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JUDICIARY IN SERBIA FROM MID 19th TO EARLY 20th CENTURY

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Abstract. *In this paper, the author mostly uses the language of the legislator to discuss the development of the judiciary in Serbia from mid 19th to early 20th century. Such an approach has been chosen because by 1838 Constitution Serbian judiciary had not been based on any strong constitutional or legal framework. The organization of the judiciary was practically shaped and developed for this first time through legislation. Without a clear distinction between the executive and the judiciary by mid 19th century, in the thirty years that followed, in which state, judicial, and political institutions developed, Serbia passed the long way to reach some accepted values of developed European countries of the time, such as independent judiciary and permanent position of judges. Serbia entered the 20th century with a fully developed judiciary which was based on constitutional and legal principles identical or similar to the European countries of the time, even though, contrary to Serbia, those countries had built their judiciaries for a few consecutive centuries.*

Key words: *legal history, Serbia, legislation, courts, judges, attorneys.*

1. 1838 CONSTITUTIONAL FRAMEWORK

Due to the specific circumstances in which it originated, the 1838 Constitution is known as the Turkish constitution. It was passed as a Sultan's edict and was endowed to the residents of the province of Serbia. In its articles 30-42, this document quite comprehensively covered the organization of the judiciary[1]. Three courts were established in Serbia. The first one was founded in the villages, made of local leaders, known as the primary court. The second one was the first-instance court in each of the 17 districts that Serbia consisted of. The third one was the Court of Appeals, whose seat was in the capital.

The primary (village) court[2] was located in each village, and it had a president and two members elected by the locals. The court was to decide in disputes amounting to up

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[1] Constitutions of the Princedom and Kingdom of Serbia, SANU, Belgrade, 1988, 69-79. (Ustavi Knezevine i Kraljevine Srbije) hereinafter: Serbian Constitutions

[2] Originally *primiritelni sud*, roughly translates from Russian as a "primary" court. (translator's remark).

to 100 coins and could not execute penalties exceeding three-day imprisonment or ten strokes of a cane. It was due to transfer to the district court all civil and criminal suits in issues surpassing its jurisdiction.

The district court had one president, three members, and a sufficient number of scribes. Its judges were appointed by the Prince's edict, equal to all other civil servants and military officers (Article 54 of the Constitution). The Court was to examine and try in both civil matters and criminal acts, offences, and mercantile litigations. Any person dissatisfied with the judgment was allowed to address the Court of Appeals within eight days. If not so, the judgment of the district court would come into force and have executive power.

The Court of Appeals was made of the president and four members. It discussed and decided on instances and litigations that had already been processed in the first-instance court. Judgments of district courts and the Court of Appeals had to be made in writing.

The 1838 Constitution guaranteed that Serbian citizens could not be deprived of their civil rights, or punished without a court judgment, and also that their goods could not be confiscated (Art. 28). The Constitution guaranteed that judges could not be fired for exceeding their authority, until this was proved through a judicial proceedings in accordance with valid regulations (Art. 42). Both provisions unequivocally testify to the fact that makers of the Constitution were very familiar with the condition in the Serbian judiciary by that time, during the reign of Prince Milos Obrenovic (1815-1839), when judgments were pronounced outside courts, execution of enforceable and executive judgments was stalled, and judges were treated as Prince's servants, whom he was allowed to transfer, fire, or punish at will. Prince Milos refused to govern by the new Constitution. He thought that it limited the power of the Prince too much, so he abdicated. From 1842 to 1858, the Serbian Prince would be Aleksandar Karadjordjevic.

2. JUDICIAL ORGANIZATION IN THE PERIOD 1840-1858

In terms of organization, the judicial system which developed from 1840 to 1858 matched the European countries of the time. Attempts to ensure maximum legal security through good bodies of the judiciary, however, resulted in the fact that the judicial organization by far exceeded the capacities of the Princedom, especially in terms of the numbers of educated lawyers. Following the meticulously collected data referred to by S. Jovanovic in his book "Ustavobranitelji i njihova vlada" (Defenders of the Constitution and their Government), out of all presidents and officials of higher and lower courts in Serbia, in 1851 there were only three persons who had studied law.[3] Although in 1853 there were 49 such individuals, in 1858 the number of educated lawyers in the entire judiciary still did not surpass even one quarter of all staff. In the words of professor D. Jankovic, the last illiterate judge in Serbia was to become retired only in 1862.[4]

While in the early years of its work the new judicial organization was supported by the public and caused optimistic expectations, beginning in mid 19th century, even more vigorous criticism of the judiciary started, due to slow proceedings, corruptibility or incom-

[3] S. Jovanovic, Complete Works, Vol. III, Belgrade 1990, 37.
[4] D. Jankovic, History of 19th Century Serbian State and Law, Belgrade 1960, 108.

petence of judges. Causes for this condition were numerous and often lay in the deeper layers of social life. However, visible at first glance already was the excessive number of instances needed until the judgment should become executive, insufficient procedural legislation, lack of judges, low (or no) education among the judges and assistants, and the fact courts were overburdened with numerous cases (especially low-value civil suits).

