role in his departure.

The first case concerns the Savamala incident in April 2016, when a gang demolished buildings in the Belgrade district of the same name. The police failed to respond to calls from the public, and passers-by were tied up and their mobiles confiscated.

According to Ministry of Interior records, a police operator told one of the callers that he had been ordered not to respond by 'top management'. The Ombudsman's report on the Savamala case<sup>93</sup> recommended the Ministry carry out an investigation without delay. The ICD's own findings were never submitted to the Ombudsman, but they were finally obtained by the Higher Prosecution Office in Belgrade, more than 14 months after the Savamala incident. Although the Commissioner for Information of Public Importance decided the report should be given to the media, the Ministry has refused to release it.

The second case concerns President Aleksandar Vučić's inauguration. Several journalists and people carrying anti-Vučić placards were grabbed by their throats and dragged away by security guards. The police did not intervene. The ICD's findings on this case remain unknown.

The Ministry of the Interior denied that Oparnica was dismissed because of these cases, explaining that a new chief of ICD was regularly elected.

92 <http://bezbednost.org/Sve-publikacije/6275/Stavovi-gradjana-Srbije-o-policiji.shtml>

93 <http://www.ombudsman.rs/attachments/article/4723/savamala.pdf>  
<http://www.balkaninsight.com/en/article/serbian-police-involved-in-phantom-masked-nocturnal-demolition-05-10-2016>  
[http://www.ombudsman.org.rs/attachments/article/134/Introduction\\_2016%20Annual%20Report.pdf](http://www.ombudsman.org.rs/attachments/article/134/Introduction_2016%20Annual%20Report.pdf)

## Criminal charges mostly against traffic police officers

The ICD establishes whether police officers, and other Ministry employees have acted illegally. It acts on its own initiative at the request of the prosecutor in charge, based on information it has gathered, written evidence from employees and complaints from individuals and bodies.

If the ICD finds irregularities did occur, its duty is to inform the minister of police. Disciplinary proceedings or criminal charges may be brought against those responsible. In 2016, 201 criminal charges were filed – a 20% increase on the previous year (168).

These charges involved 183 police officers, and two-thirds of them were accused of offences with a corruption element – also an increase on the previous year. Most charges relate to abuse of office (94 charges) and bribery (77).

Almost half (83) of all the criminal charges were against traffic police. Charges against the border police, criminal investigators and other police units together make up less than a third of the total.

In 2016, the Ministry of Interior received a total of 1,935 complaints, of which 1,890 were against employees in regional police directorates, and 45 against employees of the Ministry. Of these, 1,445 have been dealt with; 77 were found to involve irregularities while in 1,136 there were none. Others were dismissed for various reasons (for example, that the Ministry of the Interior was not responsible for them).

According to the Ministry's report on complaints in 2016, 370 cases were dealt with by second-instance bodies (Ministry commissions). Among these, only 33 commissions were identified.

The number of complaints has increased since 2015, and so has the number in which no offence was found to have been committed.

Disciplinary proceedings were launched against 253 police officers for 'severe' violations.

## Police chiefs sacked at a press conference

Five police chiefs were sacked without explanation during a press conference in 2014. The conference was led by Aleksandar Vučić, then the prime minister and now the President of Serbia.

For several months, the tabloids had been campaigning for the removal of the former head of the Criminal Police Department, Rodoljub Milović. He and Mladen Kuribak, Zoran Tomašević, Nenad Banović and Dragiša Simić were all dismissed.

The campaign against Milović started when Darko Šarić, who was on trial for money laundering and drug trafficking, accused him of having links to Ljubiša Buha Čume, the former leader of the Surčin clan.<sup>94</sup>

At one point Milović voluntarily submitted to a polygraph to be questioned about Šarić's accusations. The results showed he was not lying. Nonetheless, he was sacked at the press conference the following day. Milović had held a meeting of the Bureau for the Coordination of Security Services of Serbia the previous day, which was then chaired by Vučić.

Vučić claimed that the police chief had interfered in politics and the media. For his part, Milović said he was an honest police officer who had not taken money from Darko Šarić.

Milović had been chief of the Criminal Police Directorate of Serbia since 2007, and before that the head of the Belgrade Criminal Police Directorate. He was in charge of the investigation into the assassination of the Prime Minister Zoran Đinđić.

Based on the interviews and opinions which were heard during the research, the expert team has received very little or no evidence on the systemic and widespread corruption within the police. On the other hand, during the research, a multitude of allegations of corruption appeared in the media. Some of these articles refer to high police officers and their alleged involvement in corruption and cooperation with criminal groups, including claims about political influence on investigations of cases of high level corruption and organised crime. Although this research does not investigate specific cases, it is obvious that the problems within the police structures may be much deeper than could be concluded on the basis of discussions with the Ministry of Interior. (European Council Analysis, Risk Analysis on the Current Situation with Regard to Possibilities and Actual Extent of Corruption within the Law Enforcement, Joint European Union – Council of Europe Project “Strengthening the Capacities of Law Enforcement and Judiciary in the Fight against Corruption in Serbia” (PACS))<sup>95</sup>

94 Ivica Petrović, the former head of operations at the Security Information Agency (SIA), was sacked at the same time as Milović and moved to a more junior position in Obrenovac. He had been investigating drug cartels shortly before Šarić's arrest. Judge Dragan Lazarević, who signed the consents for wiretapping and surveillance measures, was also transferred to another position in 2014. The Prosecutor's Office for Organised Crime was the target of media criticism and a photo of the prosecutor Saša Ivanić was published after being leaked from the SIA.

<https://www.krik.rs/kljucni-momenti-slucaja-saric/>

95 <https://rm.coe.int/16806eedce>

The new Law on Police does not entirely prevent the Minister of the Interior from influencing the work of the ICD. The good thing is that he or she cannot prevent an ICD investigation. Nor can they assign the investigation to another police unit, thereby threatening the ICD's independence. However, the Law on Police enables the minister to give the ICD guidelines and mandatory orders, except in actions undertaken in preliminary and investigative procedures, at the request of the competent public prosecutor (Article 233). Thus, the minister is able to affect the work of the Department. The influence is limited, but there is room for the minister to order the ICD not to comply with certain information, so that the case would not get to the prosecution stage. For example, after the media reported that the chief of the Novi Sad police was involved in arms smuggling in Serbia, the Minister of the Interior said the allegations should be investigated but that he was certain the chief was not involved... In other words he suggested the ICD should not pursue the investigation. (Assessment of Police Integrity in Serbia, Belgrade Centre for Security Policy 2016)

The new Law on Police has improved the legal framework for managing human resources and the parliamentary police supervision, but the system of internal control has not been established yet. The principles of operational independence of the police have only been declaratively promoted in the introductory part of the Law, whereas in the remaining part, a lot of possibilities have been provided for the political management to interfere in actions of the police. (Assessment of police integrity in Serbia, Belgrade Center for Security Policy, 2016)

