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To: High Judicial Council

President Mrs. Nata Mesarovic

In its memo of 3 June 2011, the Judges' Association of Serbia (JAS) notified the High Judicial Council (HJC) that it had published on its website the judicial performance results (statistics data) which are not official court data, **in contravention of the provision in Article 3** of the HJC Rules for the Implementation of the Decision on Criteria and Indicators and for the Review of the Decisions of the First Composition of the High Judicial Council on the Termination of Judicial Office (hereinafter: Rules) of 23 May 2011 and that the following irregularities have been identified in the published results:

- The material does not comprise the performance results of the Supreme Court judges, of all commercial court judges and of all judges of specific courts or of a number of judges of specific courts or of specific individual judges;

- The material does not comprise the performance results in all the matters which the specific judges adjudicated, **in contravention of** the provisions of the Court Rules of Procedure ("Official Gazette of the Republic of Serbia", No. 65/03), which were valid at the time of the submission of the reports and the rendering of the reappointment decisions, **and in contravention of Articles 5(3) and 6(4) of the Rules;**

- The published results do not demonstrate the professional qualification of the judges – the percentage of overturned, upheld and modified decisions are mostly presented with 0%, **in contravention of the Indicators** for the Evaluation of the Minimum Success in Performing Judicial Office (Official Gazette of the Republic of Serbia No. 80/05) and **Article 5 of the Rules;**

- Data on the percentages in which the judges fulfilled the norm are incorrect because they do not take into account the effective working hours and because the number of completed cases, and thus the percentages in which the norm was fulfilled, do not factor in cases solved in another manner, which is **in contravention of** the Court Rules of Procedure, the HJC Binding Instructions on Tabular Periodic Court Performance Reports of 21 June 2005 and the provisions in **Articles 5(2(5)) and 6(3) of the Rules**.

The HJC has not published the official court data based on which the HJC is duty-bound to act during the review of the decisions of the first composition of the HJC although the JAS called on it to do so in its memo.

The JAS in the meantime noted that the HJC has been acting in contravention of the very Rules it itself had adopted in a number of ways during the first two weeks of the re-election review:

- The HJC has published neither the list of non re-appointed judges (petitioners), whose legal remedies it is to review, nor, next to them, the names of the judges rapporteurs, to whom their cases have been assigned, which is **in contravention of Article 15(3) of the Rules;**

- After presenting the facts in the case files, the judges rapporteurs have not been presenting the disputed issues in the cases to be reviewed at the hearings within the review procedure, which is **in contravention of Article 23(3) of the Rules;**

- The case files of specific non re-appointed judges have been supplemented with evidence that had not been in them prior to the adoption of the circular decision on the termination of judicial office of 25 December 2009, i.e. the reasoned decision of 14 June 2010, which is **in contravention of European standards whose application is guaranteed under Article 2 of the Rules;**

- The HJC has just now begun to seek and compile specific evidence about individual judges – data on old cases and lists with the case reference numbers and precise numbers of days from the day of completion of the hearings to the day of dispatch of the decisions although courts have not being obliged to submit official records of some of these data (they kept data on decisions drawn up within 30, after more than 30 and after more than 60 days). This is **in contravention of Articles 2 and 3 of the Rules, and even Article 6 of the Rules**, which lays down as one of the cumulative standards for assessing the competence of judges "gross negative deviations from the court department average number of decisions written upon the expiry of 30 days from the day the verdict was rendered" and not the number of precise days from the day the verdict was rendered until the day of dispatch of the decision;

- During its collection of such data, the HJC has not been seeking the same data for the other judges in the same department in which the non re-appointed judge worked, which would have ensured its correct establishment of facts and correct application of the provision in **Article 6 of the Rules**, given that only "gross negative deviations from the court department average" are relevant;

- The HJC has not been notifying the non re-appointed judges of the evidence it collected subsequently, which would have provided them with sufficient time to peruse the evidence and prepare their "defense" in accordance with the principles of the public character of hearings and contradictory argument proclaimed in **Articles 2 and 3 of the Rules;**

- The HJC has been assessing the performance of the non re-appointed judges only by their performance results during one or two of the three years – 2006, 2007 and 2008, rather than by taking into account the average performance results in the entire three-year period, whereby it is acting in contravention of **Article 13 of the Decision on Criteria and Indicators and Articles 5 and 6 of the Rules;**

- After the hearings, the HJC commissions have not been deliberating or voting in order to render a reasoned decision – a proposal to the HJC with respect to the objection, which is **in contravention of Article 25 of the Rules**;

- The public has not been notified of the sessions the HJC has scheduled to render decisions on the legal remedies, which is **in contravention of Article 26 of the Rules.**

The JAS suggests to the HJC to halt such actions and consistently apply the provisions of the Rules it itself had adopted and abide by the European standards application of which is explicitly stipulated in the Rules, whilst bearing in mind all the other shortcomings of the first-instance procedure and the recommendations noted by the Constitutional Court in its pilot decision of 22 December 2010 on the Tasic case.

Judges' Association of Serbia President