

Questionnaire of the 1st Study Commission: 2018

INTRODUCTION

In the Republic of Serbia, the situation is alarming since the custom of disrespect towards the judiciary and judicial decisions has been created during a long-lasting, now even intensified, political practice of numerous representatives of other state powers¹. Through controlled and dependent media, as well as through social networks, they illegitimately, disparagingly and offensively unduly criticise, even threaten certain judges, as well as the judiciary as a whole, thereby disrespecting the Constitutionally proclaimed independence of the judiciary.²

Having in mind that only during the last year, there have been many examples for this (as noted in YUCOM May 2018 Report³), in responses to your questions, while considering methodological, time and space constraints, we will provide an overview of a few situations by stating concrete statements as well as methods of public information services who published them.

RESPONSES TO QUESTIONS:

1. Please provide at least one example, which can be used as a case study, of an occasion in your jurisdiction where a judge, the judiciary or the courts have been unfairly criticized by: a politician or politicians; the mainstream media; social media. Please attach the actual examples to your response.

1) An example of pressure on the judiciary as a whole, directed primarily by a politician, in support of the President of Serbia and members of the Government.

In the public discourse, there are numerous statements of high public officials calling citizens to disrespect judicial decisions, which also violate the presumption of innocence⁴ and which, as such, represent unlawful influence on courts, violate the independence of the judiciary and harm the Republic of Serbia's reputation. One of those statements was made regarding the first instance acquittal of former Commerce Minister Predrag Bubalo reached by the Special Unit of High Court in Belgrade, a decision not yet final at the time, by Miloš Vučević, the Mayor of Novi Sad (second largest city in Serbia), vice president of the ruling SNS party, in stating the following:

"Ladies and gentlemen judges, I am asking you what the people of Serbia are wondering about every day – when will you start adjudicating by the laws of the Republic of Serbia,

¹ From municipal to executive and legislative.

² Article 4 paragraph 4 of the Constitution of the Republic of Serbia (*Official Gazette of RS* number 98/2006)

³ Report on observing of the Code of behaviour of members of the Government and National Assembly on limits of allowance for commenting judicial decisions and proceedings published by Lawyers' Committee for Human rights YUCOM

⁴ Guaranteed by the Constitution of the Republic of Serbia, by laws and international conventions

by the law and justice, and not by the amount of money you get from the certified liars of DOS (former ruling party), who conducted the most monstrous robbing privatisations?"

"The laws of nature make me say the truth. I cannot remain silent about disrespecting the Constitution and laws of our country. I do not recognise the judiciary independent from its people."⁵

Support for such an inappropriate and illegitimate statement comes from the highest state level through populist comment of the President of Serbia, Aleksandar Vučić using a following unique inversion:

"He (Miloš Vučević) shouldn't have said it, but he told the truth. The majority of judges are honourable people, but he said what 99% of Serbian people think. Now they are convincing us that it is nobody's fault that a tycoon became rich taking advantage of the nation's resources, that such a thing is god-honouring, and anyone claiming otherwise is guilty. It is not a conflict between the judiciary and the executive, but a part of the judiciary is dependent on a former's government's thieving-tycoon coalition."⁶

Words of understanding for such a statement were addressed by other members of the Government as well, despite the Government itself passing a Conclusion of adoption of Code of behaviour for members of the Government setting limits of allowance for commenting judicial decisions and proceedings⁷. The Prime Minister Ana Brnabić thereby said:

"I can understand Miloš Vučević, I called him on the phone this morning, I can completely understand the frustration. I think it is yet another proof that we surely need reforms in the judiciary"⁸

Other individual Ministers stood in Mayor of Novi Sad's defense. Therefore, the Minister of Defense Aleksandar Vulin said:

"He (Miloš Vučević) didn't make a mistake, i.e. the only mistake he made is commenting something that is related to Mišković⁹, and allegedly, that is something one should not

⁵ "Vučević: How do I exercise pressure and the US Ambassador does not?" 28/12/2017, available at: https://www.b92.net/info/vesti/index.php?yyyy=2017&mm=12&dd=28&nav_category=11&nav_id=1341464

⁶ "Vučić: Vučević said the truth about the situation in the Serbian judiciary" 28/12/2017, available at: <http://rs.n1info.com/a352689/Vesti/Vesti/Vucic-Vucevic-rekao-istinu-o-stanju-u-pravosudju.html>.