## CS 12: NON-TRANSPARENCY AND ABUSE OF STATISTICAL DATA (SP 5)

*Serbia is not the only country to announce regular crackdowns on criminality. But in recent years Aleksander Vučić, formerly the deputy PM and now the president, has trumpeted the 'fight against crime and corruption' by announcing mass arrests. The Minister of the Interior, who is also vice-president of the ruling party, now does the same.*

*The public should hear about actions like these from professionals, not politicians. This should normally be the public prosecutor leading the investigation (or their spokesperson), or the Director of Police.*

*Furthermore, the actions are presented in a misleading way, with a headline figure of arrests that suggests a mass crackdown. In fact, some of the people arrested have nothing to do with the crimes allegedly being tackled. But by grouping arrests together, politicians can give the impression of better results.*

*Focussing on arrests also means that the public have little idea how many charges and convictions actually resulted. This suits politicians, who can then blame the courts for failing to act.*

*Statistics on arrests are misrepresented. For example, financial crimes are grouped with other criminal offences, which makes it hard for the public to grasp how much corruption is going on in public services and the private sector. This happens because the offence of 'abuse of office' was historically applied to both private companies and public servants. Sometimes, politicians will identify the party to which a suspect belongs.*

*Serbia needs to introduce clear rules about who can communicate information about criminal investigations and their outcomes – both to the public and to journalists. This would prevent politicians from taking credit for police and prosecutorial work. The country also needs to make the relevant statistics freely available, so they can be properly interpreted and checked against claims by politicians. Serbia has so far failed to meet the requirements of the EU integration process in this area. Statistics are collected at the request of the European Commission and sent to Brussels, where they appear on the European Commission's website – without being released by the Serbian authorities.*

## Manipulating statistics about mass arrests for political ends

Author: Dina Đorđević

In recent years, the use of mass arrests as a police tactic has been praised by politicians. They like to take credit for the arrests, some of which have taken place during election campaigns. On occasion mass arrests have been announced in the media.

Through newspaper articles and police and ministerial statements, the public were told that these arrests – sometimes of a few hundred people at a time – were fighting corruption and showing that the Government and police were winning the battle on crime.

In reality, these actions boiled down to the arrests of a large number of people in various cities throughout Serbia, mostly due to unrelated criminal acts and the confiscation of arms, narcotics and pornography.

The headline number of arrests – often touted as being for ‘serious corruption’ - bears little relation to the reality. Many of the people arrested in these sweeps are picked up for criminal activity of various sorts and degrees. From the beginning of 2013 until the end of 2015, 6,179 people were arrested in anti-corruption sweeps by the Ministry of the Interior. Less than half were charged and only about 1,500 punished. On 1,268 occasions, the outcome was probation.<sup>96</sup>

Transparency Serbia has also investigated the statistical data on the fight against corruption. It concluded that the data can be misleading, even when there was no intention to manipulate it, because different methods are used to collect it and reporting is not regular.

Although statistics on mass arrests are used to highlight the ongoing battle against corruption, according to the CINS the actual number of arrests for corruption has fallen between 2012 and 2016. The most common charge is for abuse of office, which is vague and, according to the European Commission’s 2015 report on Serbia, overused: it includes “cases where objectively, there is no criminal conduct.”

## Corruption arrests are falling

Presenting the police report for the first six months of 2017,<sup>97</sup> Minister of the Interior Nebojša Stefanović said 876 acts of criminal corruption had been uncovered. They included the abuse of power and the abuse of offices as well as receiving and giving bribes and influence peddling.

The data that CINS was able to obtain shows that the Ministry of the Interior has, in the first six months of 2017, undertaken a series of measures (arrest, retention and forfeit) for criminal acts of abuse of office (40), embezzlement (15) and receiving bribery (8). Other offences barely appeared.

Between 2012 and 2016, the biggest categories of offence were criminal acts of abuse of office (743), receiving bribes (151) embezzlement (67) and giving bribes (64). In this period the number of arrests for corruption mainly went down, with the exception of 2015.

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<sup>96</sup> [https://www.cins.rs/srpski/research\\_stories/article/borba-protiv-korupcije-spektakl-pred-kamerama-muk-u-sudnicama](https://www.cins.rs/srpski/research_stories/article/borba-protiv-korupcije-spektakl-pred-kamerama-muk-u-sudnicama)

<sup>97</sup> <https://goo.gl/dd8brP>

Criminal acts	Police measure (arrest, retention, forfeit)				
	2012	2013	2014	2015	2016
Abuse of office	338	193	73	85	54
Receiving bribes	49	29	18	33	22
Embezzlement	18	23	9	11	6
Giving bribes	17	17	2	21	7
Abuse of power by a responsible person	0	2	2	3	7
Influence peddling	2	1	3	1	4
Illegal use of others' money	1	2	3	1	0
Fraud in office	0	1	4	0	0
Giving and receiving bribes in relation to voting	0	0	1	0	3

Almost half the corruption-related offences for abuse of office took place in a single year, 2012.

In its analysis<sup>98</sup> Transparentnost Srbija says it remains unclear how many criminal acts refer to actual corruption, since the police tend to use the label when it is not appropriate.

In the course of the entire 2016, criminal charges have been filed against 1,056 people for 1,611 criminal acts. In the first half of 2017, the police have filed 504 charges for corruption against 706 people.

Transparentnost Srbija points out that three times as many charges were filed in 2014 (3,014) which may suggest charges from other police authorities have been included - but this does not correspond to the report of the European Commission in Serbia, which states that the prosecutor's offices have, in 2015, received 8,460 criminal charges for acts connected to corruption.

## Police sweeps announced before elections

In 2013 Aleksandar Vučić - then the First Deputy Prime Minister and head of security services co-ordination body - personally claimed credit for a mass police sweep in which 1,165 addresses were searched. Vučić described the action - codenamed 'Grom' (Thunder) - as the most successful of the past 25 years.

Other sweeps have followed, some of which have been announced in advance - most recently, at the Serbian Progressive Party's (SNS) board meeting. Vučić, who is now President of Serbia and leader of the SNS, expressed his satisfaction with the fight against organised crime and predicted that many people would be surprised by the intensity of the forthcoming crackdown. At the meeting, the question of whether parliamentary elections should be held early was discussed.

98 <http://www.transparentnost.org.rs/index.php/sr/aktivnosti-2/pod-lupom/9385-nepotpuna-i-varljiva-statistika-antikorupcije>

*Kurir* backed up the president's line: 'Vučić: major arrests before the end of the year; a sharp sword and a new broom to sweep away corruption,' read the front page. However, Omer Hadžimerović, a judge of the Court of Appeal in Belgrade and the vice-president of the Judges' Association of Serbia, told N1 TV it was not the president's role to announce arrests: "Functionally speaking, it should not be known whether arrests will take place or not." Nonetheless, the Minister of the Interior Nebojša Stefanović routinely announces arrests and then addresses the public about them afterwards.

