

Background information about Serbia's courts

General information on Serbia's courts

Most of the laws affecting the major revisions of Serbia's judiciary which took effect on January 1, 2010, can be found at <http://www.mpravde.gov.rs/en/articles/legislation-activities>. By mid-2010, courts were still coping with the effects of the reappointment process and the relocation of judges, staff and files required the reorganization of court locations and changes in jurisdiction.

The following items could affect the work of Serbia's courts over the next several months:

- As of August 2010, many of the judges who were not reappointed during the 2009 review process were still pursuing appeals to Serbia's Constitutional Court. The effects of any decision putting them back into the judiciary are unknown.
- By the end of 2010, officials expected selection procedures would be complete for the six elective judicial positions on the High Court Council, in accordance with Article 57 of the Law on the High Court Council.
- There have been some indications the Government of Serbia would propose adding more judgeships in some sections of the judiciary, after its analysis of the effect of the changes which took effect on January 1, 2010.

Serbia's Administrative Court

Serbia's Administrative Court began functioning in January 2010, as authorized by Articles 13 and 89 of the Law on Organization of Courts. It replaces the administrative division of the Supreme Court, which did not hold public trials. The new court has a total of 36 judges (although only 34 had been appointed as of August 2010), 23 of them sitting in Belgrade. It has divisions in Belgrade, Novi Sad, Nis, and Kragujevac. A substantial number of the judges on the court did not serve with the administrative division of the Supreme Court before this year.

Cases selected for hearing are heard by a panel of judges. The judges inherited a caseload of about 600 cases per judge, but their caseload increased during at least the first part of 2010 as new cases were received.

The Administrative Court has to conduct most of its hearings in public session, which was not true for the administrative division of the Supreme Court. As of early 2010, the court had not determined what percentage of its cases would require public hearings.

A partial list of types of cases heard by the Administrative Court includes customs, tax, inspections, pension, elections, rights of prisoners, and market monopoly cases. Appeals from decisions of the Administrative Court are heard by the Supreme Court of Cassation.

During 2010, the Organization for Security and Co-Operation in Europe (OSCE) assisted the Administrative Court develop leaflets and brochures on the administrative courts to inform potential applicants about the work of the court. OSCE also provided training on communicating with the media and developing a website for the court.

An analysis done by Sigma jointly for the OECD and EU on Serbia's Administrative Legal Framework in May 2009 (<http://www.sigmaweb.org/dataoecd/30/46/43912273.pdf>) noted that "the procedure of judicial review of administrative acts in Serbia is only partially consistent with procedural standards derived from recommendations of the Council of Europe." There is a Law on General Administrative Procedure dating from 2001 and a Law on State Administration dating from 2005, which are available on the Ministry of Justice's website. The Sigma analysis noted that despite provisions of the "Law on State Administration, it seems that overlapping tasks and functions between various ministries and state administration authorities are still not uncommon, which causes confusion in citizens' dealings with administrative authorities. The organization of the administration still seems to be excessively complex and confusing." That analysis further noted that the 2008 package of laws on judicial reform which created the Administrative Court, together with other legislation, might improve the situation if correctly applied.

The Sigma report noted that the Supreme Court's administrative division had received 16,000 cases in 2006; 12,000 in 2007; and 10,035 in 2008. The division disposed of 11,349 cases in 2008.

Serbia's Misdemeanor Courts

As of August, 2010, Serbia had 25 misdemeanor courts with 103 court units and approximately 708 misdemeanor judges. There is one High Misdemeanor Court with three chambers and 65 judges.

Until January 1, 2010, the misdemeanor courts were agencies/offices administered by the Ministry of Justice, but they are now part of Serbia's judiciary and fall under the responsibility of the High Court Council. As the misdemeanor courts were added to the judiciary on January 1, the following changes occurred:

1. The number of courts went from 173 to the 25 courts and 103 court units (which do not have full-time misdemeanor judges).
2. The misdemeanor judges were included in the appointment of a new judiciary by Serbia's High Court Council (HCC), which took effect on January 1. Not all of the judges appointed to the Misdemeanor or High Misdemeanor Courts had prior judicial experience.
3. The maximum imprisonment the courts could assess rose from 60 to 90 days.

4. The courts were also given additional responsibilities, as they assumed the handling of some customs and currency violations.

