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FAILED JUDICIARY REFORM INSTEAD OF LUSTRATION IN JUDICIARY*

Abstract: Participants of the failed Reform of the Judiciary from the Government and Non-Government sectors indicate the existence of fear among judges and prosecutors, but does not offer a clear answer to the causes of the condition. This paper investigates the role of the academic community and intelligence agencies in the Security System Reform (SSR), i.e. their intervention in the Criminal Justice System. The subsequent problems in the reform of the Serbian Justice System could be explained by "politicization and ideologization of human rights that usually comes from methalegal sources of power – political, economic or military (which) (…) arbitrarily usurp *right to control* (…) human Rights and apply the so-called double standards (…) Intention of the author of this paper is to initiate awareness of mental pollution and its attachment to Human Rights to Life and a Healthy Life" [1].

Keywords: justice, mental health
Non MeSH: reform, media, academic community

Introduction

Participants in failed reform of the judiciary from the governmental and non-governmental sector speak of the fear of judges and public prosecutors without providing a clear answer to what are the causes of such situation. Apostrophizing the very fact that judges and public prosecutors are afraid of someone or something, without indicating the causes, represents a conscious reduction of responsibilities of

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the High Court Council (HCC) and the State Council of Prosecutors (SCP) for the massive breach of universal human rights, and in particular the right to live and the rights to the physical and spiritual integrity of candidates for the functions of judges, prosecutors and deputy public prosecutors, at the beginning of the reform and during the process of failed reparation of the reform.

In a number of articles and interviews, only a limited number of members of the academic community and spokesmen appear with the intention to inhibit and divide the public opinion and provide the appearance of integrity and scientific prowess of the academic community. The very community that was compromised by its ostensible protégés, and in fact its bosses from certain sectors of the society. They are primarily members of certain circles, already mentioned in public, that indeed have made security assessments of candidates for judicial functions during the period of the most strict "innovations and reconstructions". Thus, the academic community has for a long time concealed its "disastrous self-humiliation" [2] in front of the executive power, for which its members were awarded with scientific titles they had not deserved. But reality is not that simple. It is also characterized by the fact that members of intellectual circles, not just mafia, occasionally "kill" a colleague, and then hide the "killer" for ten to fifteen years, while the whole community is constantly trembling with fear. As we see, on the one hand, they spin an irrational fear, and on the other, they offer placebo as a cure. Truly, the cure(s) in the form of solutions that in no way lead to the encouragement of the judiciary, and citizens. The entire civil society sector is dominated by following institutions:

– Ombudsman;
– Commissioner for information of public importance;
– Reputable judicial and prosecutorial professional associations;
– NGOs

and others, that fail to hire independent experts in order to resolve seemingly mysterious causes of citizens' fears. Quite clearly, within the formal legal state, we can freely conclude that this is practically leading to the sort of an illegitimate state.

Contrary to the conclusions drawn by some members of the academic community who enjoy media attention, and who "invert" the scientific truth and, as "spin doctors of science", participate in political campaigns abroad [3], as a kind of "spin doctors" [4], some other members of academic community from get rare opportunities to try to correct the perception of citizens' reality about the state of the judiciary or the consequences of a political campaign called "judicial reform". Thus, in contrast to numerous media-exposed members of the academic community (it's almost always the same persons, as as it was published on the Internet hub "Pištaljka" (Whistleblower) [5]) who cooperate with a number of media editors in order to edit the content and space of communication, which as a phenomenon is scientifically seriously criticized [6,7], there are members of the academic community who have freed themselves from this kind of control. However, at this time in our region, more

members of foreign universities are present than those from local universities. According to the findings of one of these "foreigners", the expert of the University of Sinergija, Vesna Dabetić-Trogrlić:[1] "The right of a person to health protection corresponds to the duty of the state to take care of public health. It clearly indicates that, despite the proclamation, the fact remains that these human rights are not respected or grossly violated for numerous and very different reasons." Dabetić-Trogrlić further quotes the words of academician Slobodan Perović who claims that politicization and ideology of human rights most often come from a source of metalegal power: political, economic, military. On the basis of this power, *the 'right to control' the human rights is usurped arbitrarily and so-called double standards are applied*. The realization of these human rights in the countries of the rule of law is moving within the limits of social and legal tolerance, while in the states of the rule of will and arbitrariness of some "masters of space and time" the realization of these human rights is almost impossible [1].

Thus, in the legal science, behind the back of some media-exposed members of the academic community, scientific revelation of *mental contamination* and related violations of human rights to life and the right to health was found. There is a simple scientific thesis that "one cannot think about the effects on right to health, while excluding its social aspect". When it comes to "spatial and temporal management", some experts in the academic community have also tried to initiate the cognition of *virtual legitimacy* [8], as an imaginary lawfulness, created by replacing real time with historical time by the means of reality shows and in public appearances of spin doctors, along with many politicians.

The humanitarian aspect of the reform of judiciary, the activities of an undisputed civil society institution represented by the Association of Public Prosecutors and the undisputed institution of the official sector of the society – the SCP – could be clarified in the context of the perceptions of *the protection of the health of the people from mental contamination*. These conclusions were reached by the findings of the experts of the University Union, and particularly prof. dr Vesna Rakić-Vodinelić and her team in the treatment of "working bodies of SCP" in the process of reviewing appeals of unelected public prosecutors and deputy public prosecutors [9]. These conclusions should also be added to the key findings of the expert analyzes of the University Sinergija, referring to established facts that clearly demonstrate that the conduct of the HCC subjected unelected judges to a humiliating procedure, which abounded with violations of the law:

– to a fair trial, and
– to address an independent judicial body.