Goran Ilić, the commissioner for the protection of prosecutors, told CINS the problem was that when ministers announced arrests it gave the impression they were politically motivated – even though that was often not the case. "Once the prosecutor begins proceedings, the minister then has no knowledge of - nor should have knowledge of - the course of the proceedings, except in a situation when there is a complaint by the prosecutor, regarding the police's failure to act", explained Ilić. When ministers comment on arrests, it can prejudice later trials.

## Convictions for corruption remain low

Although dozens or hundreds of people are arrested in these sweeps, the number convicted as a result is far smaller.

Codenamed Rezač (Carver), the sweep that took place on 26 December 2015 was pre-announced by Vučić earlier in December, on International Anti-Corruption Day. The police produced footage of arrests which was signed off by the Ministry of the Interior and reported by local media. Eighty people were arrested on suspicion of involvement in financial crime and corruption.

Stefanović then announced further action would be taken and that Serbia would not 'turn a blind eye' to corruption. Nonetheless, of the 80 people arrested only 32 were charged and just one convicted by June 2017, according to *Insajder*.

The Scanner and Scanner 2 sweeps produced similarly disappointing results. These were carried out during the presidential election campaign in spring 2016. Ninety-five arrests were made, 21 people were charged and two convicted.

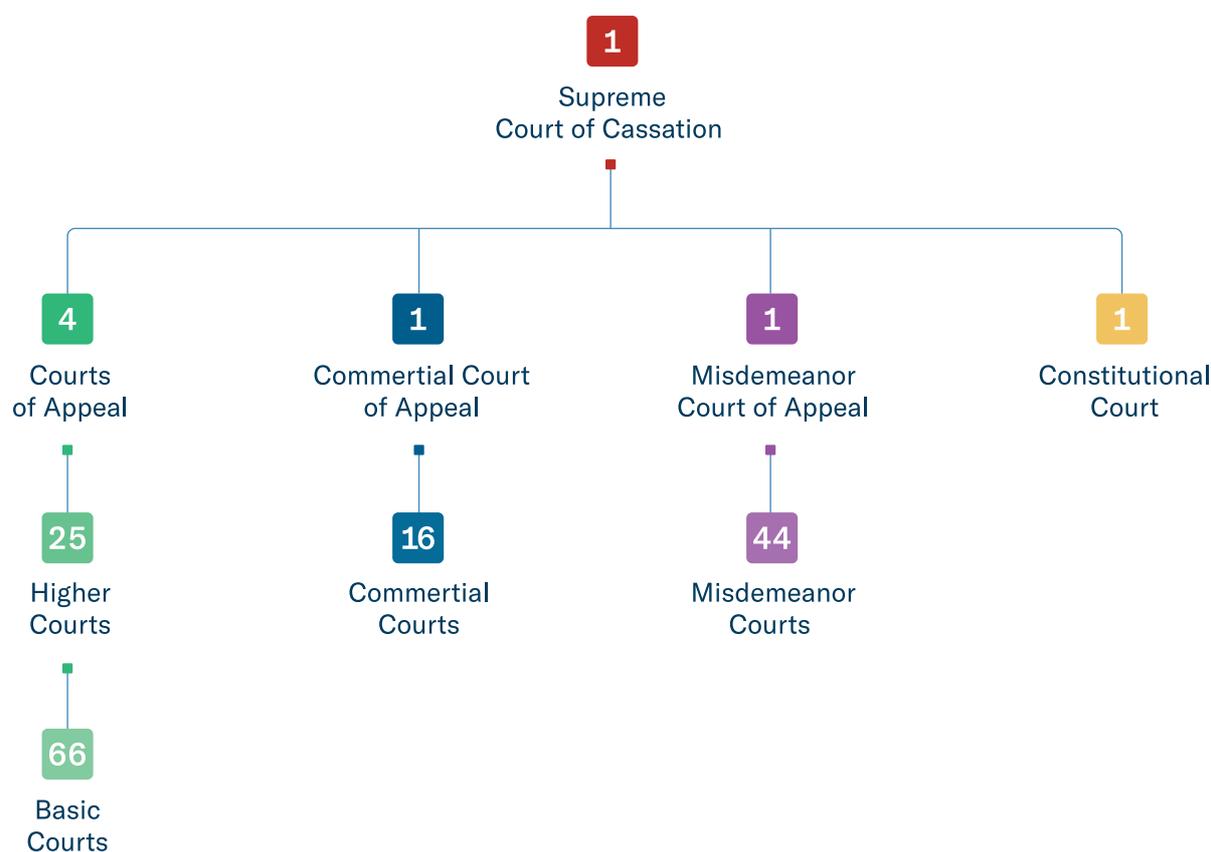
Overall, since September 2016, 123 people have been arrested. As of June 2017, 78 were charged and 33 convicted.

## INSTITUTIONAL FRAMEWORK

### Judiciary

The High Judicial Council lists 2,990 judges<sup>99</sup> (536 of them magistrates) with 244 positions vacant (on 1 September 2017).<sup>100</sup> The Supreme Cassation Court puts the vacancy figure at 366, though long-term sickness and maternity leave meant only 2,586 worked during 2017. Courts employed 1,692 judicial assistants, 5,662 civil servants and 3,187 other employees.<sup>101</sup>

The High Judicial Council (HJC), which appoints judges to permanent positions, has 11 members. Six of these are judges, one is a representative drawn from a university law department and one from lawyers' associations. The remaining three are the Minister of Justice, the President of the National Assembly Judiciary Board and the President of the Supreme Court of Cassation. HJC proposes candidates for the judiciary who are then appointed by the National Assembly.



99 [https://vss.sud.rs/sites/default/files/attachments/%D0%9E%D0%94%D0%9B%D0%A3%D0%9A%D0%90%20%D0%9E%20%D0%91%D0%A0%D0%9E%D0%88%D0%A3%20%D0%A1%D0%A3%D0%94%D0%98%D0%88%D0%90%20-%20%D0%9F%D0%A0%D0%95%D0%A7%D0%98%D0%A8%D0%8B%D0%95%D0%9D%20%D0%A2%D0%95%D0%9A%D0%A1%D0%A2\\_0.pdf](https://vss.sud.rs/sites/default/files/attachments/%D0%9E%D0%94%D0%9B%D0%A3%D0%9A%D0%90%20%D0%9E%20%D0%91%D0%A0%D0%9E%D0%88%D0%A3%20%D0%A1%D0%A3%D0%94%D0%98%D0%88%D0%90%20-%20%D0%9F%D0%A0%D0%95%D0%A7%D0%98%D0%A8%D0%8B%D0%95%D0%9D%20%D0%A2%D0%95%D0%9A%D0%A1%D0%A2_0.pdf)

100 <http://vss.sud.rs/sites/default/files/attachments/broj%20sudija%20na%20dan%2001-09-2017.pdf>

