



## Factors Influencing the Capacity of Anticorruption Law Enforcement Bodies in South East European Countries

Victor ALISTAR<sup>1</sup>

**Abstract:** The main objective of this paper is to present a regional perspective regarding the independence of judiciary system, based on the magistrates' perception. Taking into consideration that the independence of judiciary is a concept which has to be not only guaranteed by constitutional and statutory provisions, but mostly perceived as a functional reality, the present article analyses the factors which influence the capacity to act efficiently of the judicial structures in South East European countries. The article is presenting ones of explanation for low capacity to fight corruption in this region of Europe. The analyse is built on a sociological survey conducted in nine countries<sup>2</sup> from the standpoint of the hierarchical relationships and of the guarantees of operational and professional independence, legislative framework, resources as well as the relationship between justice and the society. The data used in this articles provided by the study "Integrity and resistance to corruption of the law enforcement bodies in South East European countries". The concluding remarks are based on questionnaires sent out to judges and prosecutors and emphasis cultural, managerial and functional aspects of judicial system, exposed by magistrates themself.

**Keywords:** independence of justice; magistrates perception; accountability of magistrates

### 1. Independency

The discrepancies between the degree of independence ensured by the statutory law and the perception of the real situation as in following graphics<sup>3</sup>.

Regarding the extent to which the criminal judicial system is **independent**, the answers show that only 60% of the judges think the system is

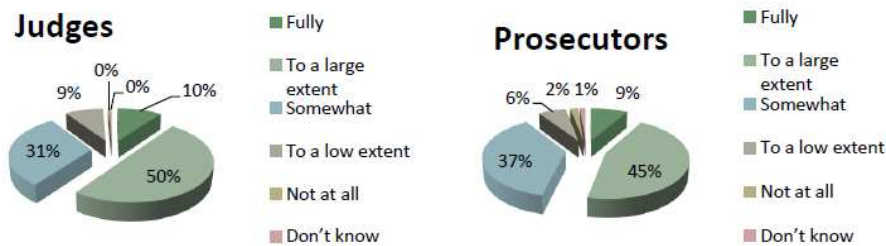
<sup>1</sup> Is a lawyer in Romanian Bar, Senior lecturer, National School of Political Science and Public Administration Bucharest, Romania. 6 Povernei Street, Sector 1, Bucharest, Romania, tel.: +4021.318.08.97, fax: +4021.312.25.35. Corresponding author: victor.alistar@yahoo.com.

<sup>2</sup> Albania, Bosnia Herzegovina, Bulgaria, Croatia, Macedonia, Moldova, Montenegro, Romania and Serbia

<sup>3</sup> All graphics are elaborated based on the data reveal by the study "Integrity and resistance to corruption of the law enforcement bodies in South East European countries" conducted by research coordinator Victor Alistar. [http://www.rcc.int/docs\\_archive](http://www.rcc.int/docs_archive).

independent, to a certain extent. This is one of the most surprising findings, considering that the independence of the judicial system is an absolute value for any rule of law society. This significant gap between the standard and reality may provide an explanation for the lack of capacity of the anticorruption enforcement bodies to fulfil their mandate, given that relativity of provided guaranties. In the case of prosecutors, the situation is approximately the same, 54% of them having expressed the same opinion. The prosecutors' perception represents a generic cause of the public opinion perception that systems are using criminal investigations on corruption offences as a political weapon in SEE Countries.

*In your view, to what extent is the criminal judicial system in your country independent? (One answer only.) The criminal judicial system is defined for the purpose of this project as the framework including courts, prosecutors' offices, and judicial police.*

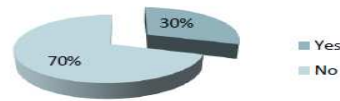


The magistrates from the region acknowledge that in their personal experience they have encountered situations in which there was an attempt on influencing their decision. 30% of the judges and 31% of the prosecutors interviewed answered with yes, hence, emphasizing on the myriad of factors that affect the independence of both the system and the decision making process. This is a huge amount of positive answers for a direct experience perception, bearing evidence of the fact that Bangalore principles<sup>1</sup> regarding the independence and integrity of justice are not effectively enforced, despite the formal adoption of those standards in SEE Countries.