1 Who deals with the case of one judge in the proceedings before the HCC, but this treatment of candidates can be entirely related to on acting against relation towards elected and unelected public prosecutors and deputy public prosecutors in the procedure before SCP!

Bearing this in mind, it should be emphasized that the weaknesses of the Association of Judges, which, like the Association of Prosecutors, have not prevented this mental pollution. And this happened because they did not have a clear strategy for advocating professional virtues in the judiciary. It also applies to the presence of courage among judges and public prosecutors to work impartially and in accordance with laws and professional ethics. This leads us to one conclusion: it is necessary to somehow "build" the power of the judiciary in relation to other branches of government – the formal but also actual development.

Serious scientific research pointed to several important moments:

1. We remind the readers that the procedure applied by the HCC and SCP to unelected-resolved colleagues takes as an example of a case of mental contamination of the environment (as a scientifically recognized term denoting a type of attack on human health). Spin doctors, who give interviews and do not offer answers and some of them are members of the disputed bodies, professionally said negatively for doctors who, unlike them offer scientific explanations, also unfortunately, and "marked the cultural identity of the spatial-temporal reality of Serbia in the 21st century, by causing, inter alia, *accidental crises in a large number of people*, which can serve as an example of 'mental contamination'" [1].
2. Furthermore, it has not been investigated which part of the military-security sector came to the conclusion that there were circumstances that could have led to the crisis that demanded the change in the form of the judicial reform in Serbia.
3. Until today, many in the academic community have come to the fore to criticize the previously detected irregularities, which consists in the fact that even professional organizations of judges and prosecutors have failed to advocate the implementation of lustration in the judiciary under then valid, but never applied, Law on Lustration. This means that the choice of both elected and unelected judges and prosecutors should be challenged and all of them should be subjected to the process of lustration. And legally-logically, it should have been done! But these are not the only easy-to-see and unacceptable mistakes for a society/state that considers itself a legal state.
4. Certain members of the academic community participated in the reform of the criminal justice system, in which they just after and parallel with the implementation of reforms, treated the members of the military security community as law enforcement agencies and brought them into the Law on criminal procedure (LCP). This is contrary to the United Nations standards of democratic control of the armed forces, and specifically contradicts the DCAF Code of Ethics [10] of the military-political aspects of security, as well as the achievements in the reform of the security system in stable democracies engaging specialized private firms, such as RAND

Corporation (Report prepared for the Security Sector Reform Advisory Team in the UK) [11].

5. And then, as a kind of addition to everything previously seen, it has come to the publicly already known:
   a) An actual reality show at the hearings before the Special Department of the Higher Court in Belgrade for the fight against organized crime, which is reflected in the fact that members of the intelligence and security community at the same time are present both as witness and actors, which is the consequence of the wrong legislative solution in the Code of Criminal Procedure. "Those so-called *special investigative actions*, which should be conducted by the public prosecutor, and entrusted not only to *classical police agencies*, but also to *intelligence agencies*, i.e. the agencies that are basically formed within the purpose of preserving state security from the negative impacts of external and internal factors, by collecting knowledge on the foreign (offensive form) and domestic (defensive form), which requires the preservation of a high level of secrecy of their work. This secrecy is jeopardized by the legal possibilities of placing: a) the collected knowledge, and b.) artifacts, as evidence, hence, c.) the participation of staff at various stages of all criminal proceedings, and not only those aimed at preserving the elements of state security." [12]
   b) Not being in opposition to the executive authority when it usurps the right to assess the existence and value of doctoral theses... it is exactly what Slobodan Divjak described as "the disastrous self-humiliation of the academic community." [2]

For some media exposed members of the academic community, there was not only professional and scientific criticism, but also the lack of every practical activity against the "owners of the reform," who avoided their responsibilities by hiding behind the National Assembly bench. For this reason, in public life and politics, there is obvious absence of a clear condemnation of those minds who, on the basis of their "knowledge and experience" have conducted judicial reform violently, without any responsibility [9].

Any more serious analysis would indicate that there was a kind of *coup*. Thus: the taking of the elements of government, but contrary to the real principles of democratic rule and reorganization of the elements of the state apparatus. Experts just conclude this elegantly when they say that the cause of the crisis *was not a spontaneous demand* by the society for judicial reform, which was otherwise "visionary" only in terms of:

- general election of judges,
- changes in the name of the courts,
- the establishment of some new and the abolition of some existing courts according to the law governing the organization of the judiciary [13]

Because the reforms of the judiciary definitely failed in the present perspective, the question of how much the Constitutional Law is in accordance with the Constitution, as well as the ratified international treaties, and the question of the possibility of its constitutional judiciary control, is indicated by the following circumstances:

Firstly, the question of the constitutionality of the Law on the Implementation of the Constitution from 2006, the Law on Judges and the Law on the High Judicial Council is raised, on the proposal of the District Courts in Prokuplje and Leskovac, as authorized proponents to initiate proceedings before the Constitutional Court, and "the Constitutional Court acted as if it had been in consultation with the executive power, at least, if not an accomplice" [9].

