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SERBIA

SEPARATION OF POWERS PROGRAM

THE HIGH COURT COUNCIL
STRATEGIC PLAN, 2011 – 2013

MARCH 2011

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List of acronyms

HCC – High Court Council

SPC – State Prosecutorial Council

USAID – United States Agency for International Development

EC – Delegation of the European Commission

OSCE – Organization for Security and Cooperation in Europe

INTRODUCTION

The High Court Council is an independent and autonomous body which provides and guarantees the independence and autonomy of courts and judges. It was established on April 6, 2009, in accordance with the Constitution of the Republic of Serbia and the Law on the High Court Council, as a result of Serbia's authentic intent to strengthen the rule of law. Within its need to realize a planned approach to the reform in the Republic of Serbia, the High Court Council developed this first Strategic Plan for the period from 2011 to 2013. This Strategic Plan includes activities that represent the continuation of the reform of the judiciary that began during the previous period in order to strengthen the judiciary.

VISION and MISSION

Vision of the High Court Council

The Republic of Serbia has an effective, efficient, independent, and autonomous court system, accessible to all the citizens under the same conditions and in which citizens have confidence.

Mission

The High Court Council contributes to the strengthening of the rule of law in the Republic of Serbia through the effective and efficient, autonomous and independent judicial system accessible to all the citizens under the same conditions and in which citizens have confidence.

1.3 Values and Key Principles

The National Strategy for Judicial Reform and this Strategic Plan define four key principles for the functioning of the judiciary: independence, accountability, transparency, and efficiency. Simultaneously, they represent key judicial priorities on Serbia's road towards membership in the European Union. Apart from these values, the High Court Council also defined universal values that guide it in its work and reflect in activities and conduct of its members. This way, the Council maintains and improves the dignity and reputations of its own institution, as well as judges and courts.

STRATEGIC PRIORITIES

Strategic priorities of the High Court Council in the next three years are:

- ▶ **Strengthening of independence of the judiciary**
Independent Judiciary represents a basis for a legal state and rule of law in a democratic society that fully respects the principle of the separation of powers. Strengthening of independence of the Judiciary in Serbia means that the High Court Council has exclusive authority over the functioning of the entire judicial system.
- ▶ **Transparent and accessible judiciary**
A Transparent Judiciary means a Judiciary the work of which is accessible to all the citizens. For the Judiciary to be accessible, everyone must have access to court buildings,

courtrooms, trials, as well as to all the data and information that are important to the citizens.

▶ **Confidence of citizens in the court system**

Citizens have confidence in the Judiciary and in judges who perform their duty responsibly, make quality decisions within a reasonable period of time, respect the parties in proceedings, and comply with the Code of Ethics. The system has an open process of election, advancement, accountability, and termination of judicial function, and is communicating with the citizens in a proactive and clear manner.

▶ **Competent and content judges and court staff**

Competent judges constantly improve themselves professionally and possess knowledge and experience necessary for quality and efficient work. Content judges and judicial staff work in good conditions and are adequately awarded for their labor. They have knowledge and experience necessary for quality and efficient performance of duty. If this is achieved, courts can perform their function appropriately.

▶ **Independent and functional High Court Council**

Only an independent and functional High Court Council can perform all the tasks from the authority vested in it by the Constitution and the law, in a quality manner and within prescribed or planned deadlines. This provides for good functioning of the entire judicial system as well.

STRATEGIC GOALS, TASKS, AND PRIORITY ACTIVITIES

Strategic goal I

Strengthen the independence of the judiciary through the establishment of responsibility for the election of judges and Court Presidents, and for the functioning of the entire court system.

Independent Judiciary means judges and courts that rule on the basis of the Constitution and the law without the influence of any individual, institution, media, or other branches of power. Only truly independent Judiciary can guarantee the rule of law, legal security, and protection of personal and property rights of physical and legal entities. To achieve judicial independence, three conditions must be met: first, the High Court Council must be the carrier of a unified and independent leadership framework which provides adequate administration and better functioning of the courts; second, the High Court Council must have the necessary authority to determine and manage the court system budget independently; third, the High Court Council must have full authority to independently and autonomously manage the internal organization of the work of courts; that is, it must have sole jurisdiction over the functioning of the Judiciary as well as over the election of judges and Court Presidents.

This is why the High Court Council is going to initiate changes to the constitutional and legal framework that would make it possible for the Council to fully take over its role and provide the independence of the entire court system. These changes include, first, changes to the Constitution, and later, to the key laws.

- In the next two years, initiate changes to the Constitution in order to establish full authority of the HCC in relation to the election of judges, Court Presidents, and the functioning of courts.

- In the next two years, initiate changes to the Law on Organization of Courts and the Law on High Court Council, in order to establish full authority of HCC in relation to the functioning of the Judiciary.
- In the next three years, initiate changes to the Law on Judges in order to establish exclusive authority of HCC in relation to the election of judges and Court Presidents.