⁷ Conclusion on adoption of Code of behaviour for members of the Government on limits of allowance for commenting judicial decisions and proceedings, *Official Gazette of RS* number 6/2016

⁸ "Judges offended, Vučević not regretful, the PM understands" 27/12/2017, available at: <http://rs.n1info.com/a352497/Vesti/Vesti/Izjava-Vucevica-o-sidijama-reakcije.html>.

⁹ Serbian businessman

do. I don't think that this represents pressure on the judiciary. Vučević said it as an individual, if you will, as a lawyer, and by no means as a state official"¹⁰

2) Example: a statement of a Member of the National Assembly which weakens the independence of the judiciary as a whole and undermines the rule of law, but which also belittles international institutions with a populist rhetoric.

One of statements amongst numerous examples is a statement of MP Milovan Drecun given during the Morning programme of the public service Radio-television of Serbia on 18/04/2018:

"...They (the EU) constantly talk about the independence of courts, but nobody talks about the rights of citizens to be protected from the judges!"

In addition, this statement was given as a comment on the 2017 Progress Report of Serbia, which marked these kind of statements negatively by commenting that pressures on the judiciary remain high, as well as that Serbia has to make a significant advancement in strengthening the independence of the judiciary and the autonomy of the prosecution offices.

3) Example: Throughout the so-called consultative process on Constitutional amendments during 2017-2018, the representatives of the Ministry of Justice of the Republic of Serbia had continuously shown disdain towards certain representatives of the professional associations of judges and public prosecutors, and to the judiciary as a whole.

They called the professional associations representatives "*political shock troopers*" and the independence of the judiciary "*a fetish*". The one who was leading the way was certainly Assistant Minister of Justice Čedomir Backović, a member of the Venice Commission, who, apart from publicly expressed vilifications and insults to the participants of the debate, threatened while stating that *he knows their results and is therefore surprised that some of them are still judges and prosecutors*. He openly threatened the President of the Judges' Association of Serbia (JAS), Belgrade Court of Appeal judge, but also all other judges, live on TV N1 on 15/02/2018 in a talk show by saying the following:

"To you (judge Dragana Boljević) and the likes of you, I would do harm with pleasure."¹¹

During the same talk show, he went on to say:

¹⁰ "Vulin: Vučević didn't make mistake, made claim as individual" 29/12/2018, available at: <http://rs.n1info.com/a352980/Vesti/Vesti/Vulin-o-izjavi-Vucevica.html>.

¹¹ Available with English subtitles on: <https://www.youtube.com/watch?v=HEeoRYQSsxA>

"Destinies of citizens are in the absolute ownership of the judges who, applying the free judges' deliberation adjudicate to whomever they want"

and also that:

"Judges and public prosecutors attempt to push their own interests forward, while the Ministry of Justice is trying to implement the European standards" therefore he "is not surprised that judges and prosecutors are opposing the European standards, having in mind results of their work".

"There is a debate being held at the level of employees' committee", "judges are dealing with politics but they do not possess the level of expertise and professionalism to deal European standards", "all current judges are appointed to be morally and politically suitable and that is the essence of people you deal with today".

4) Example: Representatives of the City Council of the ruling SNS party held a press conference in the City of Šabac on 23/05/2018 on the occasion of passing a first instance judgement.

"Ladies and gentlemen, I am opening this press conference of the City Council of the local Serbian Progressive Party (Serbian: Srpska napredna stranka - SNS) on the occasion of the events that took place and on the occasion of the judgement reached by the Basic Court in Šapac... The decision of the judge Biljana Mraović is scandalous and represents a precedent in working of the courts in the Republic of Serbia."¹²

5) Example: Inappropriate comment by a journalist.