"The Constitutional Court came in contact with the question of (un)constitutionality of the Constitutional Law is the case of IUz-43/2009 in which it deliberated on the approval of certain provisions of the Law on Judges [13]. By its decision of July 9th 2009, the Constitutional Court tried to avoid giving an answer to the question of whether the Constitutional Law was in conformity with the Constitution and valid ratified international treaties. They justified that the initiatives submitted to this court have not contested the solutions contained in the provisions of Art. 6 and 7 of the Constitutional Law relating to the application of the provisions of the Constitution to the courts and the election of judges and presidents of courts." On this occasion, the Constitutional Court also made two allegations that are particularly concerning.

First, in the reasoning of the aforementioned decision, the Constitutional Court claims that the relevant provisions of the Constitutional Law "according to the Constitutional Court's assessment, clearly show that there is no constitutional continuity with regard to the continuity of the judicial function gained under the Constitution of 1990". Therefore, it practically denied itself, since it explicitly stated in the reasoning of the aforementioned conclusions that "the Constitution of the Republic of Serbia of 2006 is not only in formal-procedural but also in material-legal continuity with the previous Constitution of 1990". On that occasion, the court held that "the issue of constitutional continuity or discontinuity is of extraordinary importance for legal control of constitutionality or normative control of laws in Serbia".

Another controversial claim by the court is that "the Constitutional Law was adopted concurrently with the passing of the Constitution", although one study empirically showed that this was not true [9]. In a separate opinion, the judge of the Constitutional Court and Constitutional Law professor O. Vučić, after detailed theoretical and practical consideration of the problem of constitutional (dis)continuity and its legal consequences, came to the conclusion that there is undoubtedly a constitutional legal continuity between Article 101 (1) of the Constitution of 1990 and Article 146 (1) of the Constitution of 2006, since these are completely identical norms – "Judicial function is permanent". Reflecting on the problem of the Constitutional Act, Judge Vučić, with the remark that "there are no more sovereign constituents", concludes that this is a "legal-technical law that is an act of lower legal force than the Constitution and which is passed (...) by procedure less complex than the

constitutional. Therefore, it implies that the solutions contained in the Constitution cannot be changed by it, especially not those among them, which, according to the provisions on the revision of the Constitution, can only be changed by a compulsory constitutional referendum" [9].

Secondly, the reform of the judiciary has established a sort of classification of judges and public prosecutors in two categories: a.) elected; b.) rejected, and neither of them have any reason to believe in the existence of the rule of law. This apathy is also indicated by the absence of any reactions of the judiciary to prosecute those who have committed numerous criminal offenses in these proceedings. As an illustration, we can use the following event: computers were removed from the cabinet of the former President of the Republic, as well as all the documents, so his legal successor would not have an insight into who the architect of the "reform of judiciary" was, and where he illegally took part?

Thirdly, the following principles were violated:

- permanence of the judicial office (who guarantees that someone, as of tomorrow, does not pass a similar Constitutional Law contrary to the Constitution?),
- the integrity of the judicial function (the specialization of judges by the stages of the proceedings, judges for previous trial and pre-trial judges as inadequately responsible procedural subjects is introduced), and
- Independence of the courts (the members of the HCC from the competitive authorities participate in the election of judges).

It is easy to conclude that some media-exposed members of the academic community did not want to see that the political regime was trying to prevent its collapse with the impact on the judiciary. But the spin doctors do not identify the political figures that did it. "The collapse of any regime is always stressful, and if it is accompanied by war and unbridled hatred, then it is catastrophic. In the former Yugoslavia there has been a breakdown of the old system of values, a drastic disturbance of the national and cultural pattern and the war broke out. Fortunate nations have not experienced for the entire ages what our people experienced in just few years. However, *if one takes into account the massiveness of the stressor*, then no one can be spared regardless of its sensitivity threshold" [1].

Why did some media-exposed members of the academic community and spokespersons continue to participate in something what the experts call "an irrational drama in which no one was spared (war conflicts in the former SFRY) and Serbian drama - the so-called *judicial reform as a true example of instrumental 'aggression' on the judicial power*, as a product of the unconscious in the darkness of an undistinguished field of irrational"? [9]. What are they actually doing now? They are increasing the fear in the judiciary, and they offer solutions in form of repairing the reform, which would seem like giving patient sugar water as placebo [14]. Instead of expert opinions, measured and cautious statements, they have unprofessionally fo-

cused on making political statements praising the reform, doing a kind of extension of this instrumental (indeed simultaneously institutionalized) aggression. After the criticism came from the highest point, stating that the police influenced the media with criminal intent, huge lumps appeared in their throats! The group narcissism of the "owner of the reform" (shaped by a certain political leader, author's note) in conjunction with "instrumental aggression" (a *coup* staged by the executive power against the judiciary, author's note) and a frenzied mentality has led to drastic destructiveness. Most importantly, they do not perceive this "crime" against the judiciary as an existential disorder, but as a defense of group and national interest (a political option that gained legality in a doubtful way (not legitimacy) by entering the National Assembly, even though, we are free to emphasize, they previously committed a kind of coup, and despite the fact that it lost power because of that). That act is an undeniable virtue in perception of the "owner of the reform", and in fact it is a triumph of passion and blackout of democracy! [9].