Priority activities in the following two years

- Organize consultations with judges and relevant actors about the necessary changes to the Constitution and the law (months 6 - 9¹)
- Create a comparative analysis with solutions from other countries regarding the competences of their Councils (month 9)
- Organize round tables/public debates/discussions in courts with experts and relevant actors on this topic (months 10 and 11).
- Promotional media activities (months 9 - 12)

Strategic goal 2

Make the court system transparent and accessible by providing conditions that will allow all citizens full access and use of the court system: access to court buildings, courtrooms, as well as data and information important for the meeting of citizens' requests.

In order for the court system to be transparent and accessible, it needs to provide citizens with access to court buildings, courtrooms, and trials, as well as to all the information related to trials and cases. The High Court Council is aware of the fact that even though all citizens are equal before the law, not all citizens have the same means, and that a truly accessible and transparent system should, therefore, take into consideration the differences that exist between citizens. The High Court Council recognizes the following needs: more information in courts that will enable the citizens to access necessary information quickly and easily; technical and space-related conditions in courtrooms that will enable all citizens, including those with various handicaps, to realize their right to access courts and trials; language equality, that is, provision of the sufficient number of needed interpreters and translators so that citizens can realize their rights before the courts regardless of their ethnicity and nationality; and finally, financial accessibility, which means that court taxes have to be adjusted to conform to the financial ability of citizens and legal entities, as well as providing free legal aid and representation for appropriate categories of citizens.

Even though certain preconditions for transparent and accessible Judiciary are listed in the National Judicial Reform Strategy and regulated in various laws², it is necessary to take steps so

¹ Digits in parentheses represent months from the day of the beginning of implementation of the Plan, and do not necessarily coincide with calendar months.

² List the Laws.

that adopted laws are implemented in practice and so that citizens have the chance to realize their rights.

In order to achieve this goal, the following **steps (tasks)** should be taken:

- In the next year, introduce an IT system that will provide citizens with simple and quick access to information about the work of courts.
- In the next two years, provide technical and space-related conditions so that all citizens can have equal access to the courts, regardless of their ethnicity or nationality, financial status, or physical abilities.
- In the next year, make information more accessible to citizens who have no Internet access.

Priority activities in the following year

- Collect information of interest to citizens, create comparative analyses with solutions from other countries, define content of the information system, engage provider (months 2 - 11)
- Assess the situation in courts related to the general transparency of individual courts and provide recommendations to courts regarding transparency and accessibility of information to citizens without Internet access
- Assess the situation and the needs for changes to the technical and space-related conditions in courts (months 5-12)³
- Assess the situation in courts regarding the informing of citizens about the use of services provided by the court system (language and financial accessibility); create a unified set of recommendations to change the laws and regulations that will make this possible (months 5-12).
- Promotional media activities

Strategic goal 3

Increase the confidence of citizens in the court system by establishing a responsible and efficient Judiciary, by providing trials within a reasonable amount of time, by providing legal security, by establishing a system of evaluation of performance and conduct of judges, and by improving the communications with the citizens.

Citizens' confidence in the independence and quality of the Judiciary is necessary to an every democratic society. During the previous period, the confidence of citizens had deteriorated significantly –in the efficiency of the system, as well as in the quality and effectiveness of court

³ In the second year: On the basis of assessed situation, provide recommendations to the Ministry of Justice about the necessary changes.

decisions. In order to regain and improve confidence, it is necessary that the court system establish certain standards of work, to uphold them, and to present the changes to the citizens in an adequate manner. The High Court Council has identified several areas where it is necessary to take measures that will contribute to re-establishment of trust of citizens in the Judiciary: first, efficiency, that is, solving backlog cases and monitoring deadlines for the solving of pending cases; and second, provision of legal security, that is, quality and consistent decisions (in other words, citizens should be certain that their cases will be solved the same way regardless of the court). Third, it is necessary to introduce a system for the evaluation of judges and to implement it consistently; at the same time, responsibility of judges towards their profession should increase. And fourth, the court system must become proactive in communication with citizens, in order to be able to communicate changes and results of reforms in a timely manner.

In order to realize this goal, **the following steps (tasks)** should be taken:

- In the next three years, reduce the number of backlog cases (in relation to the total number of cases) so that their number does not exceed 10 %;
- In the next year, establish mechanisms for regular monitoring, analysis, and appropriate reaction to the number and solving of backlog cases;
- In the next year, develop and implement a system of regular consultations between the High Court Council and the Supreme Court of Cassation and Appellate Courts for the purpose of harmonization of court practice;
- In the next year, adopt and implement sub-legal acts that regulate in greater detail the performance evaluation, disciplinary responsibility and conduct of judges, and compliance with the Code of Ethics;
- Create and implement a plan of pro-active communication of positive results of the work of courts/work to citizens.

Priority activities in the following year

- Assess the situation with backlog cases at the beginning of the year and conduct, every six months, an analysis of results of implementation of the backlog reduction program (months 2 - 7). Provide recommendations for more effective backlog reduction (month 9).
- Create, every six months, analyses of the work of courts and on the basis of these analyses create reports on the work of courts and provide a set of recommendations for further improvement (months 2 -9).
- Perform annual analyses of court practice in relation to the occurrence of different court decisions in similar situations; the analyses should be performed jointly by the High Court Council, the Supreme Court of Cassation, and Appellate Courts.
- Provide conditions for the work of established bodies (months 1-2). Perform six-month analyses of the work of disciplinary bodies and bodies in charge of evaluation of the work of judges and Court Presidents (months 6 and 12 from the beginning of work of established bodies).

