

Geneva, 8 April 2016

Dear members of the Human Rights Committee,

The International Commission of Jurists (ICJ) welcomes the opportunity to present to the members of the Human Rights Committee, on the occasion of their examination of Serbia's third periodic report on its compliance with the ICCPR, the ICJ report, *Serbia's judges and prosecutors: the long road to independent self-governance*, published in February 2016. The report assesses the current state of the independence and accountability of the Serbian judiciary and prosecution service, and, in particular, the self-governance of the two professions under the High Judicial Council and the State Prosecutors' Council.

In its mission and report, the ICJ concluded that the self-governance of the judiciary and of the prosecution service, entrusted respectively to the High Judicial Council and to the State Prosecutorial Council, is relatively weak. The ICJ identified considerable shortcomings, including:

- excessive dependence in practice on the political branches of government;
- lack of effective procedures and of sufficient will in the Councils to defend the independence, autonomy and professional integrity of their professions and of individual judges and prosecutors;
- appointment, selection and dismissal procedures open to direct and indirect political influence;
- lack of effective procedures of evaluation of the work of judges and prosecutors;
- misuse of such procedures to impose conformity in decisions;
- a strong hierarchical system in the prosecution service and, in practice, in the judiciary, that undermines internal independence and risks undermining independence of investigations and prosecutions.

In order to pursue effective independence of the judiciary and of the prosecution service, in light of Serbia's obligations under articles 2.3 and 14 ICCPR, and of their respective systems of self-governance, the ICJ made in its report the following recommendations:

- The Government and National Assembly should proceed speedily to the constitutional reform of the judiciary and its self-governing bodies, in particular:
 - the exclusion the National Assembly from any appointment and dismissal of judges and public prosecutors, including the President of the Supreme Court of Cassation, and of members of their Councils; and

- the exclusion of the Ministry of Justice as *ex officio* member of the two Councils and the provision of an *ad hoc* or observer status.
- Pending the constitutional reform, the National Assembly should swiftly confirm all elected members of the two Councils.
- The two Councils should set up election procedures that ensure the secrecy of the voting process.
- The new budgetary competencies of the two Councils should be prepared and accompanied by appropriate and targeted capacity building programmes, nationally and internationally financed, for the Councils' members and staff.
- Each of the Councils should establish a codified procedure for protection of judges and prosecutors respectively from attacks on their independence, autonomy and professional integrity, with annual reporting on its implementation and application.
- The probationary three-year period for judges should be abolished. If retained, it should be considerably reduced; judges in probation should not make decisions, but only assist in or audit the process; and any non-confirmation of judges in probation must follow the same process and apply the same standards that would lead a judge to be dismissed from the judiciary.
- The Government should design, and the National Assembly approve, a comprehensive transitional plan, conceived and agreed upon by the different stakeholders, to take into account the acquired entitlements of judicial and prosecutorial assistants and smoothly pass to a Judicial Academy entry model.
- The law should be modified in order to eliminate any link between evaluation results and grounds of dismissal, unless results are so poor that they reach the level of the grounds of dismissal recognized by international standards: i.e. "incapacity or behaviour that renders them unfit to discharge their duties"

The ICJ hopes that its findings will assist the Committee in the assessment of the third periodic report of Serbia.

Yours sincerely,



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