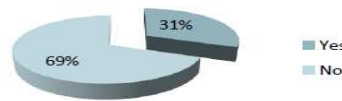
<sup>1</sup>[http://www.unodc.org/pdf/corruption/corruption\\_judicial\\_res\\_e.pdf](http://www.unodc.org/pdf/corruption/corruption_judicial_res_e.pdf)

*Did you come across situations where the influencing of you decisions was attempted?*

**Judges**



**Prosecutors**



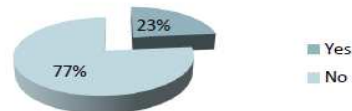
Moreover, the fact that 27% of the judges admitted to have knowledge of situations in which there was an attempt to alter the decisions of the respondents' colleagues in a direct and deliberate manner and in the case of prosecutors 23% are aware of such cases is indicating that part of the magistrates subject to political pressures did not report it. The comparison of direct and indirect knowledge of political interference in corruption criminal investigations reveals lack of communication within the system as well as a weak capacity of the professional associations to find out about pressure cases and to protect magistrates.

*Are you aware of situations in which influencing the decisions of your colleagues was attempted in a direct and deliberate manner?*

**Judges**



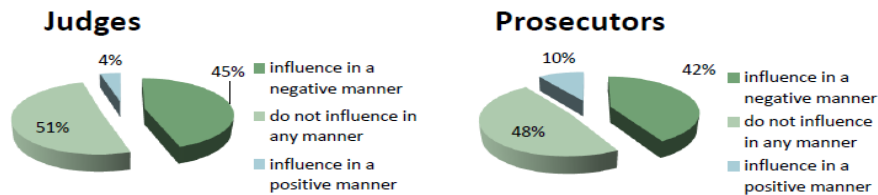
**Prosecutors**



Considering the historical context of post-communist countries the research question intended to investigate if in reality secret services still play a role in the judicial process. As a regional vulnerability to judiciary is now considered the intelligence system which can manipulate information in order to disturb the outcome of the judicial process or can be a source of blackmail used by politicians against magistrates. Almost half of the

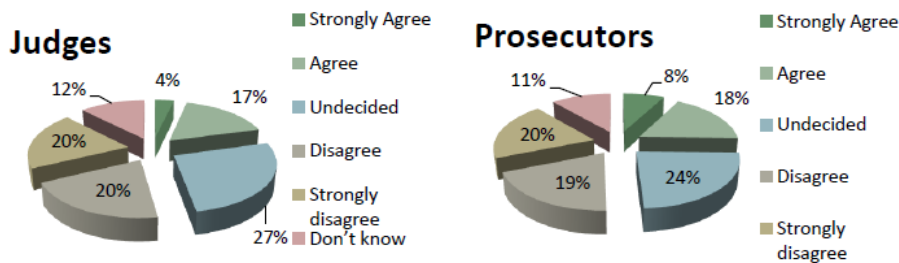
magistrates identify secret services as a factor that can influence in whatever manner justice. 45% of judges consider the influence of intelligence services as a negative one, and 4% consider that the influence is a positive one.

*Do you consider that the secret services ... the independence of judges/ prosecutors/ police officers?*



In order to counter the above mentioned vulnerabilities any system must have effective antibodies in order to defend magistrates dealing with high corruption cases. In evaluating the extent to which the respondents agreed/disagreed with whether or not the system provides protection to those involved in investigating, prosecuting, trailing high level corruption cases from eventual reprisals against the independence of the judges/prosecutors, only 21 % of judges responded with yes and only 26% of prosecutors confirmed it. This shows that the system which was designed to protect the persons who work within law enforcement is not functioning properly, with 79% of the respondents feeling unprotected.

*To what extent do you agree/disagree with the following statement: The system protecting persons investigating, prosecuting, trailing high level corruption cases from eventual reprisals is appropriate to ensure the independence of the Judges/Prosecutors/police officers?*

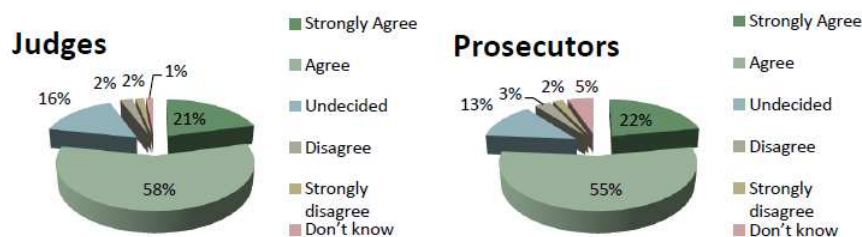


The independence of justice stated in SEE Countries' Constitutions has failed as it is not perceived by subjects to offer these guaranties, with consequences on the capacity of the State to provide functional rule of law society for citizens confronting justice.

Considering the domestic real context, magistrates from SEE Countries look more for support and intervention from international organisations in order to increase demands for compliance of national authorities with international standards.