On 29/06/2018 journalist Veran Matić, amongst others, made the following claim that:

"...The court panel... either doesn't want to conduct the proceedings or it is forced to reach an acquittal decision which had been determined beforehand", "...reached an unprecedented decision to release the accused to home custody..."¹³

6) Example: A show on the First Serbian TV regarding a family proceedings still ongoing before the First Basic Court in Belgrade at the time of showing, thus putting the privacy of the parties and the best interest of the child second to sensationalistic content.

2. What effect, if any, have those criticisms had:

a) On the independence of the judiciary

¹² Stated by Aleksandar Pajić, President of SNS Managing Board of the City of Šabac during a press conference on 23/05/2018

¹³ Published on 29/06/2018 on web portals Cenzolovka and Insider

Unfortunately, the provided examples are not the exclusive examples and exceptions, but all of them (alongside many other not outlined here) represented systemic influence in the sense of undermining its independence and impartiality. Certain representatives of the other two state powers not only violate the presumption of innocence by their comments, but openly make it known for judges and public prosecutors which direction certain judicial proceedings should assume. Using illiberal and controlled media, they create certain expectations amongst the citizens and by doing so, an illiberal atmosphere in which judges and prosecutors are to work and reach decisions is being created. An impression of desirability and undesirability of judicial proceedings epilogues violates the independence of the judiciary in its essence, i.e. it disables the judicial bodies from performing their work in accordance to the Constitution, Law, generally accepted rules of the international law, all in line with the rules of the profession. Judges and prosecutors are nothing more than people often forced to reach decisions according to politicians' interests in fear for their own functions.

b) On the separation of powers

These statements of politicians not only undermine the independence of the judiciary, but represent attempts to establish political responsibility of the judiciary before the executive and legislative powers, thus eroding the concept of the rule of law and the principle of the separation of powers, as well as violating the *acquis* of a legal state. The Draft Amendments to the Constitution of Serbia (Serbia has committed to amending its constitution as a part of negotiating process for EU accession) speak in favour of the claim that the above mentioned statements are not sporadic or accidental but systemic and targeted while the intention of the executive and legislative powers to control the judicial one stands behind them. Therefore, there is a great and real danger that Serbia slips from the separation of powers towards the unity of powers or even a dictatorship.

c) On public confidence in the judiciary

Confidence of the public to the judiciary in Serbia is not only undermined by numerous statements as described above in the past year, but it is a perennial ongoing process. In changes from one to another sets of politicians, the arrests of political predecessors take place, whereby the political option in the power (as shown through the examples) instructs the judiciary via the public on how it should proceed and what is expected of it. This results in decline of trust of the citizens in the judiciary. In such an atmosphere, should a judge adjudicate in line with a formed and expressed expectations of the politicians, the citizens will be able to conclude that the judge is afraid. Should a judge, however, disobey, an orchestrated attack of the politicians will come crashing down through nearly all media outlets that he/she is bribed, and will also probably bear other consequences (in terms of dismissal, inability to advance, transfer...).

3. a) What steps, if any, were taken to deal with the criticism?

JAS, as the oldest and the largest professional association in Serbia in terms of membership has reacted in all the above mentioned situations by publishing **public statements**

indicating to inadequacy and illegality of such claims aimed at undermining the independence of the judiciary and the rule of law therefore harming the Serbian state. Also, JAS called upon the High Judicial Council to react, which it did, and called upon the politicians to refrain from such statements, and media to respect the privacy of the citizens and their family life as well as to refrain from “public processes and adjudication”.

The Council for Ethical Matters of JAS reached decisions on certain of these matters.

JAS also informed international professional associations about some of these situations, MEDEL and IAJ, but also the Consultative Council of European Judges and the Venice Commission – during the process of Constitutional amendments related to the judiciary.

b) How effective were those steps?