The judiciary established in the 1838 Constitution was regulated in more detail in decrees that followed. The provisional Decree on Primary (Village) Courts was passed on 17 June 1839,[5] while on 26 January 1840 a Decree on District Courts and Grand Court (of Appeals) was passed.[6] The district court was indeed the actual first-instance court, established in each of 17 districts, because the jurisdiction of primary (village) courts was limited to low-value litigations (up to 100 coins), or petty offences (punishable by at most three-day imprisonment or up to ten strokes of a cane). Up to 1846, the Court of Appeals had been the highest court, but not the supreme body of the judiciary. In some cases, its verdicts were to be cassated by the Ministry of Justice (in civil affairs) or the Prince (in criminal offences, in cases in which stricter penalties were pronounced, or where other specific circumstances imposed that so be done). The Supreme Court was established on 9 September 1846,[7] but even this institution was not given full cassation power. The Supreme Court was obliged to pass on to the Prince *ex officio* each sentence to death, imprisonment or captivity longer than 6 years, and also each sentence depriving one of rank or title. Moreover, in civil litigations, parties displeased with the verdict of the Supreme Court were allowed to appeal to the Prince themselves within 15 days.

The establishment of the Supreme Court brought about a new reorganization of the judiciary, for, due to the large number of instances, there was a threat that the judicial system should become even slower and less efficient. According to the Decree on the Organization of the Court of Appeals of 1 November 1846[8], in civil affairs, judgments of this court were, as a rule, executive. The same goes for those criminal judgments in which the sentence was pronounced, such that it did not require mandatory submission to the Supreme Court. There was also the obligation that the Court of Appeals had to submit to the Supreme Court each of its judgments where a person previously convicted in the first-instance proceedings was acquitted. On 23 September 1847, the Court of Appeals was divided into two independent sections, where cases were tried according to the territorial principle.

Within the Prince's Office, a Judiciary Section was introduced on 7 November 1850, while on 3 August 1851 a Court Section was introduced with the Ministry of Justice. The latter was soon labelled the Cabinet Court. Both sections were related to the Prince's cassation authority, which undermined the cassation power of the Supreme Court. One can indeed say that only after 28 December 1855 was judiciary power in Serbia fully transferred to courts. The Supreme Court also became a cassation court, and was given such a double title – the Supreme and Cassation Court.[9] The Prince retained only the right to pardon.

[5] Collection of Acts and Decrees in the Princedom and Kingdom of Serbia, I, 236. (Zbornik zakona i uredaba u Knezevini i Kraljevini Srbiji) hereinafter: Collection of Acts
[6] Collection of Acts, I , 182. and 196.
[7] Collection of Acts, III, 132.
[8] Collection of Acts, III, 148.
[9] Collection of Acts, VIII, 104.

This Supreme and Cassation Court was transformed into a pure Cassation Court on 25 January 1858. By the end of the period we discuss here, this Court would have the right to try in the third and final instance, and also the right to cassate the judgments and resolutions of the Court of Appeals. In its plenary conference, this Court decided on the conflict of jurisdiction of civil and police courts, on particularly important cases, and on whether the legislative power (the Council or the Prince) should be required to interpret a legal provision.

According to the 13 July 1839 Municipality Act, primary (village) courts were given not only judicial, but also police authority, while in village municipalities they also acted as tax collectors. In the Municipality of Belgrade, the President of the primary court was also the town governor. When acting as bodies of the judiciary, all village courts were subordinate to district courts, while in their police activities they responded to town or district governors.

An interesting description is found in the Act on Primary courts of 1839, where there is a list of qualities required from the president and two court members, the only judges in Serbia at the time not appointed by the prince, but elected by the locals. According to this Act's Article 3, they should be honourable, conscientious, impartial, incorruptible, naturally bright, mild, sensible, and shrewd people. If they had not attended school, they should be capable to use their common sense and judge what is right before God and people, and they should decide and judge as they deem just. If in a particular primary court "no member is literate", the Act, in its Article 18, prescribed that they were due to ask a priest, district or town scribe, or any literate trader, "to read them out their duties from the Act every week" (quotation) so that they should memorize this as well as possible and judge as justly as possible. Although provisional in intentions, this Act would remain in effect until 1866.