- Identify information related to judicial reform that needs to be provided to citizens (positive results of the reform, network of courts, rights of citizens), locate funds and implement a campaign (month 8 – until the end of the year).
- Promotional media activities to accompany other activities.

Strategic goal 4

Increase the level of competence and contentment of judges and staff by establishing a system for their quality and continued education and professional improvement, and by improving their working conditions and financial status.

The High Court Council is aware that without dedicated, competent, and content judges and staff it is not possible to have a quality, independent, and efficient court system. Therefore, it is of vital importance to provide quality and continuous education of judges and all staff members, as well as their continued professional improvement.

Further, the High Court Council believes that it is very important to provide salaries for judges and staff that correspond with the level of responsibility involved in their work, as well as adequate working conditions – technical, and space-related. Finally, to achieve adequate level of quality of work and efficiency, it is necessary to take measures to avoid overburdening certain courts, judges, and staff.

To achieve this goal, **the following steps (tasks)** should be taken:

- In the next year, establish mechanisms of cooperation/consultations with the Judicial Academy with regard to the number of students and training programs.
- In the next year, establish criteria and standards for the financial status of judges and staff and a system for regular monitoring.
- In the next three years, establish and implement standards for minimum working conditions of judges and staff.
- In the next three years, introduce and implement a mechanism for the assessment and monitoring of the workload of judges and courts, and react in cases of unequal workloads.
- In the next three years, introduce Court Managers to courts with more than 30 judges.

Priority activities in the following year

- Review the number of vacant judge and staff positions in order to determine the number of trainees of the Judicial Academy; establish a commission that will perform the assessment of training needs of judges and staff and, on the basis of the analysis, propose training for judges and staff (topics and target groups) (months 1 to 3);
- Establish a commission that will analyze the financial status of judges and staff, create an analysis of criteria and standards in courts in the Republic of Serbia, make a comparative

analysis of countries of the region and, on the basis of the analysis and consultations, adopt criteria and standards as well as monitoring mechanisms (months 1 to 8). Implement the adopted criteria and standards (months 9 to 12);

- Establish a commission that will assess the situation in courts regarding working conditions and create draft working conditions standards on the basis of the analysis and consultations. Adopt the standards, and make an initiative with the Ministry of Justice to begin with the implementation of the standards (months 7 and on, so that recommendations can be provided at the end of the second year of the implementation);
- Establish a commission that will create the analysis of the situation/workload, and make recommendations to overcome the workload problem in courts (months 3 to 6). Monitor the workload every three months;
- In the next three years, evaluate the results of work of Court Managers and their contribution to the improvement of the work of courts.

Strategic goal 5

Establish a functional and independent High Court Council through the creation of adequate organizational structure that will provide smooth administrative functioning, independent budget management, transparency of work, and continued improvement of the work of the High Court Council.

As the highest body of judicial power, the High Court Council is responsible for managing the judicial system, while simultaneously representing a guarantor of independence and autonomy of courts and judges. It is, therefore, very important to establish a functional and autonomous Council that has full administrative ability including the ability to manage the budget,⁴ to provide adequate technical and space-related conditions and mechanisms for continued professional improvement of Council members and staff, and finally, adequate mechanisms and capacities for public relations.

In order to achieve this goal, **the following steps tasks** should be performed:

- In the next six months, establish full functioning of the Administrative Office.
- In the next six months, establish functioning of the Sector for Material and Financial Affairs and regular work on the planning and location of needed funds.
- In the next year, provide conditions for the work of the Public Relations Sector and create and implement a mechanism that will provide transparency of the work of the High Court Council.
- In the next year, create mechanisms for continued professional improvement of members of the High Court Council, international cooperation with other Councils, and integration into world and European networks.

⁴ The High Court Council should gain authority to propose the total budget for the Judiciary, including capital investments, and to engage in budget negotiations before the National Assembly.

⁵ This activity should become a regular activity under the communication strategy.

Priority activities in the following year

- Provide technical equipment for the Administrative Office, announce and conduct a job competition in accordance with the adopted Act on Systemization of Job Positions, determine the training needs and organize training of staff (months 1 - 6);
- Establish the Sector for Material and Financial Affairs, train the staff and provide technical and IT equipment of the Budget Office (months 4 and 5); establish regular budgeting tasks, monitoring of expenses, and provision of funds according to identified needs;
- Change acts that regulate the transparency of work of the High Court Council and open the sessions of the High Court Council to the public (months 1-2);
- Establish a PR Service, train the staff, and identify goals and tasks of the High Court Council's Public Relations Service (months 5-9);
- Create a communications strategy for improvement of transparency of work of the High Court Council (months 1- 4);
- Update the Internet presentation and hold regular meetings with editors and journalists (months 1 - 4).