101 <http://www.vk.sud.rs/sites/default/files/attachments/Godisnji%20izvestaj%202A4%20ENG.2018.03.15.pdf>

The fact that the National Assembly appoints judges and court presidents means that political influence in appointments cannot be ruled out.<sup>102</sup> According to reports by the European Commission and the Council of Europe, “there is room for political influence on appointment and promotion... thus creating a serious threat to autonomy, that is, independence and impartiality”. This creates a “risk of undesirable influence over the conduct of judges, whether directly or in the form of caution in judging cases of interest to politicians or to those whose interests the politicians are trying to protect.”<sup>103</sup>

The other risk lies in the composition of the HJC itself, which includes two politicians. The Action Plan for Chapter 23 of EU integration would put an end to this practice, partly through amending the constitution.<sup>104</sup>

However, Serbian politicians have chosen to wait until the constitution is changed before addressing the problem. It could be largely resolved now if the Minister of Justice and the President of the National Assembly Judiciary Committee simply stopped attending HJC meetings. In the meantime, the deadlines for amending the constitution were missed in 2017 and the first draft was only published in January 2018.<sup>105</sup> Furthermore, the first draft was heavily criticised for introducing new channels of political influence.<sup>106</sup> In addition, several other channels for political influence on the judiciary exist – primarily through statements, pressure and other ways in which the executive and legislative branches can exert pressure.<sup>107</sup>

## The public prosecutor's office

The public prosecutor's network includes the Republic Public Prosecutor's Office, appellate, higher and basic public prosecutor's offices and prosecutors with special jurisdictions – the Prosecutor's Office for Organised Crime and the Prosecutor's Office for War Crimes. Public prosecutors in Serbia are organised so that a lower ranked office is directly subordinated to the higher one. The same applies to prosecutors themselves. A higher-ranking prosecutor may issue orders to a more junior one. All Public Prosecutors are subordinated to the Republic Public Prosecutor. A higher ranking prosecutor may issue a mandatory instruction for action in certain cases when there is a reasonable doubt about the efficiency and legality of the actions of his/her subordinates. The Republic Public Prosecutor may issue such an instruction to any prosecutor.

Prosecutors' deputies are obliged to undertake the tasks given to them by the public prosecutor. “High level corruption” comes under the purview of the Prosecutor's Office for Organised Crime. Since March 1 2018, there are four regional offices in charge of prosecuting other corruption cases.

<sup>102</sup> <http://www.sudije.rs/index.php/sr/aktuelnosti/vesti/280-neprihvatljiv-odnos-izvrsne-vlasti-prema-pravosu.html>

<sup>103</sup> “Assessment of Risks of Poor Conduct and Corruption in the Serbian Judiciary and Prosecution”, Joint European Union – Council of Europe Project. “Strengthening the Capacities of Law Enforcement and Judiciary in the Fight against Corruption in Serbia”, April 2014

<sup>104</sup> The CE report for 2014 says that the constitutional and legislative framework still leaves space for inappropriate political influence that diminishes the independence of the judiciary. Changes of the constitution related to the composition and selection of HJC, which would enable court control of decisions related to dismissal, are needed in order to strengthen the independence, representativeness and legitimacy of the HJC

<sup>105</sup> [https://www.mpravde.gov.rs/files/Ministry%20of%20Justice%E2%80%99s%20Working%20Version%20of%20the%20Draft%20Amendments%20to%20the%20Constitution%20\(with%20explanation%20and%20references\)%201.pdf](https://www.mpravde.gov.rs/files/Ministry%20of%20Justice%E2%80%99s%20Working%20Version%20of%20the%20Draft%20Amendments%20to%20the%20Constitution%20(with%20explanation%20and%20references)%201.pdf)

<sup>106</sup> [http://www.sudije.rs/images/JAS\\_comments\\_on\\_Working\\_Version\\_of\\_Draft\\_Amendments\\_8\\_March\\_2018.pdf](http://www.sudije.rs/images/JAS_comments_on_Working_Version_of_Draft_Amendments_8_March_2018.pdf)

<sup>107</sup> “The judges have no guarantee that they can guarantee that they will perform their functions peacefully and with no out pressure. On the contrary, the politicians threaten judges if they dislike their trials and decisions.” - Report of the Anti-Corruption Council, April 2014. <http://www.antikorupcija-savet.gov.rs/en-GB/reports/cid1028-2486/report-on-judicial-reform>

Prosecutors are appointed by the National Assembly, at the proposal of the Government, for a six-year term. The State Prosecutorial Council proposes the candidates to the Government. The SPC includes three members: the Republic Prosecutor, the Minister of Justice and the President of the Parliamentary Judiciary Board, six public prosecutors or deputies and two senior lawyers.

According to data from 2015, a total of 836 prosecutors and their deputies should be working in Public Prosecutor's Offices, but in 2017, only 628 deputy prosecutors were effectively working.<sup>108</sup> That is lower than the EU number of prosecutors (an average of 11 per 100,000 people). In April 2018, the Parliament elected an additional 50 deputy public prosecutors, out of 52 proposed by the SPC.

Basic Prosecutor's Offices (58) should include 442 public prosecutor's deputies. In 25 higher public prosecutor's offices, an additional 183 deputy positions are planned. Sixty-eight deputy positions are planned in four appellate public prosecutor's offices, with 15 in the Republic Public Prosecutor's Office. Finally, 25 deputy positions are planned in the specialised Prosecutor's Office for Organised Crime, and eight in the Prosecutor's Office for War Crimes.

Analysis published in September 2016 found 114 deputy public prosecutor vacancies in Serbia:

- › in basic Public Prosecutor's Offices, a total of 71 positions
- › in Higher Public Prosecutor's Offices: 9
- › in appellate Public Prosecutor's Offices: 14
- › in the Prosecutor's Office for Organised Crime: 13
- › in the Prosecutor's Office for War Crimes: 3
- › in the Republic Prosecutor's Office: 4

On January 1 2018, 374 deputy prosecutors were working in basic PP Offices, 171 working in Higher, 55 in Appellate, 12 in the Office for Organised Crime, five in the Office for War Crimes and 11 in the Republic Prosecutor's Office.<sup>109</sup>

Executive and legislative authorities are directly involved in the proposal and appointment process for prosecutors and their deputies. Their influence is limited by the SPC procedure. However, there are representatives of the executive and legislative branches in this independent authority.

Not all the channels of influence are institutional. Low pay, physical threats and pressure from a prosecutor's family may all play a part.<sup>110</sup> The hierarchical organisation also makes political influence easier to wield. As well as direct pressure, self-censorship is a factor.<sup>111</sup>

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<sup>108</sup> According to the SPC annual report.

<sup>109</sup> [http://www.dvt.jt.rs/wp-content/uploads/2018/03/IZVESTAJ-0-RADU-ZA-2017\\_V5.pdf](http://www.dvt.jt.rs/wp-content/uploads/2018/03/IZVESTAJ-0-RADU-ZA-2017_V5.pdf)

<sup>110</sup> Interview with a high ranking prosecutor who insisted on anonymity.