According to the Act on the Organization of District Courts, passed in 1840, these courts had a president and three members with additional personnel. Those persons who had worked in courts earlier had advantage in appointment. The District Court investigated or tried all criminal offences in first instance, and also covered all disputed issues or civil litigations, along with commercial or custodian cases within its jurisdiction. Since at the time in Serbia there was little written law, in making the judgment judges were not obliged (nor were objectively in a position to) call upon particular regulations. The Law defined that criminal judgments had to be clear, to-the-point and logical, that it had to be known who had committed the act, what kind of act it was, what circumstances or proofs testified to it, and what penalty was judged. The District Court could proclaim death penalty, life sentence, captivity (permanent or temporary), temporary imprisonment (with heavier or lighter chains, or without chains), prison (public or home), bodily punishment (up to 100 cane strokes against one's bottom), financial penalty, demotion or deprivation of rank and title (permanent or temporary), and deprivation of previously acquired benefits, decorations, or rights. In civil matters, too, the judgment "in the case should be logical, clear, understandable, and unconditional, and should contain reasons on which it is based."

According to the 26 January 1840 Law, the Grand Court (of Appeals) consisted of one president and four members, along with additional personnel. As a second-instance court, this institution looked into and pronounced sentences in all those cases that had already appeared before district courts and, as such, had been resolved. The Court of Appeals

would pronounce its judgment upon hearing the justifications of the appealing party to the judgment of the district court. If the dissatisfied party offered new evidence, such that it had not been considered by the district court, the Court of Appeals would order a new trial in the district court. According to Article 13 of this Act, the judgment of the Court of Appeals was final, as a rule. However, the dissatisfied party was still allowed an eight-day term to appeal to the Ministry of Justice. The Ministry of Justice was the institution supervising all the courts in the Princedom, and, if there were some more substantial inconsistencies during the trial, the only thing it could do was order a new trial in the district court or Court of Appeals.

The Prince's edict of 10 October 1841 established yet another court in Belgrade, equal in level to the district court, but with specific jurisdiction. It tried only civil cases, in particular mercantile litigations between inhabitants from the provincial parts of the country on the one hand, and Belgraders or foreign citizens living in Serbia, on the other.[10] The Edict reads that establishment of such a specific court was necessary due to the fact litigations between merchants "become more numerous day after day, so that Belgrade District Court (…) cannot try them all". Thus, in civil litigations, Belgrade District Court became competent only for those litigations in which both parties were settled in Belgrade District.

The Act on the Establishment of the Supreme Court (passed on 9 September 1846) stressed that judges of this court (the president and four members) were appointed from among people excellent, those who were honourable, justice-seeking and capable, those proficient in jobs they were assigned to. The Supreme Court, the final, third-instance judicial institution, was to consider only cases that had already been completed in the judgments of the first- and second-instance courts. If inadequacies were found in the proceedings in either the first or the second instance, the judgment was rescindable and a new trial was ordered, or else the judgment was modified. Otherwise, if no inadequacies were found, the Supreme Court was only to validate the existing judgment.

According to Article 6 of the Act on the Organization of District Courts of 26 January 1840, judges of district courts, Court of Appeal and Supreme Court, upon appointment and before entering the office, were to take an official oath, in the presence of a higher priest. This oath, also mandatory for judges of the Commercial Court upon its establishment in 1859, would remain compulsory by the passing of the new Act on Court Organization of 20 February 1865, which no longer prescribed such an oath. The text of the judicial oath pronounced between 1840 and 1865 read: "I swear by God almighty that I shall carry out my duties in a holy and comprehensive manner, that I shall uphold the Constitution, Acts and Decrees of this country, where in trying I shall act according to justice and my clear conscience, not making a difference between persons and ranks, not looking into anyone's wealth, and that I shall not commit any act that could hurt the fatherland and rights and freedoms of the people."

The text of the oath taken by members of primary (village) courts was not explicitly defined in the 1839 Act. Its Article 6 only describes that these judges would solemnly promise, in front of a priest, that they would do nothing contrary to the duties of their position and convictions of their conscience. The 1866 Municipality Act,[11] however, pro-

[10] Collection of Acts, II, 139.
[11] Collection of Acts, XIX, 1.

vided an oath text taken by municipal court judges (judges of the courts that would soon replace the primary courts). The text reads: "I swear by one and only God that I shall be loyal to the Prince and the Fatherland, that I shall conduct my duties honourably, that I shall conscientiously protect municipal and state interests, so help me God."

3. ESTABLISHMENT OF CASSATION COURT

The full transfer of cassation power from the Prince to the Supreme Court, on 28 December 1855, finally delineated between the supreme administrative power and the judiciary in the Princedom of Serbia. By that time the Supreme Court, with its president and four members, now became the Supreme and Cassation Court, with twice more members (president, vice-president and eight members). Within its cassation competences, this court was to "rescind both the judgments and the resolutions of the Court of Appeals reached in disputed matters, in all those cases in which lower-instance courts had either breached the procedure prescribed for litigation, or had failed to consider the qualifications requested from parties in the litigation" (Article 13 of the Act on the Establishment of the Supreme and Cassation Court). However, according to Article 16 of the Establishment Act, in criminal trials, if a substantial defect was noticed, the Supreme and Cassation court was to "cassate the judgment of either the district court or Court of Appeals, and order a new trial in the first-instance court, with the instructions that this court should duly process the case and take into consideration all the evidence so as to pass a new judgment".

