



ATTITUDES OF JUDGES, LAWYERS AND REPRESENTATIVES OF BUSINESS SECTOR ABOUT CORRUPTION

Qualitative part of the research



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Methodology

In order to get more in depth information about the main problems of the corruption in judiciary and business sector in Montenegro a qualitative part of the research was designed and implemented in addition to the quantitative one. The main purpose was to try not only to identify the level and extension of the corruption based on perception, but also to try to understand the main causes of it.

For the above described purpose semi structured interviews were organized with judges and representatives of the business sector. In order to be able to provide regional perspective and see whether there are any differences when it comes to the north, south and center of the country, selection of the interviewees respected this aspect. Finally, though the basic structure of the interview followed previous years' design in order to establish some kind of trend line, additional questions were asked. These questions were identified as instruments for obtaining clearer picture during previous wave of the research.

Main structure of the interview with judges and lawyers was the following (questions that are added for the purposes of this specific research are given in italic):

- In general, what are the most common problems that you may have in the job you are doing?
- The public is often spoken about the problem of corruption. Can you tell us whether you had any experience of this type in the work you do? Describe us some case or cases.
- *Could you identify any changes with this regard in the previous few years? If yes, could you please describe what kind of changes?*
- How would you assess the manner and quality of communication with citizens and customers at work that you do?
- *How do you evaluate public confidence in judiciary in Montenegro? Do you believe that this public image is well deserved? Do you have any suggestions about how it could be improved? Whose responsibility is this?*
- *Do you think that there is self-censorship in the work of the judges?*

The questionnaire used for interviewing entrepreneurs was different. It is given below with again the same remark – additional questions are given in italic.

- In general, what are the most common problems you may have in the job you are doing?
- The public is often spoken about the problem of corruption. Can you tell us whether you had any experience of this type in the work you do? Describe us some case or cases? Did someone ask from you or offer to you some services of corrupt character?
- *Could you identify any changes with this regard in the previous few years? If yes, could you please describe what kind of changes?*
- Did you have experience that your company was in some trial? Please, describe us that experience.

- *How do you evaluate public confidence in judiciary in Montenegro? Do you believe that this public image is well deserved? Do you have any suggestions about how it could be improved? Whose responsibility is this?*
- Did your company ever compete in the tender announced by the state for some job? Describe to us what was it like?
- By your opinion, what can be done to prevent corruption in business sector?
- *What do you personally do about it?*

These questions were used as a basic structure for the interviews. Furthermore, the respondents were asked to elaborate, to give specific examples and to explain what they mean. The main findings are summarized below according to the main questions.

Self-perception of the situation in the judiciary

In general, what are the most common problems that you may have in the job you are doing?

This is a very important question. It is completely open and posed in the way that the respondent is not lead by the interviewer. The very choice of the “problem” that the respondent mentions is the strongest indicator of his/hers perception of the situation in judiciary.

Last year, the main problems were:

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| 1. <i>Too big workload that judges have</i> | |
| 2. <i>Pressure from the media and the public</i> | |
| 3. Mistrust in the court | |
| 4. <i>Technically poor organization of work</i> | <i>Main problem are new cases and their “mixing” with the existing ones. This means an immense number of parties in cases, dozens of charged people, their lawyers, and piles of evidence...</i> |
| 5. <i>Inability to deliver a court summons and attendance of clients</i> | |
| 6. Communication with other state apparatus | |

This year, most of them repeated. The ones that were mentioned this year as well are marked in italic.

The most common is again this year:

- **Too big workload that judges have.** Namely, they give examples of number of cases they need to handle at the same time, which means too much pieces of evidence, too many hearings, people, etc. They complain that in these circumstances it is very hard to focus and deliver best work.
- **Technically poor organization of the work.** This was the second most common complain. Judges state that they have many problems with scheduling hearings, that they lack basic conditions for work, small court rooms, etc.
- **Unprofessional media coverage and lack of respect for the presumption of innocence.** Unlike last year, only one of the respondents complained about this. It was said that representatives of

the judiciary are often forced to respond in public and plead that the law is respected with this regard. Media is looking for hot stories and has no understanding for the nature of the judicial process.