<sup>111</sup> "Risk evaluation from non-professional conduct and corruption in judiciary and prosecutors' offices in Serbia - "an EU-Serbia , joint project, EU-SE "Strengthening police and judiciary capacities for fight against corruption in the Republic of Serbia", April 2014.

In an effort to protect prosecutors, the post of Independence Commissioner was recently created.<sup>112</sup> By September 2017 he had acted in four cases. The Commissioner's role is to flag up instances when a prosecutor's integrity and independence may have been compromised, and notify the SPC and the public about political or other unlawful influences of their work. He or she can also review cases, provided the Republic Public Prosecutor gives their consent.

The SPC considers the first draft of the constitutional changes unacceptable<sup>113</sup> - in particular because it would mean public prosecutors chosen by their peers would be in the minority on the proposed new SPC.

## Police

Serbia has considerably more police officers per head than the EU average (601 per 100,000, compared to the EU's 211). According to the European Commission's 2018 report, there were 42,426 officers. Data from the Ministry of the Interior<sup>114</sup> indicates that 18,365 of these were working at the Ministry headquarters in September 2017. Overall, there were 28,266 uniformed officers and 14,551 non-uniformed. Over 70% have a high school diploma and 28% university-level qualifications. Further breakdowns of police numbers by organisation unit are unavailable.

The Ministry of the Interior includes the following departments:

- › internal control
- › finance and administration
- › human resources
- › international cooperation
- › EU affairs and planning
- › analytics
- › ICT
- › emergency situations

The General Police Directorate includes the Director's Bureau, organisational units at the Ministry of Interior headquarters, various police directorates and special services of the Ministry.

<sup>112</sup> <http://www.dvt.jt.rs/poverenik-za-samostalnost/>

<sup>113</sup> <http://www.dvt.jt.rs/wp-content/uploads/2018/03/Opinion-of-the-SPC-on-constit-amendments-Feb-18.doc>

<sup>114</sup> [http://mup.gov.rs/wps/portal/sr/ministarstvo/informator%20o%20radu%20mup-a!/ut/p/z1/tVPLUuMwEPyVXHx0NH5EtvemNWBlcGOoEhLrQimO4mjLloysxMDXr1J7gewCRQV00aN6elo9M4iiJaKS7UXFjFCS1fZeUHz\\_K8mxl4E\\_ia-yCyAYvKvpBhtw5qPFa0CGz30gN1FyNjmPg\\_gSEHO\\_g5RREtpWrNFRbtb1aK8L5-OqO3BgVaV3EjmQCOK6AzTndkrB4TcKN0wo\\_RADTRb7wbNrnXZgaotxRoVLMEE8CkLuwiiK3BDzxE1Gm7ULIYScB8k68JNj6f9q00iHNxYBG08\\_gowRrWq1-mskkasgrhDVfMM118Ods9bY9ruhwMO9HO\\_rJSqaj7UnQP\\_i9iqzqDIKyAq7C-iFwVIL2wBcDAh11HsZcRDI73gPZr1g2M1uv2kSbaCRxmOfJrhEzO8\\_4Fp9J30MAu-mD5Pfr6LLvz00sPMHwtfRwS6300I5jeBgDzU9WPPxpP24Ti98MDJXZIIIT8OfbfqVNqOX2dp7lt7JaZrXvAoeVb6LaZN3Hw5Mrna75wi\\_G-72ebJI3FL7ZF3JE\\_c803uQ!!/dz/d5/L2dBISEvZ0FBIS9nQSEh/?urile=wcm%3Apat h%3A%2Fpublic\\_cyrillic%2Fpocetna%2Fministarstvo%2Finformator%2Bo%2Bradu%2Bmup-a](http://mup.gov.rs/wps/portal/sr/ministarstvo/informator%20o%20radu%20mup-a!/ut/p/z1/tVPLUuMwEPyVXHx0NH5EtvemNWBlcGOoEhLrQimO4mjLloysxMDXr1J7gewCRQV00aN6elo9M4iiJaKS7UXFjFCS1fZeUHz_K8mxl4E_ia-yCyAYvKvpBhtw5qPFa0CGz30gN1FyNjmPg_gSEHO_g5RREtpWrNFRbtb1aK8L5-OqO3BgVaV3EjmQCOK6AzTndkrB4TcKN0wo_RADTRb7wbNrnXZgaotxRoVLMEE8CkLuwiiK3BDzxE1Gm7ULIYScB8k68JNj6f9q00iHNxYBG08_gowRrWq1-mskkasgrhDVfMM118Ods9bY9ruhwMO9HO_rJSqaj7UnQP_i9iqzqDIKyAq7C-iFwVIL2wBcDAh11HsZcRDI73gPZr1g2M1uv2kSbaCRxmOfJrhEzO8_4Fp9J30MAu-mD5Pfr6LLvz00sPMHwtfRwS6300I5jeBgDzU9WPPxpP24Ti98MDJXZIIIT8OfbfqVNqOX2dp7lt7JaZrXvAoeVb6LaZN3Hw5Mrna75wi_G-72ebJI3FL7ZF3JE_c803uQ!!/dz/d5/L2dBISEvZ0FBIS9nQSEh/?urile=wcm%3Apat h%3A%2Fpublic_cyrillic%2Fpocetna%2Fministarstvo%2Finformator%2Bo%2Bradu%2Bmup-a)

The Criminal Investigations Directorate includes:

- › Service for the Fight Against Organised Crime
- › Crime Suppression Service
- › War Crimes Investigation Service
- › Special Investigation Service
- › Service for Criminal Investigation and Intelligence Affairs and Undercover Operations
- › Criminal Analytics Services
- › Anti-Terrorism and Anti-Extremism Service
- › Drug Abuse Prevention and Drug Trafficking Suppression Service
- › Observation and Documenting Service
- › Crime Prevention Improvement Service
- › National Criminal Investigation Technical Centre

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## EUROPEAN INTEGRATION DOCUMENTS

### European commission reports

The European Commission regularly reports on judiciary and police operations in Serbia. They are included in special sections of the report dedicated to the progress on Chapters 23 and 24. The last published EC report refers to 2017.<sup>115</sup>

Serbia has “some level of preparation”, says the Commission, and has partly fulfilled the recommendations from the previous report. “Some progress was made by reducing the backlog of old enforcement cases and putting in place measures to harmonise court practice... Improved rules for evaluating professional performance of judges and prosecutors were adopted.” On the other hand, “the scope for political influence over the judiciary remains a concern”.

The EU asked Serbia to “make significant progress on strengthening the independence of the judiciary and the autonomy of the prosecution through amendments to constitutional and legislative provisions related to appointment, career management and disciplinary proceedings of judges and prosecutors”. It asked the country “to ensure that the High Judicial Council and the State Prosecutorial Council can fully assume their role and achieve a coherent and efficient judicial administration in line with European standards, including regarding the management of the judicial budget”; and to “adopt and implement a human resources strategy for the entire judiciary including the establishment of a uniform and functioning case management system, which will in combination lead to a measurable improvement in efficiency and effectiveness of the justice system”.

