

Round table and public dialogue

Role of Judges and Prosecutors Associations in the Judicial Reform

(Sarajevo, 04. 10. 2019.)

1. The Center for Public Law Foundation (FCJP) thanks the keynote speakers, Judge of the Supreme Court of the Federation of Bosnia and Herzegovina, *Slavica Čindrak*, and Prosecutor of the Prosecutor's Office of BiH, *Džermin Pašić*, for a reasoned and convincing detection, substantive and analytical account of the problems concerning the associations of judges and prosecutors, maintaining the necessary level of associations' independence and the liaison between the professional and independent judiciary and active associations and managements. Thanks to the keynote speakers, the discussion did not lose its dynamics nor content after four hours.

2. FCJP also owes gratitude to the participants of the round table and points to the unusual interest and the representativeness of participants: 22 judges, 6 prosecutors, 4 members of the HJPC, 2 members of the associations of judges, 3 from administrative bodies (agencies), 3 members academic bodies (faculties), one from the ministry, one lawyer, 3 journalists and 3 FCJP research associates (organizers). At the same time, we emphasize that no one from the Republika Srpska responded to the invitation, and we consider this fact to be as symptomatic as it is a serious flaw of this meeting.

3. The FCJP summarizes below the views and the requests from this meeting on the basis of seventeen protocol statements and fourteen brief interventions:

1) The participants agreed that the situation in the judiciary is unsatisfactory and that the associations of judges and prosecutors could and should be the generator of establishing a professional judiciary which can call on its own reputation, its moral and professional integrity. The description of the unsatisfactory situation in the judiciary includes: mistrust of judges and prosecutors as well as the general public in the expertise, objectivity and independence of the HJPC, personnel decisions (election of judges and prosecutors, especially the managerial structures), insufficient cooperation of the associations and the HJPC, fragmentation and lack of coordination of the associations and inactive membership.

2) The participants are dissatisfied with no concrete work of the associations on the structuring of education, reactions to election and appointments, monitoring of disciplinary proceedings and reactions to the extension of mandates of the HJPC members. It was pointed out that the effect of associations in these areas is insignificant and that they should work actively, make clearly formulated positions, oppose decisions that have no professional and moral credibility and establish standards which will bind the judiciary and all structures of public authority.

3) The participants point out that the prosecutor's offices are in a specific position characterized by a possible decline in prosecutorial independence and autonomy. The systematically controlled public prosecutors could be the first negative result of the new regulations / criteria on performance appraisal and a negative expression of legislative authority of the chief prosecutors: control is performed through appraisal and case

allocation. From professional associations, in that sense, no adequate reaction has followed.

4) The participants find the composition of the managerial structures in the associations to be problematic and not in the function of constructive work. The objection relates to the participation of a disproportionately high number of court presidents and chief prosecutors in the management of associations. It has been demonstrated that such a structure does not optimize the work of the associations and leads to the numbness of activities aimed at a critical attitude towards the regulatory body and managerial structures in the judiciary. The accumulation of functions narrows down the dialogue, numbs the criticism of the perceived anomalies and serves as a lever of internal influence.

5) The participants estimate that the current professional associations are under the influence of the HJPC and that through them the activities are generated or the passivity encouraged, which is in favor of the support of individual members of the HJPC. The HJPC partly takes over and covers activities which, by their nature, should be the responsibility of professional associations. Thus, the authority of the HJPC narrows down the space for action of the associations.

6) The participants agreed that the existing associations have positioned themselves as passive observers: they did not define the directions and the strategy of their activities, did not establish the mechanisms for mutual exchange of information, the minimum interest by which all associations must be guided and the mechanisms of joint discussions on the harmonization of stances and activities or on the lists of joint priorities. Today they act as autonomous entities that have no joint interest. By this their significance is weakened, both individually and overall. The participants are aware that indifferent membership is co-responsible for this situation, but they believe that most of the responsibility is borne by the current managements of the associations.