What kind of fear in the judiciary some media-exposed members of the academic community talk about? "It is clear that in such rallies of unbridled instincts and pathology, *a large number of people, or almost the entire community suffered in a short time*, along with human mental ability, self-esteem, and human essence. In social dynamics, the "owners of the reform" seek to preserve their roles and social positions (by sitting in parliamentary benches being protected by parliamentary immunity, author's note), which is why they are much more stressed than those who were brought in uncertainty by the judicial reform, so they almost have nothing to lose. In any case, no one's been relieved of stress, and so the overbearance of mental contamination has contributed to the fact that mental hygiene is completely compromised... In short, mental contamination is denial of the essence of man" [1].

In conclusion of expert analysis [9] the following is stated: "It would not be wrong to recall, in the context of espousal of culture of life that ensures mental hygiene and the absence of mental contamination, an attitude from the US Declaration of Independence (1776): "Prudence, indeed, will dictate that Governments long established should not be changed for light and transient causes; and accordingly all experience hath shown, that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same Object, evinces a design to reduce them under absolute Despotism, it is their right, it is their duty, to throw off such Government, *and to provide new Guards for their future security*."

We especially emphasize what media exposed members of the academic community would not explain – the professional mistakes of the first convocation of the HCC and SCP, and subsequent mistakes of independent regulatory bodies, such as the Ombudsman and the Commissioner for Information of Public Importance who readily accepted the rebuttals:

– in terms of alleged use of intelligence information on individual candidates, allegedly obtained from intelligence agencies during the first convocation of the HCC and SCP, and
– failure to remove suspicion that there has been a violation of the privacy of candidates during judicial reform.

We would like to remind that the HCC and SCP did not have the legal right to request information from any security service, either public or state! The act of eventual request and obtaining of these data is simultaneously:

– anticonstitutional,
– illegal, and even
– the criminal offense of unauthorized collection of personal data referred to in Art. 146. of the Criminal Code (CC),

and the entity that provided them with data – the legal entity (SIA) – committed the offense referred to in Art. 145. of CC. (Law on Liability of Legal Persons for Criminal Offenses). At the same time, the problem of "*providing new Guards for their future security*" is strongly initiated, which is equally:

– a problem in judicial reform, and
– a problem in the area of security system reform,

which should be resolved by the scientific determination of the differences in relations between agencies from the intelligence community and the judicial community (courts and law enforcement agencies understood in the narrow sense). This is despite the fact that the term "law enforcement agency" is arguable.

As a kind of curiosity, and indeed evidence, we remind that during the process of the aforementioned revision of the results of election or non-election of candidates, by some members of the previous convocation of HCC and SCP, the claim that the data of the intelligence agencies were used was publicly stated and then later denied:

– as by those same members, and
– by the president of the HCC, through her interview, then by
– foreign member of SCP in a public statement, but also
– by former director of the SIA,

and that, which is surprising, the permanent convocation of the HCC and SCP has not:

– distanced itself from such behavior of the earlier composition of the HCC and SCP, nor
– condemned their statements, nor
– called for responsibility for contacting members of the intelligence security community during the election of candidates, when they even compiled a report on this at the 10th session of the First Panel of SCP.

It obviously compromised their objectivity while working in the HCC or SCP. This speaks volumes about the insufficient accountability and professionalism of the members of both HCC and SCP who, during the reform of the judiciary, were obviously both institutionally and non-institutionally too impressed by the powers of the intelligence services and possibly even intimidated. Perhaps it can be suspected that they were under: a) some influence, b) recruited, or c) blackmailed.

Unfortunately, the civil society sector was not able to control the intelligence services, or to make them subject to effective legislative and judicial control. Commissioner Rodoljub Šabić stated: "Immediately after the 'Record of the 10th session of the SCP' appeared in public, mentioning, among other things, 'a meeting in the SIA on the topic of collecting data on the dignity of candidates who applied for the election of deputy prosecutors' was requested from SCP to declare whether that meeting was held, what were its consequences, and, if the person's personal data obtained from SIA were used in the procedure, indicates the juridical or legal basis for this. The information from the oral communication that followed immediately afterwards with the Minister of Justice and the State Prosecutor pointed to the conclusion that the mentioned data were not used in the election process." However, the official statement of the SCP, which the author of this paper obtained formally, does not contain explicit answers to the questions asked. Above all, professional associations have gone wrong with the logic in the process of "criticizing and correcting the mistakes of the Judicial Reform", due to the shortcomings in the NGO Advocacy Strategy, directing attention only to cases of unelected judges and prosecutors, by accident or not, overcoming the fact that all candidates are equally compromised in the process of such dubious elections.

That is why public appearances of NGO leaders and other members of the SCP are causing a dilemma in this regard, especially due to the quoting of some legal provisions in a way that might give the impression that they represent a valid basis for controversial personal data processing. The processing of data on any person without his knowledge is permitted only when explicitly provided by law. In this context, it is not disputed that public prosecutors, in accordance with explicit legal authorities for the purpose of fighting crime and for the protection of the security of the state, may obtain data from SIA and other security agencies that process these data for the same purposes, also on the basis of indisputable legally established authorizations. But SCP is not a prosecution; it is not a prosecution authority. However, no legal provision for the general prosecutors' and their deputy's election process procedures have provided for the processing of candidate data by the SIA, nor have the SIA been required for legal purposes. Therefore we warned earlier, especially in a similar procedure regarding the work of the High Court Council (HCC), that such personal data processing would constitute a violation of the right to the protection of personal data guaranteed by the Constitution and the Law on Personal Data Protection" [9].