The Commission pointed out that “little progress has been made in establishing a fully objective, transparent and merit-based system for the appointment of judges and prosecutors”, that “any future constitutional or legislative changes ... should be designed and implemented on the basis of European standards”, while “the broad discretionary powers of court presidents and heads of prosecution offices over the work of individual judges and deputy prosecutors, respectively could affect their independence and impartiality”.

It noted that a number of professional associations, CSO and other stakeholders withdrew from the consultative process about changes in the constitution, criticising its format and saying there was a lack of genuine debate. “This should raise awareness of the constitutional reform process in the country and its outcome of which should be reflected in the draft to be sent for the Venice Commission’s opinion”.

According to the Commission, “other planned interim measures to improve the institutional independence of the Councils are still pending”, including the “transfer of authority for the entire judicial budget and administration, the collection of statistical data, and the adoption of the rules of procedure” from the Ministry of Justice to the Councils.

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115 [http://www.mei.gov.rs/upload/documents/eu\\_dokumenta/godisnji\\_izvestaji\\_ek\\_o\\_napretku/ec\\_progress\\_report\\_18.pdf](http://www.mei.gov.rs/upload/documents/eu_dokumenta/godisnji_izvestaji_ek_o_napretku/ec_progress_report_18.pdf)

The “pressure on the judiciary (including from authorities within the judiciary) remains high”, says the Commission. “Public comments by government officials on investigations and ongoing court proceedings continue and are perceived as pressure on judicial independence”. Some progress is identified: HJC and SPC rules have been changed “to react more efficiently in cases of alleged political interference in the judiciary.”

The enforcement of disciplinary accountability and of the codes of ethics for judges and prosecutors is “still very limited... While the State Prosecutorial Council’s Ethics Committee reviewed the code in the light of European standards, the High Judicial Council has yet to do this.”

When it comes to professional conduct and efficiency, “delays in the appointment process for deputy prosecutors have reduced the efficiency of the criminal prosecution, in particular since the adversarial model was introduced into the criminal procedure in 2013, increasing the responsibilities of the prosecution without being accompanied by the necessary increase in staff.”

As for the Ministry of the Interior, the Commission found some progress had been made in areas such as human resource management. They recommended Serbia should “secure the operational autonomy of the police from the Ministry of the Interior during the pre-investigation and investigation phase” and “further enhance the independence and capacity of the internal control sector of the police”. “The legal framework for police cooperation needs to be further aligned with the acquis. The role, competences and operational accountability of the police should be further clarified. The legal framework is insufficient to guarantee the operational independence of the police from the Ministry of the Interior, and thus to ensure full accountability only to the prosecution during the pre-investigation and investigation phase.”

“The reforms of the human resource management system for the Ministry of the Interior and the police are being finalised. Progress has also been made on transparency in recruitment and transfer procedures, and on overall management of human resources. The rulebook on internal organisation and systematisation has not been adopted. A code of police ethics, a regulation on conducting disciplinary proceedings in the Ministry of the Interior and a rulebook on complaints procedure were adopted with a view to improving police integrity. The internal affairs sector of the Ministry of the Interior is undergoing substantial reorganisation. A new head of police was appointed.”

## **‘Non-paper’ on current status in chapters 23 and 24 for Serbia may 2017**

Ahead of its 2018 report, EC published less detailed “non-papers”, in May and November 2017.<sup>116</sup> The document from May 2017 stipulates that Serbia should increase its efforts to reform the judiciary. It identifies the first steps involved in changing the constitution. “Serbian authorities have yet to prepare draft amendments to the Constitution, conduct a public debate, consult the Venice Commission and submit a proposal to the National Assembly”. It notes the negative consequences of delays in appointing court presidents. The next task referred to the analysis of the HJC and SJC disciplinary procedures and competences.

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<sup>116</sup> [http://www.mei.gov.rs/upload/documents/eu\\_dokumenta/non\\_paper\\_ch23\\_24\\_eng.pdf](http://www.mei.gov.rs/upload/documents/eu_dokumenta/non_paper_ch23_24_eng.pdf) and [http://www.mei.gov.rs/upload/documents/eu\\_dokumenta/non\\_paper\\_23\\_24/non\\_paper\\_23\\_24.1.pdf](http://www.mei.gov.rs/upload/documents/eu_dokumenta/non_paper_23_24/non_paper_23_24.1.pdf)

The issue of political influence on judiciary is also important to the EU. The Commission criticises HJC rules from October 2016 which have had limited effect, and offers better rules for the SPC concerning the Independence Commissioner's powers.

In November 2017 the Commission commented on the public consultation on amendments to the constitution, noting that the transfer of budget competences had yet again been postponed. They recorded the appointments of ten court presidents, and disputes about the appointments of new deputy prosecutors. This report also dealt with the changes to HJC and SPC rules of procedure and the adoption of codes of conduct for the Government and Parliament that would restrict them from commenting on judicial decisions and procedures.

## Negotiating position of the government of Serbia

The Serbian government presented its negotiating position at the Inter-Governmental Conference on the Accession of the Republic of Serbia to the European Union - including Chapter 23, Judiciary and Fundamental Rights - in 2016.

The Government mentions some of the issues stated previously: the risk of political influence on the judiciary, bearing in mind the role of the National Assembly in appointing and dismissing six out of the eleven members of the Council, judges and public prosecutors and deputy public prosecutors. The solution offered is a working group that should propose changes of the constitution 'in order to change relevant legislation and enable the independence of the judiciary', which was recognised in the National Strategy for Judiciary Reform for 2013-2018.

"Up until 2015 there were no clear and transparent criteria for performance valuation and promotion of judges and public prosecutors... The National Strategy for Judicial Reform and its Action Plan define measures and activities with the purpose of ensuring the new system of performance and assessment is based on clear and transparent criteria without any external or potential political influence. The new system ... should be under the supervision of the competent authorities, HJC and SPC. Regarding the role of the Ministry of Justice in the process of monitoring of work and performance of judges, including collection, analysis and valuation of statistical data, a detailed description of competences is required."

Since the constitution is changing slowly, measures taken in the latest version are discussed, such as the criteria for proposing and appointing office-holders and the transparency of work by the HJC and SPC. The Government says "responsibility remains an issue of concern, bearing in mind that the disciplinary procedure usually leads to mild disciplinary sanctions and therefore has little effect on behaviour", and that the "bases for dismissal require additional details."

The Government further acknowledges that disciplinary procedures are deficient – only one judge and one public prosecutor have been dismissed – and that the powers of these authorities should be strengthened. "It is necessary for the Republic of Serbia to establish a disciplinary procedure that functions properly and that is impartial... In order to achieve this the Ministry of Justice should limit its supervisory role over the judiciary." The HJC and SPC, in matters of professional integrity and when errors are made, should ensure they have the authority to act *ex officio* or upon reports from individuals, government bodies or other bodies.