- **Bad delivery of the court summons.** This problem was also mentioned last year.
- **Material compensation.** One of the respondents complained that the salaries are too low so that judges are not satisfied at their work.

Is there corruption in judiciary?

The public is often spoken about the problem of corruption. Can you tell us whether you had any experience of this type in the work you do? Describe us some case or cases. Could you identify any changes with this regard in the previous few years? If yes, could you please describe what kind of changes?

I have worked as a judge for 11 years and 7 months and I have never personally experienced any kind of misconduct that could be described as corruption.

Again, judges predominately state that they had no experience with corruption in judiciary personally. Most of them also said that they have not heard of any cases of corruption in judiciary.

Only one of the respondents accepted to describe how he believes corruption takes place in judiciary. He said that some lawyers promise to their clients that they could influence judges and that afterwards try to approach judges with different kind of suggestions. The other problem is personal contacts. Since the society densely networked, there are cases when these personal contacts intentionally or unintentionally influence outcome of the proceedings. This is often perceived as corruption. Although there is no immediate *exchange* of favors, it is a great problem.

The main reason for the acquittals in corruption cases is not the fact that this was no corruption involved, but the problem that it was impossible to prove that a charged person was in fact guilty. It is especially hard to prove so called "subjective element" of the criminal deed – intent to commit the crime.

One of the respondents commented that the number of cases that they as judges deal with and that are of corruptive nature has increased over the years. The success rate in prosecuting these cases varies. There are some convictions and some acquittals, she said. The main reason for the acquittals in corruption cases is not the fact that this was no corruption involved, but the problem that it was impossible to prove that a charged person was in fact guilty. It is especially hard to prove so called "subjective element" of the criminal deed – intent to commit the crime.

I got a case involving taking bribery three years ago. At the time I couldn't find more than two precedents in the judicial practice of my court. This could mean two things –there were no charges for this crime or this crime was not being even discovered.

We can note that compared to last year, the respondents were less opened to talk about both their direct and indirect experience with corruption.

The next question that was asked was if the respondents could identify any changes with this regard in the previous period. Here, they were much more opened to talk. The main changes that they could see are the following:

- Very strong anticorruption campaign that involves different segments of Montenegrin public is taking place.
- State strategy of fighting corruption is, according to their opinion, giving its first results – number of cases that are being prosecuted is increased and more and more of people are talking about it.
- Corruption is started to be perceived as forbidden activity that damages the society. Citizens are starting to realize that the damage being done is not only personal and specific but directed to the whole society with multiplied effects.
- Number of activities that are being conducted by Anticorruption directorate is increased. This institution is perceived as a important agent in the process.
- Role of the nongovernmental organizations is becoming more and more active. Their contribution is especially important when it comes to education of citizens.
- Increased number of cases in the field of corruption that are being prosecuted.
However, in these active cases, the people that were prosecuted are not high enough in the “society ladder”. This means that fight against corruption is still selective.

My profession is very important. It requires high level of dedication, skill, professionalism and judgment and communication. I believe that my colleagues and I meet these requirements.

Communication with citizens

How would you assess the manner and quality of communication with citizens and customers at work that you do?

Communication needs to be improved. Judges cannot comment on ongoing cases and provide information for the media and public. However, it is important to maintain regular contact with the public in order to ensure public trust in judicial process. Therefore, judges suggest that every court should have a developed public relation office or manager whose task would be to inform the public about proceedings in impartial and professional manner.

I cannot meet with parties involved in case, I cannot meet citizens and discuss the case. Mine or other judge's. However, I am aware that communication must be improved.

One of the respondents noted that the newly introduced practice that all the verdicts are publicly available via court's web side improved communication with citizens immensely. This practice contributed to the transparency of the work and reinstalling public trust in the court.