The misdemeanor courts' jurisdiction is extremely varied. First instance magistrate courts traditionally adjudicate minor offenses that are violations of national laws (*e.g.*, speeding, disturbing the peace, national border crossing rules) and local laws (*e.g.*, shop closing hours and parking). Other categories include freedom of information requests, some labor, environmental, fire protection, copyright, weapons, insurance, veterinary, and foreign currency cases. Amendments to tax laws during the summer of 2010 gave these courts jurisdiction over some cases previously handled by the Tax Administration.

Serbian governments since 2001 have not focused much attention or resources on reform the misdemeanor/magistrate courts. Judges in the Misdemeanor Courts also earn less than their colleagues in other courts and since they were not considered part of the judiciary before January 1, 2010, all of the judges of the Misdemeanor and High Misdemeanor Courts are considered “new,” and will all face approval by the High Court Council after three years, before they can receive life-time appointments as permanent judges.

The court president of each misdemeanor court is responsible for all management of court operations, including monitoring caseload and making judicial assignments, and must submit reports to the High Court Council. The quality of physical and IT facilities for these courts vary, and while the Ministry of Justice has plans to have all the Misdemeanor Courts (although not all of the court units) equipped with computers and case management software, these courts currently have no IT connection to the Ministries of Interior or other agencies. Past donor activities with these courts have included analyses on case backlogs done by the National Center for State Courts for USAID, work on family violence issues supported by the Canadian International Development Agency (CIDA), and broader work on the transition of the courts to part of the judiciary done by the United Nations Development Programme (UNDP).

One estimate indicates that one out of every 20 adults had dealings with these courts at least once during 2009, and that these courts handled at least 300,000 matters during 2009. These courts can assess fines so high for some violations that in some cases, they can cripple small business. Since the misdemeanor courts are the judicial body with which most citizens are likely to be involved, the public's perception of these courts could determine the reputation of Serbia's judiciary with the public overall. Many of the hearings of the misdemeanor courts are now public for the first time, and prosecuting attorneys are now involved in many more misdemeanor cases than they were before January 1, 2010. Broader measures, including arrest, are available to the courts to insure the presence of defendants at hearings. Misdemeanor judges can order protective measures, including a ban on driving or certain types of commercial activities, and some types of alcohol treatment of some kind for both adults and children. As part of the judiciary, misdemeanor courts must now comply with the “reasonable time” standards of Article 6 of the European Covenant on Human Rights for disposition of cases. Delay in

resolving minor matters has been expressed as a concern of both the Council of Europe and the European Court of Human Rights.

The law governing most of the offenses over which these courts have jurisdiction until January 1, 2010 was the Law on Misdemeanors, from 2005 (also sometimes translated as Law on Misdemeanor Offenses or Law on Minor Offenses). On January 1, 2010 the new Law on Misdemeanors took effect. Misdemeanor judges read Article XXVIIa of the Law on Misdemeanors as allowing plea bargaining. The Law on Organization of Courts, published in December 2008 and effective as to some articles in January 2010 includes Article 27, "Jurisdiction of Misdemeanor Courts," and Article 28, "Jurisdiction of the Higher Misdemeanor Court."¹

Police determine how charges are filed, and in some cases the same person may be a defendant in misdemeanor court proceeding and a defendant in a basic or higher court on more serious charges, or both, as the result of the same incident. Cases stemming from family disputes might be handled by misdemeanor courts (e.g., as cases involving public disorder), and/or the basic courts as more serious "domestic violence" cases.² These cases and move on parallel tracks, with overlapping witnesses and other evidence and duplicative proceedings.

There are voluntary organizations judges, prosecutors and misdemeanor judges in Serbia, but only the last (still known as the Magistrates Association of Serbia, or MAS) has focused on issues of wider public interest. MAS took the initiative to train all misdemeanor judges on how to determine if defendants in their courts might be victims of trafficking in persons, and referring trafficking victims for appropriate assistance. MAS also trained misdemeanor judges on the proper handling and referral of those involved in family violence cases. MAS has also conducted two studies of the financial implications of misdemeanor courts' operations.

¹ The 2008 law is available at <http://www.mpravde.gov.rs/en/articles/legislation-activities>.

² Serbia does not have a separate domestic violence law: the Criminal Code, Article 194, covers "domestic violence." Under the 2009 amendments to the Criminal Code, penalties for domestic violence were increased. The most serious domestic violence cases, which involve death of a victim, are heard by the higher courts.