This indicates two important aspects about leadership in designing public policies for judiciary and anticorruption system. First finding is that magistrates have no trust in the capacity of the executive and legislative branches of power to promote efficient solutions for addressing and redressing the main issues magistrates are confronted with in their activities of fighting corruption. Law enforcement cannot be an effective anticorruption tool unless the judiciary is independent both of the rest of the state and the private sector (Susan-Rose Ackerman, 2007). Second remark about SEE magistrates is that they welcome the input of international key actors in designing domestic anticorruption frameworks. Even though the home affairs area is a matter of subsidiarity, judges and prosecutors prefer to transfer the leadership, ownership and even accountability from a national level to an international level.

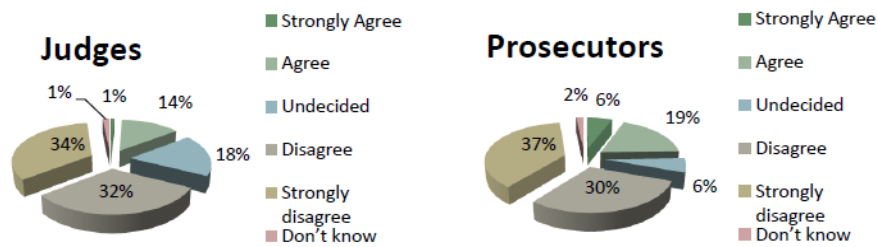
*To what extent do you agree/disagree with the following statement: Assistance provided by international anti-corruption entities (EU, UN, OECS, etc) in formulating national and regional policies and strategies would significantly strengthen the effectiveness of the CJS?*



Another important factor to take into consideration as far as the independence of the judicial system is concerned, is the level of income perceived by magistrates as vulnerability for their independence. The confusion between the salary as payment for their work, and consequently

the quality of life, and the principle of independence in the exercise of professional capacity reveals unexpected ethical vulnerability. The low level of remuneration might be seen as lack of respect for the role of magistrates in society, but not a factor which can question their independence. 66% of judges and 67% of prosecutors consider that the level of salaries is not appropriate to ensure the independence of magistrates. Therefore, judging the independence of magistrates from the standpoint of the salary is similar with the assumption that it might be possible to trade the magistrates' attribution in order to supplement private gains.

*To what extent do you agree/disagree with the following statement: The current salary level is adequate to ensure the independence of the Judges/Prosecutors/police officers?*



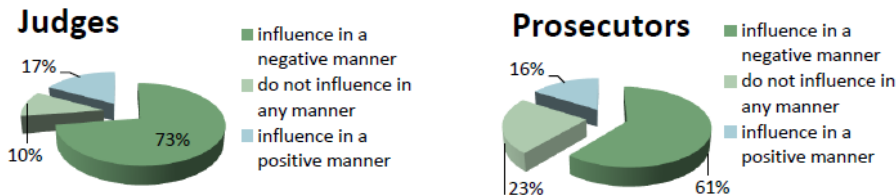
## 2. Accountability

The judicial system has to be accountable towards the society for its results regarding the corruption phenomenon on the public agenda. As it is more likely for magistrates to stay accountable to international institutions, and respond properly to their criticism and recommendation, the less likely they are to be tolerant to mass-media and domestic public opinion demand and criticism. The general public opinion trust is conveyed as being the most important source of legitimacy for the accomplishment of justice mission.

The accountability of the system towards the society was evaluated taking into consideration the influence the mass-media and public opinion have on the independence of the decision making process. Therefore, asking the judges and prosecutors about the influence of the mass-media on decision making process, we conclude that there is generally a negative perception among the respondents, concerning the influence of mass media on their independence.

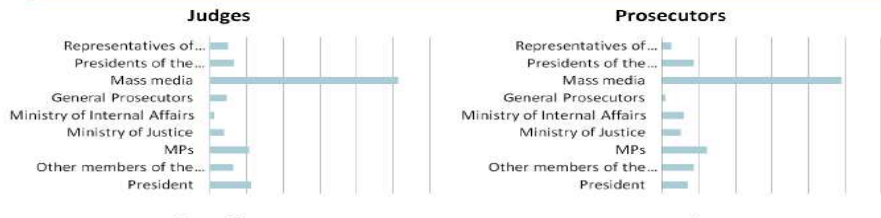
The answers showed that 73% of the judges and 61% of the prosecutors are of the opinion that mass-media influences their decision making process in a negative manner. Taking into account the basic definition of independence and considering the percentage provided by the research we can conclude that mass-media is perceived as a factor that has a strong negative influence upon magistrates.