Judges note that when people do not understand how courts work, they are inclined to create negative image and perception of their work. To be aware of this fact is very important so that something can be done about it.

People don't understand the law and process so they have very unrealistic expectations from the judges, commented one of the respondents. They tend to break rules of procedures, appear without professional representation and then expect to obtain positive outcome of their case, almost by force. This misunderstanding of how the court works additionally damages public trust in the judiciary and something should be done, said several respondents.

A good judge is not afraid, especially not of mighty individuals from the society. He does not recognize or practice advancement by any other criterion then the merit. Only professional judges could build a healthy and balanced judiciary system.

They also note improvement in communication with the citizens to the certain degree. In the past, judges were commenting on ongoing cases, e.g. Now, this practice is almost eradicated. However, there is enough room for additional improvement, they believe.

Public trust in judiciary

How do you evaluate public confidence in judiciary in Montenegro? Do you believe that this public image is well deserved? Do you have any suggestions about how it could be improved? Whose responsibility is this?

Most judges are aware that the level of public trust in judiciary in Montenegro is far from being satisfactory. They partially agree with the reasons for this situation. For example, one of the respondents say that the reason is *political influences* on the judiciary and nepotism and explains that in fact, these two reasons have enough ground for the people to be distrustful. He says that as a result all the good judges that seek to do their work professionally are being pressured by the public. They work in very bad conditions and still manage to deliver decent results.

Very often we can hear in public that a judge is good if he reached a certain decision. On the contrary, if the media doesn't like the verdict – the judge in question becomes corrupt, politically influenced, etc.

The recommendation is to respect the Constitution almost literally.

Also, it is important to insist on three aspects of judges' work – skill, bravery and distance from the politics.

The responsibility was being attributed to certain mighty individuals in the society that influence selection of the judges according to non professional criteria.

Also, judges recognize their own responsibility for the poor public trust in judiciary.

At the end, they blame the media and the way they report on ongoing cases.

One of the respondents suggested stronger cooperation with nongovernmental society which could lead to the stronger contact with the citizens, which in the end would improve current situation.

Respondents agree that judiciary must be one of the top institutions when it comes to public trust. Only in this case the system will properly work and do its function.

A judge must be brave. We are in a position to decide in cases involving influent people from business, politics, and public life. There is always formal or informal pressure. Therefore, judge must be immune.

Self-censorship

Do you think that there is self-censorship in the work of the judges?

Most judges do not believe that there is self censorship among their colleagues. They believe that this kind of behavior is very harmful for the profession and therefore the judges are careful not to behave in this fashion.

However, there were several respondents that said that even though they could not be certain, there is possibility that such behavior among judges exist.

One of the problems that judges mention is influence that is being produced by the media and public. This was one of the findings last year as well. They complain

that the public reaches their own „decision“ before the official trial is over and then pressures the judge to decide the same way. In this situation, it is easier for him or her not to confront with the public and then the law is not the primary principle that the decision is based on. They also note that the judges that decide differently then the public has already decided are being described as corrupt and unprofessional. This creates additional pressure for the judges to self-censor their legal opinion.

The public reaches its own decision about the case and it is possible that some judges follow the public and its “verdict” since it is easier and do not want to confront.

Normative framework

What is the worst of the current system in working with clients in the very procedures, by your opinion? And when it comes to laws? Can they be improved and in what sense, so the communication between court and citizens would be more successful?

There were different ideas when it comes to this question. One of the suggestions was regarding increasing efficiency by using more advanced technology such as electronic databases, case files and sheets as well as enabling communication technologies to reduce time needed for organization of trials. It is very important to legally and practically reduce the time needed for the legal procedures, the judges admit.

In the last ten years we have seven changes of Criminal code, we have a new Code on Criminal Proceedings and new changes are being announced already.

At the moment current legislation is not adjusted enough to enable using such technologies in sufficient manner and should be reformed.