7) The participants are of the opinion that the management of prosecutors' offices and courts with the engagement and participation in the administrative structures of the associations generally represents an obstacle for an open discussion about the associations, defining problems and taking clear positions. They point out that by this there is a noticeable endangerment of the freedom of speech with the method of labeling, which comes down to the thesis that by criticism and critical positions towards the noticed deviations the work against the current policy is done.

8) The participants emphasize that the founding acts of the associations are not in compliance with the applicable laws. They do not have clear criteria for the election of members of the management boards and the term of office.

9) The participants notice poor or aggravated communication through Internet and social media. They point out in particular that the websites of the associations are not updated and often contain outdated data.

10) The participants emphasized in part that there is a noticeable lack of courage to confront the noticed deviations in the judiciary, in particular towards the structures engaged as lobbyists of individual members of the HJPC. This is the responsibility of the existing associations from which no reactions are coming, but also of the membership,

which as a rule does not participate in the formation of the associations' views and do not implement the appropriate conclusions.

4. Based on everything,

it is proposed the following:

1) **Principal objective:** It is needed to work on achieving the normative and real preconditions to enable the professional associations in the judiciary to effectively and without delay accomplish the objectives they have been entrusted with.

2) **Founding acts:** It is necessary to do a revision of the founding acts, specify the membership criteria for the associations and precise the criteria for assuming functions in the management of the associations.

3) **Inaction of membership in the management:** It is necessary to determine by the founding acts that during the performance of managerial functions in the prosecutor's office or the court membership in the management of the association is inactive.

4) **The coordinating body:** It is necessary to take actions to establish a coordinating body tasked to ensure the safe information flow between different associations, coordination of individual and joint actions, establishment of cooperation at the international and regional level and widely inform the general public and members about the activities of the associations. With respect to prosecutors' associations, the establishment of a framework association must be approached with care, given that federal and cantonal prosecutors are involved in the work of the federal association and that there is a possibility of access by the state prosecutors with minimal changes to the statutory provisions.

5) **International appearances:** The associations must, through a coordinating body or not, find a passable way for their international appearances. The international representation of the associations and the platform for international action need to be discussed here.

6) **Establishing a dialogue with the HJPC:** Associations must insist on establishing a dialogue with the HJPC and determine the list of priorities on which the associations should give their positions. Furthermore, the focus should be on addressing the HJPC and attending the sessions as well as creating the content of individual sessions. The focus of the dialogue should be on the issues raised in this discussion:

- objectivity of the decisions and independence of the HJPC,
- impact of the HJPC on professional associations and the passivization of their work,
- selection and appointment of judges and prosecutors,
- extension of mandate of the HJPC members and
- identification of structures and individuals lobbying for the decisions of the HJPC.

7) **Laws on the Prosecutor's Office:** It is necessary to insist on the amendments to the Law on the Prosecutor's Office and the adoption of a decision of the HJPC that will guarantee that the work of active members in the associations will not depend on the will of the superior and will not be disrupted by anything.

8) **Incentive for membership activities:** The associations should immediately consider the reasons behind the passivity and find the appropriate measures for the active work of the membership. The establishment of working bodies within the associations, afterwards within the coordinating body, for monitoring legislation and efficiency and for ethical issues should be started immediately.

9) **Web presentations:** It is necessary to immediately proceed with updating the existing and opening new websites on which the work of the associations would be regularly presented.

10) **Expert meetings:** Determine the issues and problems which will be the subject of professional and public debates in various forms (professional and scientific meetings); plan the involvement of distinguished lawyers and ensure that acute issues that foster judicial and prosecutorial work, integrity and professional ethics are addressed.

5. The Center for Public Law Foundation is ready to cooperate with the associations. Our capacities can be engaged at any time for the purpose of establishing initial cooperation between the associations on establishing the content and organization of expert meetings, for the sake of the presence of experts at appropriate meetings, as well as for organizing joint meetings and popularizing the conclusions. I hereby invite the prosecutors' and judges' associations to initiate cooperation with the FCJP.

For the FCJP

President

E. Šarčević