*Do you consider that mass-media ... the independence of judges/prosecutors/police officers?*



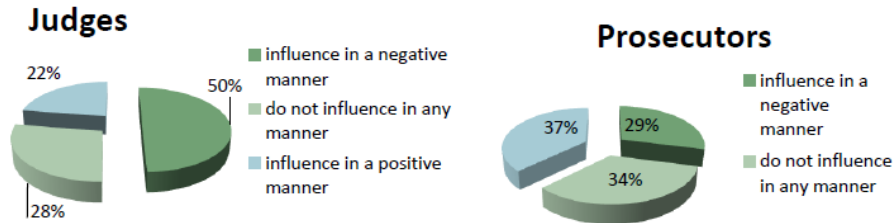
Moreover, when asked to answer which group is most responsible for exerting direct and indirect pressure upon the criminal judicial system, the respondents consider that mass-media is the most influential group.

*In your view, which groups are mostly responsible for exerting direct or indirect pressure upon the criminal judicial system?*



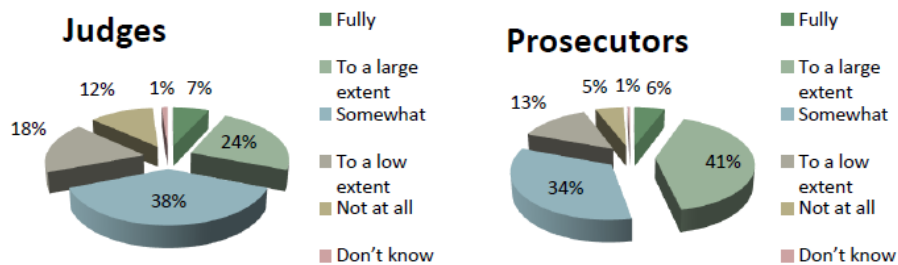
However, the questionnaire shows that there is a discrepancy between the perception of the judges and the prosecutors regarding public opinion influence. Thus, the research shows that 50% of judges answered that the public opinion has a negative influence on the independence of the judicial system and only 39% of the prosecutors gave the same answer.

*Do you consider that the public opinion ... the independence of the criminal judicial system?*



**Differences between political commitment and the political support of key political actors:** The satisfaction level of the magistrates with regard to the activities of the Ministry of Justice denotes that there is generally an unfavourable view, with only 31% of the judges and 47% of the prosecutors answering that they are pleased with the activities of the Ministry of Justice.

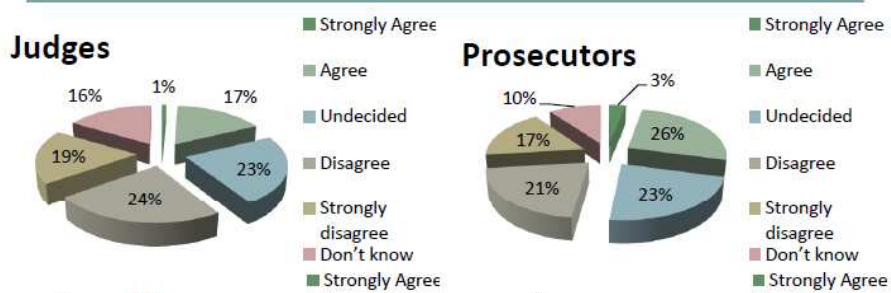
*To what extent are you pleased with the activities of the Ministry of Justice/Ministry of Internal Affairs/General Prosecutors' Office?*



However, when asked if they agree or disagree with the statement: the Government respects the independence guaranteed by law to persons involved in the investigation of high level corruption cases, 18% of the judges feel that the Government does in fact respect their independence, while a higher percentage of the prosecutors, 29%, seem to agree with the given statement. This research reveals that Government should be more involved in finding feasible instruments and mechanisms to protect the independence of the magistrates.



To what extent do you agree/disagree with the following statement: The Government respects the independence guaranteed by law to persons involved in the investigation of high level corruption cases?



### 3. Conclusion

The mismatch between legislative standards and the actual situation, when considering the independence of the magistrates who investigate high corruption cases, is the main reason why progress is not noticeable in the fight against corruption. Lack of accountability in the case of magistrates, by wrongly considering independence as being a personal professional right rather than an instrument meant to be a guarantee for the judicial procedure, is the main reason why the level of trust in justice and its capacity to combat crime is so low. The public opinion's distrust in justice is the main vulnerability used by politicians in order to intervene in organizing the judicial system, thus creating a sort of operational intervention lever.

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