Judges also complain that the changes in the legal framework are so intensive and quick that it is very hard for them to follow. This is especially the case in situation when they are piled with work and do not have enough time for their personal advancement and study.

They also say that something should be done about the fact that charged people tend not to appear in the hearings which leads to long procedures and piling up of the cases. In order for the trial to be efficient it must be conducted within reasonable timeframe. According to the one of the respondents judges are too tolerant regarding this problem which at the end leads to extremely long trials.

The technical part of the work including filing, statistics, archives, case management must be significantly improved.

In some cases, clients decide not to use lawyer's services. This usually ends up badly for them and these cases represent a great burden for the court. Very often there is no legal cause and the client that does not understand the law and the procedures gets annoyed when things do not go his way immediately. One of the recommendations was that in these cases a compulsory legal consultant must be appointed.

Another idea was that some professional associations such as Association of judges, Lawyers' association and Prosecutor's association should come up with an agreement on professional ethics. This was even recommended by the Council of Europe (Opinion no. 13 and 14). This opinion recommends rules when it comes to communication among judges and lawyers which are very important in order to enable independence and objectivity of the trial.

How to prevent corruption in judiciary

By your opinion, what can be done to prevent corruption in the judiciary? What do you personally do about it?

Judges mainly go back to the initial thesis – there is no much corruption in the judiciary. However, some of them have more specific ideas. One respondent stressed out the importance of strengthening individual and collective awareness of the damages that corruption produces not only for the society but for every each individual within society. Only when everyone is aware that the shortcuts are in the long run harmful for everyone – the change will be easier. Therefore, judges insist that informative campaigns that are being conducted by Directorate for Anticorruption Initiative and nongovernmental organizations are according to their opinion useful.

The following question was aiming to see what they personally do in order to prevent corruption. One of the common answers was – „nothing. I would report the corruption if I had any experience with it, but I do not”. On the other side one of the respondents said that it is very important to produce a good personal example. Every judge that respects ethics and provides a good personal model is contributing to the fight against corruption.

I will give you an example. A lawyer enters judge's chambers before trial in order to tell him that he will need to leave earlier for another trial. Then, when he comes out, he tells his client that he has "personal" connections to the judge that he will use in his favor.

When it comes to payments of the judges and the question whether they are sufficient for the purposes of ensuring their independence, opinions are split. Some respondents believe that they are high enough (apparently they have been increased recently) but others identify this as a problem and a cause for corruptive behavior.

One of the respondents was quite opened about the way she perceives the problem. She said that the main obstacle to fighting corruption is to depoliticize judiciary and fight conflict of interests in the highest positions. She believes that the judges know that the only way to advance is to be in line with the official politics and "loyal". This provides insecurity among judges and they act in accordance to what they believe is the desired, not proper way.

The other problem is the fact that Montenegro has a small population of inhabitants so it is inevitable that family members work in the same line of business. However, this is very harmful in judiciary and should be treated with the best of care and institute of "exclusion" should be used more often.

At the very beginning of the process I clearly say that I will decide only according to law and evidence and that no political, public or any other pressure will influence me. My decision will reflect the legal provision and be explained to the last detail.



Also, one of the respondents expressed his opinion that external monitoring of the trials could be a good idea if the goal is to reduce any kind of misconduct including corruption.

Apart from that, they believe that dedicated implementation of the law and sanctioning every detected case of corruption without exception would be an effective method of prevention. Very strict punishment policies combined with strong and intensive education campaigns are probably the best method to reduce and prevent corruption according to the respondents.

Self-perception of the main problems in business

In general, what are the most common problems you may have in the job you are doing?

It was not hard to assume that the reply to this question will be economic crisis. Businessmen complain that the situation is currently very bad and that they face number of difficulties in trying to keep their business alive.

One of the biggest problems for most respondents is *collecting receivables*. People and companies just cannot pay their dues in timely manner. Additionally, it is proscribed that a company must pay its dues to the state nevertheless it collected the payment. This creates a closed circle of debt that suffocates the economy.