In mid 19th century, courts in the Princedom of Serbia were literally overburdened by dozens of cases, where civil suits prevailed. In the words of the first Serbian statistician Vladimir Jaksic, their number increased from 2,789 in 1841 to 27,849 in 1858. In "Novine Srbske" (Serbian Papers), no. 108 and 122 of 1852, there is a claim that most lawsuits in conutry's courts came as a consequence of debt. This was quite logical, having in mind the social processes in Serbia at the time. Among other issues, courts also tried in cases in which usurers requested paybacks from indebted farmers, disputes over the division of family cooperatives ("zadruga"), which, as a rule, gave birth to lawsuits on property over immovables and their delineation.

The transformation of the Supreme and Cassation Court into the pure Cassation Court, which took place on 25 January 1858,[12] was the last major change in the organization of the judiciary that the Council and the Prince would implement before the Prince was to be overthrown by the National Assembly towards the end of that year by Prince Aleksandar Karadjordjevic. In the same act in which a purely Cassation Court was founded, new organization of the Court of Appeals was defined, while changes and additions to the principles organizing district courts were also introduced.

The main obligation of the Cassation Court was to take care that "acts prescribed in the country should be equally and strictly respected and enacted in matters disputed and undisputed, and also in criminal trials". This court was fully independent of any other power. In strictly defined cases, over the Ministry of Justice, this court submitted certain

[12] Collection of Acts, XI , 7.

decrees absolute to the Prince *ex officio*, where the Prince was authorized to pardon the convicted person.

After the reorganization of 25 January 1858, the Court of Appeals became a second-instance court, simultaneously the highest court in which individual trials were conducted in the Princedom of Serbia. In its title and first four articles, the corresponding Act suggested there were two courts of appeals, while in further provisions singular was used, which may be interpreted as the fact this was indeed a single Court of Appeals with two sections, which divided tasks among themselves on technical basis. For the first time we find the provision hear that the judgment of the Court of Appeals acquitting an indictee was not suitable for revision by the Cassation Court. In two and a half years (16 August 1860), the Cassation Court was divided into the Grand Court for Civil Offences and the Grand Court for Criminal Offences.[13] It would remain thus divided by 20 February 1865, when the new Act once again blended the two into the Court of Appeals. The Grand Court is often related to a scandalous political drama, that would be remembered by the people as the "affair of the Grand Court's collapse".

4. Affair of the Grand Court's Collapse

Commotions in the Serbian political scene, that picked up with an almost unseen intensity in 1858 and 1859, during the almost revolutionary events in the National Assembly, and that, in a more concealed manner, continued during the reign of prince Mihailo Obrenovic (1860-1868) had to impinge on the judiciary as well. Numerous complaints of members of the National Assembly in 1858/9, accusing certain courts and judges, had a political motivation. Many requests for dismissal of judges were inspired by the expected and conducted succession of dynasties on the throne. However, the Serbian judiciary experienced its strongest earthquake in 1864, in the so-called affair of the Grand Court's collapse[14]. The victory of political opportunism over justice and legality, in this case manifested itself in a way that was so dramatic that it shocked the public at large. According to reactions it caused in the public opinion and its political consequences, the affair of the Grand Court's collapse could only match the subsequent coup d'etat of King Aleksandar Obrenovic.

In its second-instance consideration of the guilt of 26 individuals convicted by the District Court in Smederevo of offending the sovereign and preparing an overthrow (in the so-called Majstorovic conspiracy, discovered in winter 1863/4), to the astonishment of the Prince, the Government, and the State Council, on 3 June 1864, the Grand Court pronounced the sentence of acquittal. While the supporters of Prince Mihailo's regime held that this judgment meant the Grand Court sided with the conspirators and provocatively supported the liberal political opposition, judges of the Grand Court called upon the principle of judicial independence. They responded to all criticism by saying that the Court interpreted the law the way judges understood it, and not the way the Justice Minister did. The response of the Prince and the Council (comprising the Legislative power, in accordance with the Constitution) came very quickly. Already on 11 June 1864, they passed a specific Act, indeed unique in the history of Serbian legislation – the Act on

[13] Collection of Acts, XIII, 140.
[14] Succinctly on this: Slobodan Jovanovic, Completed Works, Vol. III, Belgrade 1990, 432- 442.