## The plan for harmonisation of the legislative and institutional framework with the EU *acquis communautaire*

This plan aims to ensure Serbia's courts are fully independent, in line with the recommendations of the Venice Commission and the EU. This involves amending the constitution. It includes:

- › New criteria for the appointment of judges and court presidents
- › The transfer of responsibility for the judicial budget
- › Improvements in administrative capacity
- › Changes to the HJC and SPC rules of procedure “to enable them to act publicly where there has been political influence on the judiciary”
- › The adoption of a code of conduct for MPs, including a ban on commenting on court rulings
- › Amendments to the ethical code of police and public prosecutors, “to secure the confidentiality of investigations” and measures for raising awareness of the issue.

Similar evaluations can be found in previously published documents, including screening reports from 2013.<sup>117</sup> The document was updated in February 2018.<sup>118</sup>

## European parliament resolution

The resolution of the European Parliament was adopted on 14 June 2017, and it relates to the Commission's reports on Serbia for 2016.<sup>119</sup> Much of the wording had already appeared in a 2015 Commission report, but its adoption was delayed.

It found that – some progress notwithstanding – the independence of the Serbian judiciary had not been secured. The Parliament called on the Government to change the constitution so as to reduce political influence in the appointment and selection of judges. It also mentioned other issues, including legal aid, the handling of old cases, the Savamala case and threats against activists. It is worth noting that in 2016 the Commission had said that “property rights are still mostly respected” in Serbia and did not mention Savamala.

<sup>117</sup> [http://www.mei.gov.rs/upload/documents/skrining/eksplanatorni/23\\_zapisnik.pdf](http://www.mei.gov.rs/upload/documents/skrining/eksplanatorni/23_zapisnik.pdf)

<sup>118</sup> [http://www.mei.gov.rs/upload/documents/nacionalna\\_dokumenta/npaa/third\\_revision\\_npaa\\_18.pdf](http://www.mei.gov.rs/upload/documents/nacionalna_dokumenta/npaa/third_revision_npaa_18.pdf)

<sup>119</sup> European Parliament resolution of 14 June 2017 on the 2016 Commission Report on Serbia  
<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-%2f%2fEP%2f%2fTEXT%2bTA%2bP8-TA-2017-0261%2b0%2bDOC%2bXML%2bV0%2f%2fEN&language=EN>

## STRATEGIC ACTS

One of the goals of the National Strategy for Fighting Corruption in the Republic of Serbia for 2013-2018<sup>120</sup> is that the “process of appointing, promoting and the responsibility of the holders of judicial functions shall be based on clear, objective, transparent and predetermined criteria”. The National Strategy for Judicial Reform and its 2013-18 Action Plan has similar aims<sup>121</sup> as does the Action Plan for Chapter 23 on EU integration. Five basic reform principles were set out in an effort to ensure greater independence, impartiality and quality of justice, based on the expertise, responsibility and efficiency of the judiciary. Changing the constitution to remove political influence from judicial appointments would be necessary. The HJC and SPC should become key institutions with full authority and a defined system of transparency and responsibility.

The Action Plan for Chapter 23 took recommendations from the screening report. The most important issues for this analysis are:

- 1.1.1 With the support of external experts, Serbia should make a thorough analysis of the existing solutions/possible amendments to the Constitution bearing in mind the Venice Commission recommendations and European standards, ensuring independence and accountability of the judiciary. Changes should include, *inter alia*, the following points:
  - › The system for the recruitment, selection, appointment, transfer and termination of judge’s office, presidents of Courts, and prosecutors should be independent of political influence and remain of the responsibility of the High Judicial and State Prosecutorial Councils. Entry in the judiciary shall be based on merit-based objective criteria, fair in selection procedures, open to all suitably qualified candidates and transparent in terms of public scrutiny. The High Judicial Council and the Prosecutorial Council should be empowered with leadership and the power to manage the judicial system, including when it comes to immunities. They should have a pluralistic composition, without involvement of the National Assembly (unless solely declaratory), with at least 50% of members stemming from the judiciary, representing different levels of jurisdiction. Their elected members should be selected by their peers;
  - › Legal or executive authorities should not have the power to supervise or monitor operations of the judiciary;
  - › Reconsider the probation period of three years for candidate judges and deputy prosecutors;
  - › Clarify the grounds for the dismissal of judges;
  - › Clarify the rules for terminating the mandate of Judges of the Constitutional Court;
- 1.1.5 Establish a clear procedure for both Councils to react publicly in cases of political interference in the judiciary and prosecution;
- 2.3.7 Propose measures for law enforcement and the judiciary to prevent leaks to the media of confidential information regarding investigations.

120 Official Gazette of the Republic of Serbia, no. 57/2013

121 Official Gazette of the Republic of Serbia, nos. 71/2013 and 55/2014.

The Action Plan set the fourth quarter of 2017 as the deadline for adopting the amended constitution and the fourth quarter of 2018 for the harmonisation of laws with the constitutional provisions (Law on Courts, Law on Seats and Areas of Courts and Public Prosecutor's Offices, Law on Judges, Law on Public Prosecutors, Law on High Judicial Council, Law on State Prosecutorial Council, Law on Judicial Academy).

Within item 1.1.5., an amendment to the Rules of Procedure of the HJC will regulate the way the HJC communicates with the public about possible political interference. The deadline was the fourth quarter of 2015.

For item 2.3.7., different actions are planned – efforts to create an early-warning system that, together with more secure IT systems, would make it more difficult to leak information about an investigation.

According to the most recent available report on the execution of this Action Plan, some of the actions within items 1.1.1. and 1.1.5. have been fully implemented, while others are still pending. Namely, “after the consultative process was conducted, the Ministry of Justice has started drafting the amendments to the constitution in cooperation with Venice Commission expert, James Hamilton, who has met the representatives of all relevant institutions in the field of judiciary as well as representatives of the civil society organisations that were participating in the consultative process.”

For item 2.3.7. of the Action Plan, the Government considers that some actions have been fully implemented - to conduct an analysis of the current situation (normative, organisational and functional), and identify weaknesses and risks. When it comes to adopting new regulations and oversight, however, implementation was partial. In March 2018 Serbia amended its law on data registration and processing, and further bylaws will need to be drafted and adopted.

The Republic Prosecutor's Office asked the Ministry of Justice to amend the Criminal Procedure Code. The Ministry considers this activity “conducted” (*sic*). Article 27 of the Law on Organisation and Jurisdiction of State Authorities in Combating Organised Crime, Terrorism and Corruption stipulates that anyone involved in detecting criminal offences must regard the data and information gathered as confidential. Without the permission of the competent public prosecutor, the data from the preliminary investigation and investigation cannot be made public.