They were effective in terms of achieving a unity of the legal profession in Serbia and abroad, as well as informing the citizens, in whose interest the independence of the judiciary is established in the first place. Nevertheless, certain representatives of other state powers do not give up their pressures on the judiciary and its independence, which is shown in the fact that 44% percent of judges who participated in a survey claimed that they felt some sort of pressure on their work and have personal experience regarding the matter, while 43% had experience with systemic pressure.¹⁴

4. What is regarded as the boundary between legitimate and unfair criticism?

A possibility of social control of the work of courts, alongside informing the public are needs of any democratic society striving towards the strengthening of the rule of law. However, the criticism that violates the presumption of innocence, that inappropriately influences the course and outcome of the judicial proceedings, which is used to belittle judges, threaten them or the judiciary as a whole, and to call on citizens to disobey judicial decisions, all represent not only inadequate but illegal criticisms aimed to weaken the independence of the judiciary and undermine the legal order.

5. What approaches have been adopted in your jurisdiction to improve the accuracy of reporting of court decisions and fair treatment of judges and the justice system?

Certain number of courts have their spokespersons (they are appointed and controlled by the president of courts), while in other courts it is the president of the very court that is in charge of this.

6. What have been the benefits of and any problems caused by those procedures?

In courts which have implemented the process of continuous training of spokespersons who do this job over a longer period of time and therefore have a lower judicial norm to fulfil and the courts in which the presidents have built a higher degree of independence from the executive and legislative powers, this system has shown advantages and

¹⁴ Survey conducted by the Judges' Association of Serbia and Centre for Free Elections and Democracy, available at http://www.sudije.rs/files/JAS_Strengthening_of_independence_and_integrity_of_judges.pdf

contributed to creating a proactive role of these courts. In these situations, it has been noted that the courts have on their own accord started informing citizens about the court cases estimated to be of its interest and providing information regarding the work of the court with the aim of providing an overview on functioning of the judicial system from the citizens' point of view.

However, in most courts the presidents represent "extended arm of the executive", which affects establishing the relationship between the media and courts. Also, in majority of courts which formally have spokespersons, they are appointed from the ranks of judicial assistants. They are sent to trainings, and they don't spend a long time doing this job, which is an additional problem.

7. What suggestions could you make for:

a) improving the accuracy of reporting of court decisions

JAS has noticed a necessity for dedication of more attention to the relationship between courts and media. Therefore, it organised two international conferences (which is a recommendation to others) dealing with following topics: *Freedom of thought and expression of judges in relation to performing judicial function*, and *The judiciary and the media*. On these occasions, it has defined shortcomings and their sources, while concluding that the courts must have a more proactive role in informing the public.

With the same aim, and within an ongoing project, JAS has formed a working group consisting of media representatives reporting on the judiciary and judges, tasked with creating a frame that reporting should follow, i.e. the minimum that needs to be fulfilled so that the reporting is made of higher quality. Also, an analysis about spokespersons' reporting and substantiality of these reports is being made, while taking into account the legal framework. These results will be a starting point of discussion at workshops organised in courts, with participation of journalists. Drafting the final guidelines and recommendations and their publishing will ensue, and they will be delivered to all presidents of courts and media associations.

b) the fair treatment of judges and the justice system

i) By politicians

Taking into account that, irrespective to the legal framework and obligation of the politicians to observe the presumption of innocence, as well as to contribute to preserving the authority and impartiality of courts, they mostly fail to follow them since such a behaviour is not sanctioned. Providing not only an obligation, but also criminal and material responsibility, especially of the representatives of other two state powers, in case of their violation would contribute to creation of political culture of respect of judicial decisions and judges as well.

ii) By the media

Raising the level of knowledge and understanding of the legal framework, but also the manners of working and functioning of the very court system alongside raising the level of mutual cooperation of the media and courts that would assume a more proactive role.

iii) In social media?

To follow a trend of development of the information technologies and develop informing activities in that direction regarding public work of courts, as well as regarding concrete judicial proceedings also via social networks.