Trying Judges.[15] This Act established a special court for trying solely judges of Grand Court (of Appeals), which did not have to rely on the valid regulations on producing evidence, but was allowed to pronounce its judgment according to the free conviction of its judges. The judgment of this court was to come into force immediately and it was not to be further considered.

Through retroactive enactment of this shocking Act with retroactive force, five judges of the Grand Court who had tried in Majstorovic conspiracy (Jovan Filipovic, Jovan Micic, Marinko Radovanovic, Jovan Nikolic, and Jevrem Grujic) were sentenced to three year imprisonment and two year deprivation of civil honour. The Court Secretary Stojca Ivankovic was sentenced to two years in prison and one year of loss of civil honour, but he was pardoned before imprisonment. The convicted judges would be pardoned only after one year spent in the Karanovac prison.

5. 1865 ACT ON COURTS

The principal elements of organizing courts, set up between 1838 and 1858 remained in the Act on the Organization of Courts (district, Court of Appeals, and Cassation Court) passed by Prince Mihailo on 20 February 1865. First-instance district courts, second and final instance Court of Appeals, and supreme Cassation Court would remain in Serbia by World War One, i.e. by the end of the Princedom of Serbia. The status of municipal courts would, however, change, depending on the particular position of the municipality within state or local administration. The most important turning points in the functioning of the judicial mechanism are found in the passing of the first Act on Bar Council in 1862, introduction of juries in 1871, and passing of the Act on Judges in 1881.

According to the 1865 Act on Courts, in each district there was a first-instance district court. It had at least three judges, including the president. To become a judge in the district court, one had to be a citizen of Serbia, not younger than 25, with at least 5 years of service in the judiciary, who "received regular legal education, either in Serbia or abroad". This final condition did away with the practice in which persons without appropriate education could also become judges of first-instance courts. Judges and other district court officials were appointed by the Prince in separate edicts, upon the proposal of the Justice Minister. Belgrade City Court and Belgrade Commercial Court were equal in rank with district courts.

District courts were competent for civil, criminal, guardianship (pupillary), and commercial lawsuits (the last type only for parties from outside Belgrade). In civil matters, regardless of the value of the suit, these courts had to judge in all disputes regarding property over immovables, inheritance by the law or will, damage inflicted by a state official while conducting his or her professional duty, and also disputes in which the value of the matter was not expressible through money. In criminal cases, district courts were in charge of all crimes and also offences "not defined in the law to be tried by specific courts or authorities". District courts had the power to cassate the judgments of municipal courts.

Trials in district courts were public, and any exceptions had to be defined by the law. The verdict was reached by majority vote, where a judge could provide a minority report

[15] Collection of Acts, XVII, 265.

in writing, which would become a part of the official trial record. The president of the court managed all technical and procedural actions. He also "supervised the conduct of court officials, when on or off duty". In case the president of the court was incapacitated, all his rights were transferred upon the oldest judge. The court secretary was the head of office clerks, but, in extraordinary situations, he was allowed to replace an absent judge "if he had the qualifications required for one".

The Court of Appeals was superior to all first-instance courts. This was the second- and final instance court. It had 10 judges, one of whom was the court president. There were two sections in this court, with trying councils consisting of five judges in each. The president of the court was allowed to chair any of the two sections, while in the section where he was not presiding, the chair was always the oldest member, in terms of the duration of his appointment as member of Court of Appeals. Judges of the Court of Appeals were appointed by the Prince, upon the proposal of the Justice Minister. Requirements for appointment were that one had completed a school of law, that he was at least 30 years old, and had had five years of experience as a judge. Like district courts, the Court of Appeals was also under the authority of "the Ministry of Justice". The jurisdiction of the Court of Appeals was defined in Article 19 of the Act on the Organization of the Court of Appeals: it was to provide second and final instance judgment only in those civil and criminal suits that had been previously judged by first instance courts. Cases were considered sequentially, i.e. by the order of their arrival at the Court.

The Cassation Court was superior to all first-instance courts and the Court of Appeals. It had 15 judges, one of whom was the court president. Judges of the Cassation Court were also appointed by the Prince, upon the proposal of the Justice Minister. The judge needed to have the qualifications required from a Court of Appeals judge, but one exception was allowed. Article 4 of the Act reads that one who had received regular education in law "cannot be a Cassation Court judge if he had not served as a judge for at least seven years". As a rule, the Cassation Court had three sections with five judges in each, but it also had "grand conferences" (at least nine judges) and the "plenary conference" (at least thirteen judges). Cassation Court resolutions pertaining to judicial affairs bore the title "In the name of His Majesty, the Serbian Prince", where the name and the title of the current prince was also added.