Regarding the Republic Prosecutor's Office (RPO) initiative to amend the provisions of the Criminal Procedure Code, the planned changes to the CPC will be much broader in scope, and will include the RPO initiative. Given the scope of necessary changes of the CPC arising from Chapters 23 and 24, as well as other negotiating chapters, it was decided to make comprehensive amendments to the CPC by the third quarter of 2018, as these changes will take longer.<sup>122</sup>

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122 <https://www.mpravde.gov.rs/files/Report%20no.%201-2018%20on%20implementation%20of%20%20%20Action%20plan%20for%20Chapter%2023.pdf> and <https://www.mpravde.gov.rs/files/Report%20no.%203-2017%20on%20implementation%20of%20Action%20plan%20for%20Chapter%2023.pdf>

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## LEGAL FRAMEWORK

- › Constitution of the Republic of Serbia
- › Law on Judges<sup>123</sup>
- › Regulations on the procedure for determining disciplinary responsibility of the judges and court presidents
- › Regulations on the criteria and norms for the assessment of expertise, competence and eligibility of candidates for the position of a judge, being appointed for the first time
- › Regulations on criteria and norms for the assessment of expertise, competence and eligibility for the appointment of a judge to a permanent judicial positions at a second or higher court and on criteria for proposing candidates for the court president
- › Law on Public Prosecution
- › Regulations on criteria and norms for assessment of expertise, competence and eligibility of candidates within the proposal and selection procedure of the holders of the public prosecutorial office
- › Regulations on the program and the manner of taking exams at which the expertise and competence of candidates is being tested, candidates being appointed to the position of the deputy public prosecutor for the first time
- › Regulation on disciplinary procedure and disciplinary responsibility of public prosecutors and deputy public prosecutors<sup>124</sup>
- › Law on Judicial Academy<sup>125</sup>
- › Law on Police<sup>126</sup>
- › Regulation on conducting an open application procedure at the Ministry of Interior

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123 "Official gazette of RS", no. 116/2008, 58/2009 – decision of the CC, 104/2009, 101/2010, 8/2012; decision of the CC, 121/2012, 124/2012 – decision of the CC, 101/2013, 111/2014 decision of the CC, 117/2014, 40/2015, 63/2015 - decision of the CC and 106/2015

124 "Official gazette of RS", no. 64/2012, 109/2013 and 58/2014

125 "Official gazette of RS", no. 104/2009, 32/2014 – decision of the CC and 106/2015

126 "Official gazette of RS", no. 6/2016

## CONCLUSIONS

The overall conclusion of our research, based on both analyses of the legal and institutional framework and case studies, suggests there is no genuine political appetite to curb political influence on the police, prosecutors and judges in Serbia.

Serbia's EU integration process continues, although with significant delays in the implementation of legislative measures and an absence of visible improvements in practice. Political influence on judiciary and law enforcement is recognized by both the EU and Serbian authorities. Measures aimed at overcoming this problem have been put forth in the 2013 Judicial Reform Strategy and in the Action Plan for Chapter 23, which was adopted in April 2016. The revision of that document, scheduled for 2018, should trace the Serbian path to achieve rule of law standards by 2025 (i.e. the earliest envisaged accession date, as identified by the European Commission in February 2018, in 'A credible enlargement perspective for and enhanced EU engagement with the Western Balkans').<sup>127</sup> The cornerstone of the reforms are the planned constitutional changes, aimed at excluding politicians from the judicial and prosecutorial appointments and dismissals. However, the first drafts of constitutional amendments apparently seek to replace the current system with one where political influence on the judiciary will continue, but in a less direct way.

While reforms of the legal framework - with long-term effects - are undoubtedly necessary, there are measures that the Serbian politicians could take immediately, but have not. For example, there is no need to change the constitution to ensure the Minister of Justice and the Chair of the Parliamentary Judicial Committee do not sit on the High Judicial and State Prosecutorial Councils. They could simply stop attending the sessions. Moreover, contrary to the proclaimed reform goals, the executive branch continues to hold the judicial budget directly, denying any financial independence to the judicial branch. Senior politicians continue to comment on judicial decisions. In addition, the overall narrative on judicial reform has shifted - from protecting judicial independence from political influence towards 'protecting citizens' from 'corporatism', i.e. the alleged menace of a judiciary that "wants to be independent from the state".

For some of the seven systemic problems, identified throughout this research, there are no proposed solutions in the existing EU accession negotiation action plans and other strategic documents by the Serbian government. Bearing in mind the manifest unwillingness to achieve progress on a national level, there is a strong need to broaden and intensify EU oversight.

Within the scope of this research, we identified the following problems related to political influence on the judiciary, public prosecution and police in Serbia:

1. **Limited accountability:** The system for holding judges and public prosecutors to account is ineffective and inconsistent. A lack of proactive disciplinary bodies and insufficient transparency helps conceal political pressure. (Illustrated in case studies no **4, 5**)
2. **Political appointments:** Political bodies are involved in the appointment of public prosecutors and court presidents. Similarly, the criteria and selection process for police officials are not transparent. Political influence is further exercised via the reluctance to appoint certain key positions in the police on a permanent basis with a full mandate. (Illustrated in case studies **2, 11**)

<sup>127</sup> [https://ec.europa.eu/commission/sites/beta-political/files/communication-credible-enlargement-perspective-western-balkans\\_en.pdf](https://ec.europa.eu/commission/sites/beta-political/files/communication-credible-enlargement-perspective-western-balkans_en.pdf)

3. **Too much discretion:** Law enforcement bodies have significant discretionary powers when taking an initial decision about whether to investigate and prosecute a given case. Similarly, they do not provide adequate explanations for decisions to abandon an investigation. This enables them to hide possible political motivation behind police and prosecutorial decisions. (Illustrated in case studies **3, 6, 10**)
4. **Media manipulation and discrimination:** Inappropriate relationships between law enforcement agencies, judiciary and politicians and the media take several forms: leaking of information, using the media for defamation, violation of the presumption of innocence in criminal matters, positive discrimination against certain media when providing information to them and not to others, selective attacks on media, and inconsistent court decisions in medi-related cases. (All illustrated in case studies **1, 4, 10**)
5. **Misuse of statistics:** Manipulation of statistics and outcomes of police work, prosecutors and courts for political gain. (Illustrated in case studies **2, 9, 12**)
6. **Abuse of political powers:** Direct and repressive influence of politicians on the functioning of the state apparatus (e.g. participation of politicians in co-ordinative law enforcement bodies, political influence over the appointments of police chiefs, etc.) (Illustrated in case studies **9, 7, 11**)
7. **Dysfunctional criminal investigations:** Weaknesses in the functioning of criminal investigations (misuse of the statute of limitations, failure to remove obstacles in laws, procedural mistakes, and ungrounded decisions), followed by a suspicion that decision or omission is politically motivated. (Illustrated in case studies **2, 7, 9, 11**)





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