

## The Topic of the Issue

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### HUNDRED DECISIONS PER MONTH

NIKOLA LATINOVIC *PRESIDENT OF THE CRIMINAL DEPARTMENT*



**All trials against those indicted for war crimes, organized and ordinary crime, which have ended or are still pending before the District Court, get their final epilogue in the Supreme Court of Serbia, because it is this court that decides in the second and third instances in regard to appeals against judgments of lower courts. During 2005 the Criminal Department of the Supreme Court issued hundred decisions per month on the average, and in relation to 2004 the number of cases received has grown by seven percent.**



However, that the scope of work has particularly expanded is even better illustrated by the fact that there were 2,477 cases based on appeals, which is as much as 20 percent more. To put it more precisely, there were 350 cases more.

Nikola Latinovic, President of the Criminal Department of the Supreme Court of Serbia, in the interview for *Pravda u tranziciji* points that deciding on appeals is the most important part of the work.

- Apart from that, judges in criminal matters decide also in regard to appeals against extended detention and the decisions to order detention, as well as on the repetition of proceedings. Besides, we decide also on appeals against decisions on parole. The so-called "Kr" cases, or transfer of territorial jurisdiction, are also on the list of our duties. It is rare - but it does happen - for instance that the judge be accused of defamation and of course it is not

recommendable to have his colleagues conduct the proceedings. Decisions are also made in regard to concurrence of jurisdiction between the courts. Under the sign "KZU" are classified cases in which it is decided upon demands for extraordinary mitigation of penalty – explains Latinovic.

#### Life

The President of the Criminal Department explains that most often the reasons for mitigation of punishment are of medical nature.

- Thus, for instance, we had embarrassing situations created by life itself. There is a precise span of punishments and they can be mitigated only to a certain extent. It did happen that young men - who have never committed any misdemeanor, and were for instance in Kosovo during and after the bombing campaign, and even later - be caught with a bomb or some other weapon that they had brought and hidden in the barn or the house. The punishment could not be mitigated or reduced below one year. Whilst for drugs, were the punishments range from one to ten years, it can be even less than a year.

He remembers the situation with a women who went to Kosovo to look for her son and took with her in her bosom a bomb for her own safety. A woman which has never before committed any criminal act or misdemeanor was caught with a bomb, and she could not have gotten anything less than one year in prison. In court she stated that she would do it again and that she would take the bomb in order to protect herself because in Kosovo anything can happen on the way.

A specific problem, as Latinovic points out, was that at some point the maximum punishment was 15 years, except for grave crimes for which it could have been possible to have 40 years of imprisonment. This most severe punishment could have been mitigated to 15 years at some point. The new Criminal Code now envisages the most severe punishment to be within 30 and 40 years, so that mitigation within this span is made easier. The punishment can be exceptionally mitigated for, say, two or three years, and not from 40 to 15 years.

Under the sign "KZP" are demands of convicts for investigating the legality of the judgment. The President of the Criminal Department stressed that for the time being it is possible to file such a demand

even in regard to decisions of the Supreme Court. He expressed hope that the new changes in the Criminal Procedure Code will correct this illogicality. Namely, the Supreme Court is the last instance - explains Latinovic and adds that it is not exactly pleasant and advisable that colleagues with which he is, say, deciding in other chambers, decide as a separate chamber on a decision of the previous chamber.

- In situations when there is a hearing in the third instance, for gravest crimes - let us say multiple murder - the court decides in a chamber of five. If there is an appeal, in the third degree the decision is brought by a chamber of seven members and so we need already twelve judges. This is a problem, because we also work on regular cases, some colleagues are in the War Crimes Chamber and chambers for organized crime. We decide also on requests for protection of legality of the Republic's Public Prosecutor who has the right to file them if he thinks that the law is violated. We have fewer judges than in 1999, when there were 30 judges in criminal matters. There are 25 of us now, and the scope of work has expanded. At that time there were also less cases, between 1,700 and 1,800. Hence, we could have additional five or six judges - said Latinovic.

The Criminal Department has five chambers, and judges from these chambers are members also in two special ones dealing with organized crime, as well as in one for war crimes. Each chamber has five judges. After the Act on minors came into force, since January 1st there is also a Chamber for juvenile crime. Besides, there is also a chamber which acts upon appeals related to former cases of the military courts, which came under the jurisdiction of regular ones. Presidents of the chambers are Nikola Latinovic, who apart from heading the entire department is also President of the Supervisory Board of the Supreme Court of Serbia, then Novica Pekovic, Janko Lazarevic, Dragisa Djordjevic and Dragomir Milojevic.

Nikola Latinovic explained that the judges have also other numerous duties, they take part in the control and monitoring of lower courts, as well as in drafting laws. In answer to the question whether there is pressure upon judges of the Supreme Court, or unfavorable influence of the media which often bring the verdict and conclusions before time, Latinovic says that there are no overt pressures.

- Although influence of what is published is indirect, it still can have negative consequences, particularly in regard to trials pending before lower courts. It happens that witnesses speak openly in TV broadcasts before they were in front of the court, that even facts from the investigation related to the cases and trials against organized crime are published - said Latinovic.