The Cassation Court had a triple jurisdiction. In the words of the legislator, its principal task was to monitor whether legal acts and regulations in civil and criminal affairs were enacted equally throughout the country, in accordance with their original wording. The second competence of the Cassation Court was to "corroborate or annul the judgments and resolutions in civil and criminal matters, in cases defined by the law". Finally, this court decided on the conflict of competences between civil, military, clerical, police courts and the Head Control (which functioned as an accounting court), and also on the transfer of jurisdiction from one first-instance court on the other, when such a legal situation emerged.

In its plenary conference only, the Cassation Court could decide on possible requests by the Justice Minister to determine whether there were grounds for a judge of any court to be held responsible for the compensation of damages made in conducting his professional duty, or to stand trial for crimes and offences against professional obligations defined in the Criminal Code of the Princedom of Serbia. In the plenary conference, the Court discussed "how to interpret an act or regulation", whenever it noticed that courts interpreted it differently in practice. Likewise, in the plenary conference, upon the request

of the Justice Minister, or upon its own initiative, the Cassation Court took a stand on certain legal regulations or formulated objections to the Justice Ministers if the Court found that some of his commands or requests were not accorded with the positive law.

6. LEGAL COVERAGE OF ATTORNEY BARS

In 1860s, the construction of stable judiciary and adoption of a number of procedural regulations brought about the problem of representing parties before courts of law. Lack of educated lawyers, slow work of courts, and a strong need for legal representatives resulted in situations in which barely literate individuals appeared as attorneys. At best, parties were legally represented by resourceful clerks, who usually charged heavily for their services, including their private connections with the judges and the judicial personnel.

The first step in the legal coverage of the chaotic conditions in legal representation was made on 21 October 1842. At that time, the Prince and the Council proclaimed a resolution,[16] that "civil servants, teachers, and all others receiving their salary from the state may not act as legal representatives, before courts or otherwise". This ban had a positive effect, as it formally distinguished between legal representation and civil service. On the other hand, it dramatically lowered the (already low) quality of representation before courts. Many civil servants kept on working as shadow attorneys, or as advisors to those representatives that were still allowed to appear before courts of law. It is truly ironic that after 1843 legal representatives, appearing in courtrooms, included former civil servants fired by the state for embezzlement or other criminal or disciplinarian offences, semi-literate craftsmen, and even outright frauds. This "legal representation" would prevail until 1862, when the new Act on Legal Representatives was passed in Serbia.

The Act on Legal Representatives, passed on 28 February 1862,[17] provided detailed conditions for assuming and losing the right of representation in courts, defined the procedure for taking the exam for legal representatives, the rights and duties of the representatives, disciplinarian measures they could be subjected to, and, in the final article (Art. 64), the text of the oath that the newly-appointed legal representatives had to take in the Ministry of Justice.

After this Act came into force, only those of "good and honest conduct" who had "duly completed their studies of law" and successfully passed the exam for legal representatives were given the right to practice law. Those who had worked as lawyers for at least three years, or in the judiciary for at least two years, before the passing of the Act were exempted from taking the examination. The oral and written examination for legal representatives was taken before the five-member board made from the judges of the Grand Court (of Appeals). If one failed this exam three times, one would permanently lose the right to practice law. In the first two years of this Act's being in force, Serbia had only 22 public attorneys, 8 of whom were in Belgrade.

One sees the scope of the need for the full legal coverage of representation in the fact that on 15 June 1865 already[18], a new Act on Legal Representatives was passed. It was

[16] Collection of Acts, II, 259.
[17] Collection of Acts, XV, 58. and 60.
[18] Collection of Acts, XVIII, 48.

needed in part because of the dissatisfaction with the work of some attorneys, mentioned in the discussion at the National Assembly session of 1864. Many members of the Assembly then publicly expressed their embitterment with the work of some lawyers, and some even went as far as to propose that the institution of legal representation should be discontinued.

As for conditions for one to become a legal representative, the 1865 Act introduced a significant novelty: there was no request for the candidate for representation to have had completed a school of law. Rather, it was sufficient that this person should pass the examination for the legal representative. The five-member board for assessing this examination was appointed by the Justice Minister, and members had to be judges of the Court of Appeals or Cassation Court. Still, the Minister was allowed to include an attorney as member of this board, too. The new Act specified instances in which the legal representative "may not accept the case and must cancel his assistance", when he might, but did not have to refuse his assistance, and those cases in which he was due to, could, but did not have to "timely cancel his assistance before the end of the lawsuit". In much more detail than in the 1862 Act, the 1865 one covered rewards for and expenses of legal representatives, precisely listing how much the client should pay as compensation for each individual action of his or her attorney.