The causes of the spread of fear and the feeling of insecurity are found in the mistakes of those in charge of security. This criticism and observations are based on

a scientific view that the intelligence and counterintelligence agency cannot and must not be treated as law enforcement agency (prosecutors at the Ministry of Justice and the FBI or the Crown Prosecution Service and Scotland Yard, in the Anglo-Saxon system of law, therefore, the judiciary police, customs, inspections, administrations, directorates, etc). Therefore, the most urgent need to eliminate catastrophic mistakes in the previous phases of the security system reform, *which arose due to excessive and uncontrolled intervention in the criminal justice system* (such intervention is otherwise recommended for countries burdened with corruption, but not in the way that has been applied in Serbia so far)! The jurists in Serbia had no one to learn. No one from the academic community warned that intelligence agencies avoided their own reform by taking over the work of law enforcement agencies, with the same people. Counter-arguments that stem from the fact that the existence of parallel agencies with high-tech surveillance equipment is too expensive, is not an acceptable option. Hence, the members of the HCC and members of the SCP in the process of revision and correction of errors during the elections have not distant themselves from the nature and reliability of the data that were eventually received by candidates their predecessors in the HCC and SCP.

Here we come to the causes that generate fear among the judiciary and citizenry. From the point of view of the basic concepts and categories on which the security system is based, our approach to the problem can be explained, in lay terms, as an endeavor to achieve a moral healing of the society, inter alia through further professionalization of the public prosecutor's office, which should take part in the introduction of our community in the EU as a liberal civic democracy, after a long history of authoritarian rule systems in Serbia. Without this common conceptual framework, it will not be possible to achieve the further reform of the judiciary, but also of the intelligence community at the national and global level.

The goals and scope of the changes both at the global and national level, a clear view of *the lack of capacity of the security services in relation to the judiciary on a specific case of scandalous statements by some members of the HCC and SCP and the key evidence: Scandalous contents of the Minutes of 10th session of the SCP*, determines the briefly described public interest in the field of security of Serbia. This is a condition for the success of any reform, even the national revival.

In the field of professional ethics of workers in the judiciary and members of the intelligence and security community, a new notion must be introduced, a *re-professionalization*, as a new relationship between the judiciary and agencies, as the regulatory agencies of the modern state towards citizens. Therefore it would not happen to issue contradictory statements to the public whether the intelligence data of the agencies was used (unlawfully) during the election or non-selection of public prosecutors.

We also consider that the accommodation of the intelligence and security community as a part of civil-military relations in the system of distribution is a condition for the beginning of all serious social reforms. Certainly the transfer of highly

educated people into the public security sphere will contribute to the police's control of special operations, tactics, techniques and methods. In doing so, we emphasize, starting from foreign scientific expertise that the SSR, or reforms of intelligence security agencies, require:

the introduction of the notion of intelligence activities of the judiciary conducted by the judiciary with the judicial police (such as the FBI in the United States and Scotland Yard in England within the intelligence-led police activity of law enforcement agencies [15] [16] and

- a clear distinction between this concept and the activities of intelligence and anti-intelligence activities of the government (the activities of its security agencies), and
- separation of the reform of the security system from the reform of the judiciary, and
- reducing Intelligence Community (IC) reforms to the level of intelligence agencies, understood as regulatory agencies with a degree of autonomy in relation to the Government in the sense of a neoliberal society – a state of stable democracy, i.e. at the level of the executive, without interference in the judiciary.

In our analysis, we also noticed that spin doctors do not give an *academic explanation why there was no awareness of responsibility and professionalism, that is, more precisely, the lack of professionalism* in the members of the previous convocation of the HCC and SCP, expressed by decision to contact intelligence agencies contrary to the law, regardless of the reasons, precisely during the election and re-appointment of public prosecutors. As there was no awareness of the responsibility of the members of the Standing Convening of the HCC and the SCP for not having called two members of the First Panel of the SCP and the former President of SCP to disciplinary responsibility for acting in such a way and threatened the legality and legitimacy of the election.

It must be said immediately that the *academic community is extremely responsible* for the limitations regarding the capacity of the security services in Serbia, and especially the various deviations in their work, because it is itself part of that community of security services. So, we emphasize, it did not recognize what consequences would be if the introduction of security services into the Code of Criminal Procedure in the status of the law enforcement agencies is carried out and if they are clearly violate:

a) the nature of their work (special secret operations and tactics, techniques and methods...), and
b) the principle of secrecy in the work, which are otherwise incompatible with the principle of the public in the work of law enforcement agencies (the police, the Anti-Corruption Agency, the Anti-Money Laundering Administration, and others, with the exception of security agencies) [16].

We emphasize that:

– personnel of security agencies can be successful and effective only if they act in confidentiality, and
– secretly obtained evidence is difficult to convalidate in court or in scientific expertise.

Hence, for example, the reform of the security system in the United Kingdom, as a long-standing democratic and legal state, did not involve such intervention in the system of criminal law, especially criminal procedural law, as it was done in Serbia. This system "is absolutely the opposite approach to determining elements of material truth of relevance to the resolution of criminal cases based on the so-called *police investigation*. It is present in the legislation of England, Wales and Northern Ireland (UK), Australia, New Zealand, and Canada (except Quebec). Legislation of these states allows prosecutors to send only non-binding advice to the police, not to give orders regarding the investigation [17,18].