### **A specific criminal procedure**

All trials against those indicted for war crimes, organized and ordinary crime, which have ended or are still pending before the District Court, get their final epilogue in the Supreme Court of Serbia, because it is this court that decides in the second and third instances on appeals against decisions of lower courts. However, the proceedings in front of the Supreme Court differ significantly from trials in the first instance.

From the moment when a case comes to the Supreme Court, the session must be scheduled within three months, hence not the main hearing like in the first instance. The case is first noted in the registry, then it is transferred to the Republic's Public Prosecutor for opinion, and after two weeks it is returned to the court. Then, according to the right to the natural judge, hence according to schedule, it is determined which chamber is to get the case. The judge-rapporteur is nominated, who does not have to be the president of the chamber, and he establishes the date of the session. The session can be a public or private one, and in case that it is a public one, and if it deals with the criminal act which is prosecuted ex officio, the Republic's Public Prosecution is informed about the date of the session, and the information is sent both to the defendants and the lawyers if in their appeals they requested to be informed.

If the defendants are in detention, and did request to be informed about the session, the Supreme Court must secure their presence by issuing an order on bringing the defendants to the court from prison. However, the public session can be held also in absence of all parties, because they are not obliged to be present at the session although they were informed. The accused who is not in detention also does not have to be present at the session. Hence, unlike the main hearing, which cannot be held unless the accused and their lawyers are present, this is not necessary for the sessions of the Supreme Court, because here no evidence is brought up, but the judge rapporteur is only presenting the situation of the case, presenting the judgment in the first instance and the appeals against that verdict, as well as the statement of the Republic's Public Prosecutor. After that the floor takes the deputy prosecutor, afterwards the lawyers of the defendants and finally the defendants. This is the end of the public part of the session, and after that the court chamber of five members decides behind closed doors. Records are taken on the public session and the decisions, which all members of the chamber and the note-taker sign, and in the Supreme court this is not the typist, but a court counselor with the bar exam. The chamber of the Supreme Court can confirm, annul or change the decision of the court in the first instance, completely or some of the parts. The judgment can be changed in the part related to the

decision on the guilt of the defendants, then in the part of the decision on punishments or in regard to legal qualification of the criminal act. The decision is brought by a majority vote of the members of the chamber.

There can be no appeals against the decision of the Supreme Court in the second instance, except in cases in which the threatened punishment is – from 30 to 40 years. The judgment becomes final only when extraordinary legal remedies are also exhausted, i.e. the request for an extraordinary mitigation of the sentence, the demand for investigating the legality of the final judgment, request for the protection of legality and the repetition of the criminal proceedings.

### **War Crimes Chamber**

The War Crimes Chamber of the Supreme Court of Serbia up to now has received no case of appeal against judgments in the first instance of the War Crime Chamber of the District Court in Belgrade, although the regular chambers of the Supreme court did decide on judgments in the "Sjeverin case" and against the indictee Sasa Cvjetan because these proceedings started before the specialized chambers were established. Judgments in both cases were already once annulled, and now there are pending proceedings dealing with appeals.

It is expected that the Supreme Court soon receives the judgments for those accused of murder of two hundred Croatian captives at the Ovcarica farm near Vukovar, and during this and the next year trials against indictees for crimes near Zvornik ("Yellow Wasps"), Trnovo ("Scorpions") and in Kosovo (mass graves in Batajnica, case Anton Lekaj and others) should be brought to an end.

- In these cases the chamber was deciding upon appeals against decisions on extension of detention, on removing documents in the case, on jurisdiction, as well as on all other decisions brought to the War Crime Chamber of the District Court, against which the prosecutors, the lawyers and the defendants appealed. However, we are expecting that in this and the forthcoming years there will be an even bigger number of cases dealt with, having in mind that The Hague Tribunal is ending its work. New cases which have started in front of the Tribunal will be delegated to our judiciary, and it is realistic to expect that our War Crimes Prosecutor's Office will institute a certain number of new proceedings – says for Pravda u tranziciji the President of War Crimes Chamber Janko Lazarevic.

He points out that due to the big number of cases there will soon emerge the need to establish yet another chamber of the Supreme Court of Serbia, a chamber for war crimes. This is necessary in order to end the proceedings as quickly as possible because they are exceptionally voluminous and complex.

- It is too early to talk about the number of these cases in the future in view of certain difficulties related to collecting the evidence, but this is our state obligation and if all organs will work in accordance with their legal obligations, I do hope that these proceedings will be conducted timely and legally – says Lazarevic.

The War Crime Chamber of the Supreme Court of Serbia has six judges altogether. Apart from the President of the Chamber, these are the judges Novica Pekovic, Slobodan Gazivoda, Nikola Latinovic, Dragomir Milojevic and Sonja Manojlovic.

## **THREE BODIES OF THE SUPREME COURT**

### **Supervisory Board**

The Supervisory Board of the Supreme Court of Serbia has in the year and a half since it was established received 1,500 petitions by citizens, lawyers and the convicts and has solved more than half of the cases (827).