7. Establishment of Jury-Based Trials

A significant moment in the history of Serbian judiciary in the second half of the 19th century was the introduction of juries in 1871. The Serbian 1869 Constitution[19] did not alter the principal organization of the judiciary, originating from 1865. Since, when this act was passed, Serbia already had its Civil and Criminal Code, and the Act on the Procedure in Civil Litigation, and also the Act on the Procedure in Criminal Lawsuits, the Constitution's Article 115 prescribed that "in the judgment, the court must call upon the fundamentals of the trial and the paragraphs of the acts according to which the sentence was pronounced". Another novelty was found in Article 117 of the Constitution, prescribing that juries should be introduced for banditry, major thefts and arson. The Act on Jury, passed on 21 October 1871,[20] brought this Constitutional provision to life. This action resulted from the wish of many Serbian citizens that perpetrators of such grave offences should no longer be acquitted due to the lack of evidence. This was exactly the all too common result of numerous trials, where, even when a court was fully convinced of someone's guilt, it still did not have enough formal proofs to substantiate a verdict of guilty.

In a way, this Act represented a correction of those provisions of the Act on the Procedure in Criminal Offences, which obliged the courts to take as proof only those facts for which a particular kind and quantity of evidence was available. However, in practice, this solution offered by the legislator helped the perpetrators, as some evidence was very difficult to obtain. Among common people, there was now a strong belief that municipal authorities and the police did a futile job catching thieves and bandits, if courts would then often acquit these due to the lack of evidence. When discussing the Act on the Jury, even the State Council itself openly admitted that such things indeed occurred.

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[19] Serbian Constitutions, 91-111.
[20] Collection of Acts, XXIV, 45.

When this Act came into force, on 1 January 1872, the judiciary of the Princedom of Serbia introduced mixed councils of judges, where four members were jurors coming from the people, and three were professional judges. Just like the district, first-instance court, a jury court convened when the defendant was charged with major theft, banditry or arson. The mixed council only reached the verdict, while the sentence, the qualification of the offence, and the justification of the judgment were still the sole responsibility of professional judges. Jurors were elected by municipal committees each year: in small municipalities there were 6 to 10 jurors, in major towns 12, and in Belgrade – 24. To become a juror, one had to be a Serbian citizen older than 30 who paid at least 6 talers for taxes a year, who had not been convicted or subjected to police surveillance, custody or bankruptcy, and who had the overall physical and mental abilities required for such a post. Persons working as servants or apprentices, ministers, police officials, legal representatives, priests, and military personnel could not be appointed jurors. The juror took an oath before the president of the district court, saying that "in voting, he will act according to his own convictions, based on his observations and knowledge of things, and not based on hatred, affection, out of inducement or fear."

After twenty years of experience with juries, it turned out original expectations from this system were unrealistic, and that reality was rather different. Since they came from the same municipality as the defendant, and these were small towns in which all people knew, or at least easily recognized, one another, for fear of revenge, or under pressure, jurors often voted in favour of acquittal, even when they were convinced otherwise. For this reason, the new Act on Jury of 1892[21] defined that, out of the four jurors, only two had two be from the same location as the defendant, while the remaining two were to be taken from the seat of the district court. As this amendment resulted in no improvement, in 1895, the Act on the Jury was appended in such a way[22] that now the jury court had four professional judges and only two jurors from the people.

8. 1881 Act on Judges

The twist in the Serbian political life, resulting from the removal of the Liberal Party from government in October 1880, would reflect on the judiciary over the Act on Judges passed on 9 February 1881.[23] From this historical distance, this was a good act that made the judiciary independent of the executive, the way it was done in France and Belgium at the time. Apart from this, the Progressive Party Government, headed by Milan Pirocanac, used this Act to permanently purge the judiciary from all non-professionals. Salaries were increased, where the Act itself defined the scope and pace of the increase according to the number of years one had spent in service, which improved the financial circumstances of judges.

The first condition, presented as the basic requirement for all district court judges, and also for the judges of the Court of Appeals, Cassation Court, and Commercial Court, was that they "have all received higher education in law, in Serbia or abroad". In district courts, Belgrade City Court, and Commercial Court, judges could be appointed even

[21] Collection of Acts, XLVIII, 132.
[22] Collection of Acts, L, 484.
[23] Collection of Acts, XXXVI, 211.

without prior experience in the judiciary. Along with basic conditions, candidates for judges in the Court of Appeals and Cassation Court had to meet specific requirements: prior work as judges, or 5 to 7 years of teaching law at the Grand School, or prior position as Justice Minister or supervisor in the Ministry of Justice, or a certain number of years as legal representatives. Upon the proposal of the Justice Minister, the Prince appointed only the judges of district courts, Belgrade City Court, and Commercial Court. Only persons previously elected by the Court of Appeals and the Cassation Court could be appointed presidents of first-instance courts or presidents and members of the Court of Appeals. Members and the president of the Cassation Court were elected at the plenary conference of this Court, and the Prince only formally appointed them by an edict.