Although also an Anglo-Saxon approach, the approach to establishing elements of truth in criminal proceedings within the United States should be regarded as a special, third way, based on the so-called "prosecutorial investigation". It is based on material and procedural criminal legislation of the Federation and federal units, laws governing the work of courts, prosecutors' offices and various police forces [12]. Some of the agencies are, for example: IRS Criminal Investigation Division, United States Postal Inspection Service, Financial Crimes Enforcement Network, ATF Bureau of Alcohol, Tobacco, Firearms and Explosives, DEA, and others. Practically dozens of different types of police agencies (Princeton's WordNet, 2017). But, we emphasize, the classic intelligence agencies are not included in the list." [12]

We believe that this unsuccessful reform of the criminal justice system is caused by transfer of the intelligence agencies to the judiciary, instead of creating a special service for such tasks: the judiciary police, with intelligence led police activity, which already exists in the modern countries (Intelligence-Leading Policing – ILP) [16]. It was in the statement of the Minister of Justice that at the counseling at the Kopaonik School of Natural Law, where he introduced the idea of overcoming this problem through the establishment of the Judicial Police. This problem is also discretely indicated in the remarks of the European Commission after screening in Serbia related to meeting the conditions for accession from Chapter 23 – Judiciary and Fundamental Rights in the EU accession process. We also emphasize that the problem in the previous intervention in the national criminal justice system is that security agency staff can be successful and effective only if they act in complete confidentiality, so that the secretly obtained evidence is difficult to convalidate in court or in scientific expertise. Namely, they can hardly be Independently Corroborative Evidences, so strong evidence that an independent institution in charge of auditing can confirm them.

We also emphasize that numerous media-exposed members of the academic community overlook that resolving such complex state issues has not been hired by real authorities because the coordination of intelligence services so far has not been

based enough on the operationalization of the National Security Council as the supreme command operative body, that is, with more experts with an orderly authority, and not as a consultative body as it is up to now. This, instead of raising the level of security, has led to decrease in security of the entire society. Especially when this is considered together with the "advanced reform of the judiciary", which, unfortunately, has been done. With the reform, which, as we have already pointed out, the previous authorities have obviously sought to keep the government for themselves, contrary to any democratic and legal logic. Hence, we really violated the real internal security of our society and the state!

Conclusion: human rights injury
Consequences of the application of the illegal work of "working bodies" of SCP

The special responsibility of the Republic Public Prosecutor's Office and SCP exists because of concrete violations of the procedure. According to the findings of the University of Union experts, the procedure before the "working bodies" of SCP [19] has been violated, which is, as emphasized, designated as the *sui generis* administrative procedure, and consequently the Law on Administrative Procedure must be applied subsidially on the activities of SCP working bodies. Accordingly, the answers on questions that are not defined by the Rulebook itself could be found in the analysis of the relevant provisions of the mentioned legal text.

Let's pay a little attention to the Rulebook itself. The Rulebook on the procedure for reviewing the decisions of the first composition of the SCP and the application of criteria for the assessment of expertise, competence and dignity provides for the holding of hearings or interviews with non-elected holders of public prosecutorial functions before the entire convocation of the SCP. The Association of Public Prosecutors and Deputy Public Prosecutors of the Republic of Serbia had the status of a "special observer", which could raise questions to the complainants and make remarks on the record and the proceedings as a whole. Apart from UT, the observer status (but without the aforementioned rights) was also provided to the representatives of the European Union Delegation, the OSCE Mission and the Council of Europe. As a rule, the interviews were public unless the complainant requested otherwise, which occurred in just a few cases. But, what really happened?

1. Interviews with non-elected holders of public prosecutorial functions have not been carried out in the manner prescribed by the Rulebook. Although Articles 3 and 5 of the Rulebook envisaged that hearings should be held before the full composition of the SCP, they were held in front of newly formed bodies, which were called differently before the name of the "working bodies" became settled. In doing so, the complainants were not informed of the decision on the basis of which they were so treated, and their objections were that they wanted to be heard before the SCP as a whole (which were, as a rule, rejected without explanation), it was usually replied that the bodies

established under Article 12 of the SCP Rules of Procedure. According to this article, it is indeed possible to form special bodies that would have limited tasks from the scope of work of SCP.

2. The same Article 12 of the Rules of Procedure stipulates that these "working bodies" must have four members, while the "working bodies" actually had only three members from the ranks of prosecutors and deputy prosecutors. One of the members of the "working body" functioned as president, and for each individual case there was a rapporteur. If the Rulebook and practice of these bodies are analyzed in parallel, it could be seen that all the rules that were envisaged for the procedure before the SCP in full composition were applied by analogy. In this way a double uncertainty was created:
   – Which body led the procedure, and
   – What was the procedure really like?

