

Research of professional integrity of public prosecutors and judges

Summary

Integrity of a judge and a public prosecutor depends not only on personal choice of an individual, though this is significant, but also on context where its duties are being performed. Therefore, we divided factors to those impacting at the level of the profession and out of it. Within the profession, we divided factors to institutional-normative and professional-personal. The same division goes for the unprofessional level.

Table 1. Integrity factors at the professional level

PROFESSIONAL LEVEL	OUT OF PROFESSION LEVEL
<p style="text-align: center;">Institutional-normative:</p> <ul style="list-style-type: none"> ➤ Integrity of professional association at the level of permanent acts, management, organization, finances, ethics, functionality and anti-corruption 	<p style="text-align: center;">Institutional-normative:</p> <ul style="list-style-type: none"> ➤ Integrity of normative framework regulating area for professional activities and for members of the profession ➤ Integrity of relevant institutions regulating area of activities of the professional members, such as members of labor world, public officials or clerks ➤ Integrity of home institution of a professional association at the level of statutory acts, management, organization, finances, transparency, responsibility, ethics functionality and anti-corruption
<p style="text-align: center;">Personal level of a professional member</p> <ul style="list-style-type: none"> ➤ Standpoint and awareness of integrity concept of the professional members ➤ Professional active integrity ➤ Professional passive integrity ➤ Social-psychological aspects of personal integrity of the professional members 	<p style="text-align: center;">Personal integrity of professional clients</p> <ul style="list-style-type: none"> ➤ Standpoint and awareness of integrity concept ➤ Passive integrity of professional clients ➤ Active integrity of professional clients ➤ Social-psychological aspects of personal integrity of professional clients

Methodological framework of the research

Research within the project was conducted by the Human Rights Center –Nis research team. Research plan foreseen that the questionnaire should be filled in by 150 public prosecutors and 150 judges within the quota sample at the level of court and prosecution office jurisdiction on one hand and court and public prosecution office seat at the other hand. In addition to this number, the questionnaire was distributed to all members of the High Court Council and the State Prosecutorial Council. The research was realized during second half of 2013, where the Prosecutors' Association was in charge of organizing distribution of the questionnaire, and the Human Rights Center was in charge of sending the questionnaire via regular mail to the judges' addresses chosen based on the Table of random numbers. The questionnaires were submitted to the examinees both in hard copy and electronically through the Prosecutors' Association and the Judges Association of Serbia. Result of these endeavors is that the research encompasses 115 examinees in total, 42% of which are judges (36.5% out of the planned sample of judges) and 73 public prosecutors (63.5% out of planned sample of public prosecutors). Degree of realization of the planned sample leads us to interpret the gained results as if they were obtained using adequate (possible) sample. Regardless of statistical faults of this type of the sample, since it cannot present baseline for conclusions on population of judges and prosecutors, it shows us participative representativeness of the research. Namely, act of participation in the research and choice to loud and clear present opinion of situation in the profession and judiciary cannot be regarded as opinion given under coercive measures, entailing participation of the line ministry and court administration. Therefore, we obtained standpoints and opinions of those examinees willing to present their opinion and thus contribute to determination of priorities and obstacles standing before the course of independent, unbiased, responsible, professional and efficient judiciary.

Within the research were estimated both integrity of the judiciary system itself and personal integrity of judges and public prosecutors. For estimation of personal integrity of judges were used direct and indirect indicators. Direct indicator of comprehension of personal integrity of judges presents a set of statements with correct and incorrect answers. Indirect indicators are related to different features and opinions of judges, originating from the definition of integrity or linked with integrity of judges. These indicators are related to constructs close to opinions (such as anomy and machiavellism) and predominantly changeable, but also to more durable conditions and features, such as impulsiveness (recklessness, inability to control impulses, search for excitement) and 'burnt out'.