Some companies receive preferential treatment because of political contacts.

Apart from this, people from the economy state that politics is heavily involved and that some companies receive preferential treatment because of the political contacts that they have. Another problem that they mention is low quality of the labor force. Employers are not satisfied with the skills and abilities of their employees and believe that much more should be invested in their education and preparation for the labor market. They say that after finishing with their formal education they need at least a year or two before they can work as they are supposed to. Also, some of the respondents complain that young people are not motivated enough to work hard. They expect quick results without any effort.

The market is very small and there is not enough space for the current subjects. This means that one must fight not only with the quality but also by lobbying.

Business barriers including taxation, structure of administration and similar are also one of the problems that endanger business activity in the Montenegro in the current moment.

I was asked politely. It wasn't a high price to pay, but I would not like to go into details now. I am convinced that this is something that happens often.

Is there corruption in business?

The public is often spoken about the problem of corruption. Can you tell us whether you had any experience of this type in the work you do? Describe us some case or cases? Did someone ask from you or offer to you some services of corrupt character?

Could you identify any changes with this regard in the previous few years? If yes, could you please describe what kind of changes?

Representatives of business sector are more opened to talk about corruption than representatives of judiciary.

I believe that the corruption has increased. We are used to it. I prefer to pay in order to accomplish something then to wait a year or two and fail my business. Regulations are made in such a way that one can indefinitely and without certainty wait for some permissions or documents.

They mainly report that they were in a situation to be „politely“ asked for some sort of bribe. They are also quite open to admit that they have accepted to give the bribe in order to be able to close their deals.

They complain that the system is made in such a way that it supports corruption. As representatives of business they are in a position to wait for some legal documents, permissions and similar for too long time and without being sure that they will get it. Administration is set in a way that the business tries to find a loophole to be able to function. Very often this involves shortcuts, which the respondents have no problem admitting. One of the respondents gave the example that some procedures are on purpose being stalled so that a desperate businessman is „forced“ to offer bribe when the situation rapidly improves.

Some of the respondents were very negative saying that the corruption is almost everywhere. They give some practical examples from their business when their product will not be accepted unless bribe is paid.

In every administrative body you can find a person that can help you with a certain percentage to get the job. About 70% of the jobs we get is achieved through lobbying and direct percentage payment. We are used to it, everything works this way.

Most of them believe that the situation is not improving at all. On the contrary, they believe that it is getting significantly worse.

However, several believe that it is not as bad as it was before but could not give an example.

Public trust in judiciary from business perspective

How do you evaluate public confidence in judiciary in Montenegro? Do you believe that this public image is well deserved? Do you have any suggestions about how it could be improved? Whose responsibility is this?

The key to the trust is openness and efficiency.

Most respondents believe that public confidence in judiciary is rather low. The one to be responsible are people from the judiciary because they need to organize the system in more effective way which would make people more confident.

Representatives of the business sector are more opened to blame the government for the low public trust in judiciary. They are using rather harsh terminology in stating this.

There are some of the respondents that are noticing positive change. They believe that the proceedings are shorter and quicker. In order to support this change, public should be continuously educated about the nature of the process, system must work on its efficiency and judiciary must be more opened to the people.

Tenders and corruption

Did your company ever compete in the tender announced by the state for some job? Describe to us what was it like.

Most respondents had some experience with public tenders and most of them believe that those are „fixed“. Most of them do not admit participating in these kinds of tenders but they expressed something we can describe as perception.

However, a few respondents agreed to explain how it works. For example in so called *shopping method*, they make an agreement with the person that decides, provide two fictive counter offers and get the job. The respondent that described this situation admits that he is not proud of participating in such activities, but this is how the system works and they need to adjust if they want to survive.

Some of the respondents could not answer this question. They said that they believe that it is impossible to fix a tender based on their experience, but that they have heard from the people that they trust that this is being done. In this situation, their reply is just that they are not sure.

How to prevent corruption in business sector

By your opinion, what can be done to prevent corruption in business sector?