The 1881 Act on Judges established and guaranteed the permanence of judges' position. They could not be revoked without the judgment of regular courts. According to Article 19, the judge was not to be retired unless he was older than 60, or unless he was "so weak in body and soul, that he was unable to carry out duties accorded with his position". The judge could not be transferred if he disagreed to, "whether due to the needs of service or due to promotion".

Independence of courts established with this Act was confirmed in the Serbian 1888 Constitution.[24] Courts were independent, were not subject to any authority, they tried and decided in accordance with the law (Constitution Article 147). Never and under no name could one establish extraordinary courts, courts martial, or trying commissions (Article 148). Three levels of the judiciary were retained. There were first-instance courts, the Court of Appeals and the Cassation Court. The list for members of the Court of Appeals and the Cassation Court to be elected was proposed by the State Council and the Cassation Court. According to the Constitution Article 158, judges had permanent positions. They were not to be dismissed without the judgment of a court, and they could be transferred only if this was for the purpose of new appointment, for which their written consent had to be given. A judge was not to be retired if he did not agree to, unless he was older than 60 or had had more than 40 years of service for the state.

The 1901 Constitution[25] also guaranteed the independence of courts and irrevocability of judges. The same provision is found in the 1903 Constitution.[26] In its Articles 146-159, the 1903 Constitution fully took over the provisions on judges and courts from the Constitution of 1888. The only change pertained to the appointment of first-instance court judges: they were now appointed by the King from the unified list jointly proposed by the Justice Minister and presidents of the Court of Appeals and Cassation Court.

9. Extraordinary Courts (Courts Martial)

Apart from ordinary courts, which were called "civil courts" in the 19th century Serbian legal jargon, the Serbian judiciary in the broader sense at the time also had military courts, clerical courts, the Commercial Court, and extraordinary courts, i.e. courts martial. Courts martial were actually regular, district courts which, in states of emergency, became extraordinary, courts martial.

[24] Serbian Constitutions, 125-160.
[25] Ibid, 169-188.
[26] Ibid, 199-233.

They were different from all other so-called civil courts because before them proceedings were shorter and, as a rule, there was no right to appeal to their sentences. This way their judgments became executive in a shortened procedure.

In 1850, 1855, and 1861-66 courts of Uzicki, Cacanski and Rudnicki districts were given this status in order to try the perpetrators of offences such as highway robbery (committed by "haiduks"), banditry, and grave public violence. When Prince Mihailo was killed in 1868, due to great disturbance in the country, on 30 May 1868 courts martial were introduced in all the Princedom,[27] and this would last by 18 July around Serbia, and by 31 October in Belgrade. The beginning of the war between Serbia and Turkey also resulted in the passing of the Act on Court Martial on 18 June 1876[28] and 1 December 1877.[29] Due to Timok Uprising, on 21 October 1883[30] the penultimate Serbian Act on Court Martial was passed. The last act of the kind was passed during the war between Serbia and Bulgaria, and it was in effect only within Pirotski district, from 15 December 1885 to 10 June 1887.[31] The 1888 Constitution explicitly forbid any extraordinary courts or courts martial, so that, in the final decade of the 19th century, this institution completely disappeared from the Serbian judiciary.

IZGRAĐIVANJE PRAVOSUĐA U SRBIJI OD SREDINE XIX DO POČETKA XX VEKA

Dragan Nikolić

O izgrađivanju pravosuđa u Kneževini i Kraljevini Srbiji od sredine XIX do početka XX veka autor u ovom članku govori pretežno jezikom samog zakonodavca. Ovakav pristup je odabran zato što u Srbiji sve do Ustava iz 1838. godine pravosudna organizacija nije imala jasne ni ustavne ni zakonske okvire. Pravosudna organizacija je putem zakonodavne delatnosti praktično prvi put iz osnova izgrađivana i oblikovana. Bez jasno razgraničene upravne i sudske vlasti sve do sredine XIX veka, Srbija je, za tridesetak godina potonjeg razvitka državnih, pravnih i političkih ustanova, prešla put do standardnih vrednosti tadašnjih razvijenijih evropskih država, put do sudske nezavisnosti i stalnosti sudijskog poziva. U XX vek Srbija ulazi sa potpuno izgrađenom organizacijom pravosuđa koja je počivala na istim ili sličnim ustavnim i zakonskim načelima koja su važila u ondašnjim evropskim državama koje su, za razliku od Srbije, svoje pravosudne sisteme kontinuirano gradile tokom nekoliko vekova.

Ključne reči: *istorija prava, Srbija, zakonodavstvo, sudovi, sudije.*

[27] Collection of Acts, XXI, 25.
[28] Collection of Acts, XXIX, 634.
[29] Collection of Acts, XXXII, 143.
[30] Collection of Acts, XXXIX, 258.
[31] Collection of Acts, XLII, 8.