1. *Basic demographic features* (age, sex, years of work experience, place of living)
2. *Anomy*
3. *Machiavellism*
4. For need of this work we examined three aspects of *impulsiveness*:
 - Impulsiveness as reckless actions, absence of activity planning;
 - Impulsiveness as inability to control impulses (aspect if impulsiveness most frequently equaled with impulsiveness as such);
 - Impulsiveness as need and search for excitement, sensation.
5. *Burnt out*, as a syndrome, can be defined with more than three basic symptoms: exhaustion, depersonalization and low performance. Exhaustion is central feature of burnt out and its most visible manifestation. The exhaustion, above all, reflects job related stress.

For this research a questionnaire was drafted based on Bangalore principles which enable measuring of views of integrity and independency of judiciary. The questionnaire is comprised of two

large groups of questions. One is related to understanding of integrity and independency by the employees in the judiciary, and the other to how they estimate current situation in judiciary related to independency and integrity. When creating the quantity questionnaire, in the part related to understanding if independency and integrity, the focus was not on covering the whole scope of notions. It is clear that there is consensus that the judiciary should be independent from political influences, and that judicial position should be safe enough to enable independence of judiciary. Asking such questions would be redundant, and sole questions would be non-discriminative. Instead, we examined opinions of judges and public prosecutors regarding institutional independency of judiciary compared to executive authorities and their views of independency of their position.

As goes for understanding of notions themselves, we were interested in opinions that were not discussed too much, but are also basis for judicial integrity. Above all we were interested in opinions related to: internal judicial independency, estimation of financial independency including period after retirement, non-interference of judicial and executive authorities, comprehension of independency in extreme sense of untouchability and attaching importance to public perception of judiciary itself, judges and prosecutors, specificity of judicial position compared to community values and position in public administration itself.

Moreover, we were examining how much judges and public prosecutors find that citizens trust in judiciary, availability of courts, methods of distribution of cases and workload.

Based on the abovementioned, we can differentiate the following domains of questionnaire estimation:

1. Judiciary independency at institutional level
2. Personal independency of judges and public prosecutors (non-interference of three authorities)
3. Integrity of judges and public prosecutors
4. Availability of judiciary and trust of citizens in judiciary from the perspective of judges and public prosecutors
5. Workload and method of case distribution

Research findings

Process of judicial transition¹, especially in the period between 2008 and 2010, is featured by collapse of judiciary as institution and by violation of judges' and prosecutors' rights in the process of general (re)election. Judges and public prosecutors themselves, as members of High Court Council and State Prosecutorial Council, contributed to such relation towards judiciary, and also towards judges and prosecutors. It is obvious that in the field of judiciary executive and legislative authorities represented by the Ministry of justice, the National Assembly of Serbia and the Board for judiciary are actors with the majority of power. Such position enables them to control and abuse resources and capacities of judiciary starting from (not)drafting normative acts in a manner that would guarantee: independence, impartiality,

¹Under judicial transition we see adoption of adequate institutional-normative framework, creation of conditions for its implementation that have as a result independent, impartial, professional institutions with integrity, judges and prosecutors that proceed efficiently, and all that is producing trust of citizens into judiciary and sharing of justice and fairness.

responsibility, professionalism and efficiency of court and prosecution office. Moreover, executive authority has normative mechanisms to deny resources for work and to control who enters into judicial and prosecutorial profession. In addition to reports of relevant institutions, findings of our research also show that judicial transition in Serbia during 2012 was blocked.

More accurate, half of the examinees (53.4%) of judges and public prosecutors find that judiciary is not strong enough to control executive authority and to call it for responsibility for its actions. One sixth of research participants (15.5%) see their position as secure enough to provide independence of judiciary, while 53.5% do not agree with this view. Two thirds (67.2%) of judges and public prosecutors who had accepted to participate in the research recognize importance of perception of public on judiciary independence, and half of judges and public prosecutors find that citizens do not trust in judiciary, while only 17.2% have opposite opinion. Half of the questioned judges and public prosecutors (53.5%) who answered in the questionnaire think that not all citizens have same conditions to exercise their rights. Little less than two thirds (60.3%) of judges and public prosecutors has low confidence in executive authority. However, it should be pointed out that majority of judges see themselves as guardians of legality, i.e. as authority with no power and control. With change of constitution and legislation that would guarantee independence of this branch of authority from the other two, it could cause creation of new authority that would place imperative of its control before citizens. As argument for this serve findings on untouchability defined with this research. Namely, both judges and prosecutors do not have positive attitude towards international standards which points out that, when drafting their decisions, judges and public prosecutors should elaborate their decision well, to be in favor of comments that are not illegal and to appreciate local (social) context.