What do you personally do about it?

We can detect something that could be described as *logic of collective action*. Businessmen believe that if everyone is not included the one that loses. Namely, if he/she is the only one that follows the rules, then his/her company would suffer. In this situation they choose to fight for their business the best they can and according to the informal but true rules of the game.

Some of the representatives of the business sector are rather radical about solutions to the problem. They would change the government, judges and the laws. The impression is that there is a lot of anger in their opinions.

I do not do anything. There is nothing I could do. Not by myself. It would be different if everyone decided to do something. This way, I can respect my state's institutions, but as a businessman I am fighting for my company in a very bad time.

One of the specific suggestions was to change Law on public procurement. It is too complicated and rigid and this very fact stimulates corruption by endangering the economic logic that must be behind it as well.

Also, more successfully prosecuted cases would encourage people to report it more often.

One of the respondents said that no one could do anything but the state and that it is responsibility of the representatives of the state to fight the corruption with instruments that they possess.

Main conclusions

Conclusions will be organized in two segments. In the first, it is important to go back to the last years and try to identify the change, if any. In the second, some new conclusions will be drawn.

Last year main conclusions were:

- *Judges strongly felt that the trust in judiciary is really damaged.* We can confirm this conclusion this year as well. Most of the respondents both on the side of judiciary and business sector state that the situation is not improved in the significant way. The recommendation is to combine *openness* and *efficiency* to fight this problem. *Openness* means that the public should be informed and educated, judicial decisions transparent, accessible and well argued. *Efficiency* means that many organisational and technical problems in the functioning of judiciary must be solved in order to build a strong system that people could trust.
- *Judges showed bigotry toward corruption. They were aware and clearly emphasize that cases of corruptive behavior damage complete judicial system and they did not show the signs of justification of this behavior.* The same happened this year. This means that the potential for fighting corruption exists and that the biggest allies should be representatives of the judiciary.
- *Judges did not perceive corruption as one of dominant problems in judiciary. The priority was given to other problems like technical organization of work, overwork, pressure from media, etc.* This could be said this year as well. Even so, judges were more reluctant to speak about this problem than the previous year.
- *Majority of judges that were interviewed had some experience with attempt of corruptive action, and the most common are interventions for relatives, cousins, friends, etc.* This conclusion could not be confirmed this year since only one respondent admitted having any personal experience with the attempt to influence the decision that was supposed to be made.
- *Representatives of business sector perceive corruptive behavior as part of every day's life. Regardless of whether it is so or not, which cannot be proven through the interview, the perception that everywhere is like that.* This conclusion can be completely confirmed this year. Representatives of the business sector even more firmly state that this is how the system works and that they are faced with the choice to participate or to lose their business. Most of them participate and state that they use corruptive methods in their work.
- *State administration, judicial system, and special local self-government are primarily seen as obstacles in business from the perspective of entrepreneurs.* Again, this conclusion can be reaffirmed this year.

Additional conclusions:

- Most of the problems that were mentioned last time both in the judiciary and in business still remain. For the judiciary this includes work overload, pressure from the media and the public, technically poor organisation of work, inability to deliver a court summons and attendance of clients. For the business this is economic crises and its direct consequences, influence of the politics to the economy and business barriers.
- Relations between media and judiciary is very poor. Since the media is very important subject for establishing public confidence into the system, this problem should be further investigated and solutions suggested.
- There are no significant and detectable regional differences when it comes to opinions and perceptions of the judges and representatives of the business sector in the south, center and north of the country.
- Most representatives of the business bluntly admit having experience with corruptive behavior and state that this is in fact the precondition for their work. Even though they are not proud about it and believe that something should be done, they explain that it is much more important for them to keep their businesses' alive. They believe that the system is in fact organised to foster corruption and that they do not have a choice. A very serious problem of the logic of the collective action could be identified. Everyone is seeing the problem, but believes that is it not his/hers personal responsibility to fight it and that for more general action by someone else should be waited.