Nikola Latinovic, President of the Supervisory Board of the Supreme Court of Serbia says that in the last year and a half since it was established there were in 13 cases initiated proceedings for the dismissal of the judge.

- Half of the colleagues which were doing their work with negligence file themselves the request for dismissal, so as to be able to join the Bar association under less embarrassing circumstances. It is the High Personnel Council that decides on the dismissal of judges, and this is not within our jurisdiction. The biggest number of cases relate to petitions by those convicted, and it is a curiosity that we had in our hands also the petition of a man convicted as long ago as 1952. We had more of such cases, in which the judgments were pronounced in the mid-20th century. Petitions of citizens and parties, primarily in civil proceedings, often are not supported by arguments and written with precision, which is also normal. In the civil proceedings one side is always dissatisfied with the decision of the court – said Latinovic.

He noted that the jurisdiction of the Supervisory Board is to control whether the judges were acting conscientiously, scheduling the trials, respected the deadlines, and it takes into consideration also petitions supported by obvious evidence which indicates corruption, and it even makes field visits, as was the case in Kraljevo upon the complaint of the lawyer of Bosko Ristic. However, not knowing the scope of work of the chambers the citizens often send various petitions which resemble more to writings to organs in charge of requests and appeals.

- We got a lot of material also from the Anti-Corruption Council and its President Verica Barac; however the chamber is not an investigation organ and cannot do a job that some other organs and services should do. We cannot alter and reexamine the judgments, though we can consider petitions were there is reasonable doubt that the judge violated the law – said Latinovic.

The President of the Board stressed that this body does not have its own technical staff, which is a problem. Cases are dealt with according to schedule like all the others. The Board decides by first considering whether the petition is founded, and takes decisions during a separate session. The Supervisory Board has five members, and as judge Latinovic explains, the principle is that at least four of them be present at the session.

Members of the Board, apart from the President, are also judges Dragisa Djordjevic, Vladimir Tamas, Branislava Apostolovic and Ljubodrag Pljakic. The Supervisory board is independent in its work and takes its decisions completely on its own.

Nikola Latinovic mentioned that the sessions of the Board are held regularly, once a week on the average, and that apart from a small delay in dealing with the cases due to objective circumstances, a fully adequate dynamic of the work has been established so that the number of solved cases will in the forthcoming period be bigger for sure.

### **High Personnel Council**

The High Personnel Council of the Supreme Court of Serbia decides on issues related to the judges' status, establishing the reasons for cessation of judicial offices, retirement and deals with requests for the dismissal of a judge. It decides in a procedure closed for the public, it has its president and nine members. These are judges with longest experience.

Three members are judges in criminal matters, three in civil matters, and three specialized in administrative issues. They are elected for two years. They alone chose the president among themselves. The President of this body is Miroslav Cvetkovic. The High Personnel Council brings its decision independently. When deciding on whether or not there are conditions for a judge's dismissal, which might be the most delicate job, it can also conduct a genuine small trial and enable the judge to react to criticism related to his work, to get insight into cases in which this judge was acting.

This organ's decisions in such cases provoke great interest of the public, particularly when the requested for dismissal is linked with cases interesting for the media or with big criticism in regard to the work of certain courts, presidents of courts and judges.

When deciding on requests for dismissal due to negligent and unprofessional performance of judicial duties, the chamber can pronounce a warning or removal from court for a period ranging from one month up to one year. These pronounced measures are registered in the personal file of the judge. During the validity of the removal from court, the judge's position equals to removal from duty.

### **General session**

According to name, one could wrongly assume that this is just a meeting of a given composition, but the General Session is much more than that. This is a body composed of all judges and the President of the Supreme Court of Serbia, who presides over its work. The vote during the General Session can be public and private, which depends on the decision of the majority of the judges present. There must be minutes on the work, which are kept in the archives of the court.

The jurisdiction of this body includes adoption of legal opinion, issuing opinions on draft laws and other regulations important for the judicial power, considering the implementation of laws and the work of the courts in the Republic. Among the judges the General Session chooses members of the High Judicial Council by invitation and proposes candidates for one permanent member of the High Judicial Council. It also chooses members of the Supervisory Board of the Supreme Court of Serbia, as well as three members of the Board for Prevention of Conflicts of Interest of the Republic. Prescribing the criteria for evaluating how conscientious and successful a judge was in performing the function is yet another important duty of the General Session, as well as prescribing which acts are contrary to the dignity and independence of the judge and harmful for the reputation of the court.

The General Session adopts Rules of Procedure related to the organization and the work of the Supreme Court of Serbia and the Rules of Procedure of the High Personnel Council. Apart from these documents, this body establishes the types and methods for professional specialization of judges; it decides on objection expressed by the President of the Supreme Court against the decision of the High Personnel Council in regard to his/her removal.

There are also decisions related to judges' objections expressed against a measure of the High Personnel Council within the proceedings for dismissal and for negligent and unprofessional performance of duty. The General Session appoints the judge who is acting President of the Supreme Court and decides on the exemption of the president of the court. The task of the session is also to appoint the secretary of the Supreme Court and the counselors.