Research findings on satisfaction of the examinees with important features of work and judge's and prosecutorial work are also pro thesis on blocked judicial transition, with note that there are differences between judges and public prosecutors. Namely, when comes to judiciary independence compared to legislative authority, 17.1% of judges and 75% of prosecutors are not satisfied. Independence compared to executive authority causes discontent for 31.4% of judges and 85% of public prosecutors. When questioned to estimate satisfaction with method of election, 51.4% of judges and 85% of public prosecutors are unsatisfied, while criteria and indicators used as basis for defining promotions show that 48.6% of judges and 75% of public prosecutors are not satisfied. Public prosecutors are predominantly not satisfied with regulation of dismissal (70%), compared to 25% of questioned judges. Duration needed for citizens to exercise their rights poses discontent for 22.9% of judges and 60% of prosecutors.

In such climate, integrity of judiciary is born by individual judges and public prosecutors. The biggest challenges placed before judges and public prosecutors in such disorganized judiciary are: roles (what should be done by a judge or a public prosecutor), unclear rewards (criteria for promotion), unclear sanctions and unclear available resources (above all material, technical...). As a consequence, one part of judges and public prosecutors are giving up on professional integrity trying to solve their (in)security, (un)safety and (un)certainly by methods including actions contrary to professional integrity. The other part of judges are behaving with conformity, i.e. in line with principles of passive integrity, i.e. instead of putting fight for institutional integrity of judiciary and change they are focusing on preservation of personal professional integrity.

Finally, one part of representatives of the profession, judges and public prosecutors, are acting in the described state in line with principles of active integrity, acting under auspices of the Judges' Association of Serbia and the Association of Prosecutors of Serbia. Thus, these two professional associations in cooperation with the Council for fight against corruption and relevant international associations exerted pressure on EU to alter content and direction of judicial reform. Result of that was passed new strategy for judicial reform, with intent to contribute to citizen friendly judiciary.

Looking at the level of professional associating, we can conclude that integrity of professional associations is being improved. However, resources of the associations themselves, related to finances, premises and activity of members (especially during occasions to demonstrate power to the executive authority) obviously must be enhanced. Support of international donors is for now resource for servicing needs of both associations. It should be stressed that, along with the described situation, influence of both professional associations is rising, due to successfully released judiciary reform that was redeveloped during 2012, due to networking at international level and due to cooperation with EU stakeholders relevant for EU integration of Serbia. It remains for the Judges' Association of Serbia and the Association of Prosecutors of Serbia to enhance their institutional integrity and sustainability above all through enhancement of ethical management mechanism, primarily through proactivity of ethical bodies that should not be just bodies focused on sanctioning of violations of ethical code, but also bodies initiating enhancement of integrity of members of both public professions.

From the results obtained by questionnaires several trends can be noted among research participants. In relation to judges, one aspect shows ambivalence related to condition of the profession and professional associating, and the other shows expressed discontent with relation of parties towards the profession, contribution of the profession members to enhancement of the profession position, and position of the profession in the society and compared to decision makers, but also discontent with presence of corruption and crime within judicial profession. Regarding representative role of the Judges' Association of Serbia perceived by the questioned judges, predominant view is that they are satisfied and that they are not satisfied, while management and relation of the Judges' Association of Serbia towards the profession members were positively estimated by almost half of the examinees (40.5%).

Unlike judges, public prosecutors show somewhat higher degree of satisfaction with the influence they have on decision makers and readiness of colleagues to contribute to the profession. Compared to judges, public prosecutors are less discontent with crime and corruption in "their lines". In 60% of cases, the questioned public prosecutors positively estimated management and relation of the Association of Prosecutors of Serbia towards prosecutorial representatives.