   An analogous application of the rules as if the entire procedure was taking place before the DVT could not remove the fact that this was not the case.
3. The legal unfoundedness of the existence of such bodies, as well as improvising the rules under which they were treated, did not in any way contribute to the quality of the proceedings, nor to the achievement of minimum standards of legal certainty and fairness of the proceedings. In all this, the absence of any explanation as to why SCP did not act in full composition and why the new Rulebook was violated practically before the beginning of their application in relation to non-elected holders of public prosecutorial functions [20].
4. Considering that the members of the "working bodies" themselves changed the name of the body of which they were members, as well as the formulation of the hearing itself – hearing, interviewing for the collection of information – the question is whether the reasons for the practicality and cost-effectiveness of the proceedings could be justified by this behavior, especially if we have in mind that SCP had far fewer complaints from the HCC (162 complaints, compared to 837). Even in this case, it is unclear why SCP decided to violate the Rulebook, instead of amending it at its session.
5. Finally, it completely excludes a rational explanation of how it might have appeared that the Rulebook which was adopted less than two months before the beginning of the proceedings proved to be unusable. All of this significantly characterized the proceedings before the "working bodies" as illegitimate, more precisely implemented without any legal basis, in the case of non-existent bodies – bodies that the SCP could not constitute, more precisely, which constituted it contrary to its Rules of Procedure.
6. With regard to the work of the "working bodies" in technical terms, apart from a more detailed analysis of the hearings itself, it would also be important to mention the important fact that the very organization of the hearing was significantly worse than the one that followed the work of the HCC commissions. The record was dictated at the hearing itself, there were no

forms of recording, which significantly slowed down the work. The manner of drafting minutes in the administrative procedure is regulated by Art. 64-69 of the Law on administrative procedure (LAP). Although these rules were largely respected and there was no obligation for audio and visual recording, it must be noted that hearings were often reduced to dictating the complainant's statements directly to the record. This was particularly evident in cases where there was no individual decision. In these cases, the "working bodies" remained completely passive, and even there were objections by complainants and their representatives that the behavior of members of the "working body" was insulting because no one listened to the monologue of the unelected prosecutor. In addition, the hearings were scheduled at too short intervals, so the delays were inevitable and they were very often lasting for several hours. In certain cases, the prosecutors waited for their order for a hearing for 10 hours, and the hearings were held in the early morning hours, i.e. several hours after midnight. Bearing in mind the tiredness of both the complainants and the members of the "working bodies", these circumstances seem to have a significant impact on the quality of the presentation and the process in general. When considering the fact that the complainants who waited for the hearing did not have adequate accommodation, nor access to water and food on SCP's premises, this behavior and disorganization would also get a new dimension in the form of degrading treatment.

7. The fact is that this behavior has shown the arbitrariness of "working bodies" and SCP as a whole, which can even be called arrogance and legal violence. In this way, the provisions on the mandate of the SCP in the review process, criteria, documents and evidence used have been violated, and it can even be said that the complainants were actually discriminated against their colleagues who were elected in 2009, because they had to fulfill a significant stricter and unjust conditions in order to achieve the same right as determined by law. The right to a fair trial is also completely ignored, as well as any legal certainty that has plagued this broad, vague and "creative" interpretation of the review procedure.
8. The "working bodies" of SCP have failed to achieve any of the stated tasks and objectives. Based on the conducted procedure, it can be safely claimed that the sole object of its realization was to justify the first instance decision, and where it was not possible or not to make such a decision, to find and present data related to the work of the complainant who could justify a future negative decision and reject the objection.
9. In that sense, the statement of the representatives of the Association of Public Prosecutors who have objected to the reconsideration procedure on the objection turned into a re-decision procedure on the fulfillment of the selection criteria. The simple task, to identify the controversial points in the initial

decision and to allow the complainant to declare them and offer counter-arguments, has been turned into interrogation of work results.

10. In this context, any reference to the standards of a fair trial is rendered almost meaningless – the Rulebook was often violated thoroughly and, as a rule, at the detriment of unelected prosecutors and deputy prosecutors. "The working bodies" conducted the procedure under investigative rules, presuming "guilty" (i.e. the failure to meet the selection criteria) of the complainant, who had the burden of proving the otherwise.

Consequences of injury irregularities before HCC and SCP

We conclude that the cause of the crisis was not a spontaneous demand for judicial reform by the society, which was otherwise "visionary" only in relation to the so-called general election of judges, the change of the name of the courts, the establishment of some new ones and the abolition of some existing courts. In any case, so-called the judicial reform was a trigger, a circumstance that led to crisis situations, i.e. to the accidental crisis [21] in regard to 1837 judges, as it caused a change in all aspects of their material and socio-cultural ambient reality, and to that extent disrupted their individual dynamic psychosocial balance, which certainly would not be re-established for a long time. This also applies to unelected public prosecutors and deputy public prosecutors.

Consequences of conducting a too widely understood principle of devolution and substitution

The widespread use of devolution and substitution has led to a number of difficult consequences. Thus, the Ordinance on referral to the function of the higher public prosecutor, without the election according the Law, are practically widely interpreted and applied by SCP and directors in the public prosecutor's office, and the combination of these authorities exercised a specific mechanism of pressure on public prosecutors and deputies, in order to hinder the "unsuitable" public prosecutors and deputy public prosecutors by moving them to another public prosecutor's office and to "promote politically suitable" (obedient) public prosecutors and their deputies to positions in the higher public prosecutor's offices or the special prosecutor's offices (which was also decided by the heads of the higher public prosecutor's offices). Such a management of human resources is underlined by the case of sending a number of people to the Republic Public Prosecutor's Office. The example is the Special Public Prosecutor for High-Tech Crime from the HTC Department of the Higher Public Prosecutor's Office in Belgrade, and that the function that he has already been elected to can not be transferred to a higher level in a way that could be identified as a deputy public prosecutor in RPP, so that the same person remained in the office of deputy public prosecutor of both offices (which sufficiently speaks of the unconstitutionality

of the said provision and Articles 63 and 64 of the Law on Public Prosecutor's Office – LPPO).