One of the priorities must be development of prerequisites for enhancement of position of judges and public prosecutors as guarantee of judicial independence. Constitutional change and adoption of legal framework will not be enough for Serbia to have adequate judiciary. It is needed a kind of professional socialization of members of these two professions with focus on active relation towards integrity, not only of the profession, but also towards the institutions where they perform their duties.

Research results are in favor of this conclusion, especially related to institutional-normative framework. Systematic laws, regulating the area of judiciary, either have negative influence to professional integrity, as in the prosecution office case, or have no influence at all, as in the case of judges. Both judges and prosecutors have identical view that the judiciary is currently in no position to provide rule of law, obedience of law and control of the executive authority. Perhaps there should be searched for explanation for data that there is lack of trust of the questioned judges and prosecutors in the executive authority. Data that judges and prosecutors are aware of the fact that citizens themselves see them as dependent and under influence of the executive authority testifies about depth of this standpoint. With reference to nature of influence to the judiciary, it emanates from acquaintances and friends, attorneys of the party, politicians at local levels, but also superior judges and prosecutors. The greatest influence to the judiciary has political affiliation of the party, whether it is high official who is member of a (ruling) political party, or an attorney who is member of a party. In addition to affiliation to political parties, influence to the judiciary also comes from the criminal group affiliation to a party.

As the most powerful factor of influence to the judiciary, judges and prosecutors perceive political affiliation of the party, i.e. the attorney. If the party is high official from a republic governing

institution, a total of 69% judges and public prosecutors find that it has influence on judicial, i.e. investigative procedure, and 36.2% find that it has strong or decisive influence. Research findings show that during last five years there were attempts to influence to 74% of judges and public prosecutors, where 36.2% of them experienced attempts to influence from three or more sources. Most often the influence was attempted to be realized through a common acquaintance, a judge/public prosecutor and a party(43.1%). If only frequency of influences is observed (5 or more times in five years), this influence is most frequently performed by court presidents or superior prosecutors (8.6%). In relation to corruption as means of influence to the judiciary, judges and prosecutors find that approximately 17% of cases were solved in corruptive manner.

At the end we will also be dealing with personal aspect of integrity of judges, which is not only matter of professional integrity, but also of daily life and inter-influence of personal and professional aspects of personality of judges and public prosecutors.

Summarizing findings obtained by measuring anomies at the examinees, we can conclude that most of the examinees are concerned by current social situation regarding conditions for life expressed through low level of trust in the executive authority and through agreement with view that citizens are losing their freedom, ever decreased by the government. However, it must be stressed that judges and public prosecutors that participated in this research, compared to average citizens, feel relatively more secure. The only insecurity appears in the portion of condition of material position at the moment of retirement. At one third of examinees we recorded distinct anomy, at public prosecutors is twice as high than at judges. On the other hand, judges and public prosecutors mostly have negative (46.6%) or moderate negative (36.2%) perception on moral condition of the society, while moral condition of the society is found as relatively positive by 17.2% of judges and public prosecutors.

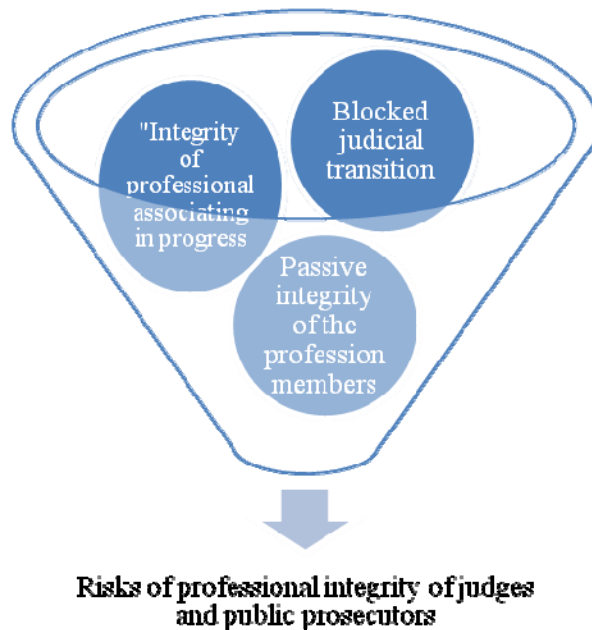
Besides the anomy, in the research we measured as theoretical variable presence of machiavellism. Therefore, machiavellism is present at certain degree at 39.6% of judges and public prosecutors, and in more narrow sense, meaning acceptance and illegal resources for accomplishing good cause, at 17.2% of judges and public prosecutors.

At 29.3% of judges and public prosecutors stress and strain at work are transferred into private life (it is disturbed), while at 13.8% of judges and public prosecutors is recorded decreased interest in wellbeing of parties than it used to be. Increased strain, for which two thirds of examinees state to influence at the performance, judges and public prosecutors manage to overcome by high personal value the job has for them, i.e. by feeling of content with their work. Integrity guarantee of judges and public prosecutors is rare impulsiveness of judges and prosecutors. Merely at 8.6% of examinees is recorded characteristic recklessness and lack of planning, and at 12.1% of examinees are present difficulties in controlling the impulses.

Conclusions and recommendations

The above stated gives us grounds to find that risks as challenges are determined by three factors at three levels: (blocked) judicial transition, integrity of professional associating (in progress) and (passive) integrity of the profession members.

Graph 1 Scheme of determinism of professional integrity risk at judges and public prosecutors



The described condition should be treated as zero, starting from it towards accomplishment of criteria defined in 23. At the course is crucial to establish monitoring, which would, along with respect for EU context and criteria, also have in mind local context². This type of monitoring would guarantee that reforms are not just matter of EU standard implementations, but also implementation of effects and change of climate, grounded on acceptance of the rule of law as value and not criterion. Precisely those were standards for creation of three-fold mechanism for monitoring of professional integrity, respecting at the same time EU and local context.

Based on the presented finding, recommendations at several levels are standing out.

The first one is continuation of judicial transition in portion related to implementation of the National Strategy for Judicial Reform with intensive monitoring and evaluation of implementation and impacts of the Action plan. The second one, perhaps more important priority, is constitutional change in Serbia, which would enable to legislative and executive authorities to “redraw” from judicial authority and to establish mechanisms of inter-control that should provide independent, impartial, professional and efficient judiciary, and also rule of law. The third level is related to enhancement of integrity at the level of professional associating and its sustainability. It is of utmost importance to enhance position of ethical bodies, which should act proactive, meaning that these bodies should not be just bodies for sanctioning “bad” members of the profession or worse institutions acting as cover for bad judges and prosecutors. Role of ethical bodies should precisely be guarantee of integrity of the profession members, i.e. ethically corrective counseling office for individuals as well as at the level of the phenomena. Heading towards challenges, bodies established at this manner should be agent for professional socialization in the area of acceptance of ethical principles defined by these two public professions. Preceding, yet important condition is that these ethical bodies transfer their responsibility entirely at conferences of the Judges’

²Examples of positive practice are Laken indicators having this type of duality, which along with EU indicators have also domicile indicators. For more details see: <http://www.prsp.gov.rs/download/Pracenje%20društvene%20uključivosti%20u%20Srbiji.pdf>

Association of Serbia and the Association of Prosecutors of Serbia. Only when at conferences of these two professional associations are chosen and in that manner elected members start to be liable before them, we will be able to conclude that ethical management has adequate institutional framework.

Ethical code should be changed so that priorities and values would be contribution of judges and public prosecutors to enhancement of integrity of courts and public prosecution offices, as well as promotion of active integrity among members of these two professions which is comprised of pointing to violations of legal and ethical provisions by colleagues or related persons, i.e. of providing support to colleagues pointing to unethical and illegal behavior. Thus judges and public prosecutors would become subjects of ethical management and they alone would be guarantee of implementation of ethical standards and laws, which is directly linked to independent judiciary working for the benefit of citizens.