Certainly, the PRI factors did not record this aspect of the unconstitutionality of the provisions of the LPPO, but it was important for the legislator to implement a mechanism for the flow of suitable personnel, while the legal consequences were not "covered" with a norm envisaging the possibility or abolition of one of those functions in a particular procedure, or by appointment to a senior function in a reasonable time or appointment as a counselor, in order to prevent the permanent appointment of staff, under conditions of non-transparency and on the suspicion of being "suitable staff", and in order to frustrate and disguise the choices for a particular public prosecution, etc.

Also, an additional principle was applied too widely, as is stated correctly in the PRI analysis: the so-called "Addition to standard forms of referral", since the legislator sought to provide further instrumentalisation of the public prosecutor's office in this earlier political regime. More precisely, the deputy public prosecutor can be sent to the SCP, that is, he can simultaneously work on regular cases, if he is assigned to them, and at the same time perform the highest authority in the prosecutor's organization when choosing and selecting the staff. Therefore, for example, within the Ministry of Justice, institutions in charge of judicial training, and international organizations in the field of justice. The mistakes in managing the public prosecutor's offices were made by redundancy referrals for individual public prosecutors and deputy public prosecutors, so the public prosecutor already sent to the highest public prosecutor (the Republic Public Prosecutor's Office) was sent by the SCP to other functions.

The previously formulated conclusion stands, regardless of the fact that Article 64 of the LPPO foresees this, because it is a deliberate mistake in the management of the public prosecutor's office and the perception of corruption that is concealed by the lack of transparency regarding the criteria that the directors in:

– the public prosecutor's office, and
– SCP

applied in spite the existing deputies of the Republic Public Prosecutor in order to perform:

– this reference, i.e.
– they avoided the selection of these same or other public prosecutors who were sent to places not filled in by the Republic Public Prosecutor's Office (no selection of three deputy public prosecutors was made, and the function of the deputy prosecutor was performed by: the public prosecutor's office as a consultant in the handling of requests for access information of public importance, then the deputy of the Higher Public Prosecutor in Belgrade and the deputy of the Appellate Public Prosecutor in Kragujevac in postponing international cooperation and legal assistance).

Such management of the public prosecutor's office can only be explained by the fact that referrals to several public prosecutors in the conditions of vacant positions in the functions of public prosecutors and deputies in the higher public prosecutor's offices, and especially in the Republic Public Prosecutor's Office, were suspected of being:

a) either unnecessary, or
b) manipulative with human resources in the public prosecutor's office, in the sense that it was managed by the staff, rather than by expertise.

From the abovementioned, it is clear that the constitutional principle of the continuity and non-transferability of functions in the judiciary is seriously violated. This weakness in the management of courts and public prosecutors obviously served for the political instrumentalisation of the public prosecutor's office during the previous political regime. Only other executives in the judiciary can interrupt such a management practice.

The aforementioned referral was carried out:

– on the proposal of the head of the body, i.e. the institution or organization to which the deputy public prosecutor is referred,
– and upon the opinion of the public prosecutor in which the Deputy Public Prosecutor performs his function,
– with the written consent of the deputy public prosecutor.

In any case, a referral decision was made by the SCP, so the referral could last for a maximum of three years. However, this legislative solution is equal to some kind of punishment, if it is done without the consent of the deputy public prosecutor to whom the solution relates (sic!), because it is at the same time regarding the same transfer, in accordance with Art. 62. of the Law on Public Prosecutor, deputy public prosecutor could be permanently transferred, with or without his consent, based on SCP's decision. This should be added to the fact that, as part of the PRI analysis, the fact and conclusion is explicitly stated: "Although they rarely mentioned irregularities in the transfer of prosecutors, it was noted that in practice any such action must be approved by the Republic Public Prosecutor" [19].

Rezime

Učesnici neuspele reforme pravosuđa iz vladinog i nevladinog sektora govore o postojanju straha kod sudija i javnih tužilaca, a da pri tome ne nude jasan odgovor na to koji su uzroci takvog stanja. Apostrofiranje same činjenice da sudije i javni tužioci strahuju od nekoga ili nečega, bez ukazivanje na uzroke, predstavlja svesno umanjivanje odgovornosti Visokog saveta sudstva i Državnog veća tužilaca zbog masovne povrede univerzalnih ljudskih prava, a posebno prava na život i prava na fizički i duhovni integritet kandidata za funkcije sudija, tužilaca i zamenika javnih tužilaca u pocesu reforme i procesu neuspele popravke reforme. Zaključujemo da uzrok krize nije bio spontani zahtev društvene zajednice za pravosudnom reformom, koja je

inače "vizionarski" sprovedena samo u pogledu tzv. opšteg izbora sudija, promene naziva sudova, osnivanja nekih novih i ukidanja nekih postojećih sudova. U svakom slučaju, tzv. pravosudna reforma je bila okidač, okolnost koja je dovela do kriznih situacija tj. do akcidentne krize kod 1837 sudija obzirom da je izazvala promenu svih aspekata njihove materijalne i sociokulturne ambijentalne realnosti i u toj meri narušila njihovu individualnu dinamičku psihosocijalnu ravnotežu, koju sasvim sigurno neće moći uspostaviti duže vremena. Ovo važi i za neizabrane javne tužioce i zamenike javnih tužilaca.

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