

If There isn't Media, There Won't Be Pressure on the Courts**Thu, 09/10/08****VIJESTI, Society****pag. 7****AGENCY FOR ANTI CORRUPTION INITIATIVE PRESENTED ANALYSIS ON INTEGRITY OF JUDICIARY**

Podgorica- According to analysis on integrity and capacity of judiciary system in Montenegro, citizens don't believe in independent and justified judiciary, whereas the judges claim that they are independent while most problems they have with media that create pressure on them mostly because they arbitrate before courts.

Responding to the questions of the journalists, Director of the Agency for Anti Corruption Initiative Vesna Ratkovic said that judges should reason that, but she believes that they refer to more complicated processes and early stadiums of investigation when they are being monitored in sensation-seeking manner in some cases.

Family and social ties, policy and corruption are factors influencing passing of a verdict, denizens and lawyers believe. Entities in judicial procedures believe that the system only protects the rich and powerful. Survey was performed in cooperation between Agency for Anti Corruption Initiative and United Nations Development Programme (UNDP) to Montenegro for last year.

Director of Centre for Entrepreneurship and Economic Development that was working on the analysis, dr Dragana Radevic, stressed that perception on corruption of the judicial system is much bigger than data issuing from direct experience of the examinees.

According to her, asked to evaluate corruption in the juridical system, a little bit over a third of the examinees and one quarter of the companies have perception that juridical system in Montenegro is usually and often corrupted. However, data on direct experience are different. Therefore, most of the examinees stress that entities or their lawyers weren't asked to give a bribe.

However, 10, 9 percent of the entities, 8, 5 percent of the lawyers and 6, 7 percent of representatives of the companies claim that these kind of demands were sent. The parties state that corruption is present due to velocity of judiciary process, and the examinees from the companies stress that it is because of favourable outcome of a dispute, this was stressed in the analysis.

They explain the fact that they haven't informed on it because "even if they informed on it, the authorities wouldn't react". Denizens and companies mostly don't have trust in the police either.

However, judges, prosecutors and inspectors don't know for some case in which the entity gave bribe. 4, 9 percent of the entities informed on that they gave bribe to the judges, 3, 9 percent of the companies and 1, 8 of the lawyers. According to the responses of the examinees, there is slightly less percent of the prosecutors who aren't immune to bribe as well as the inspectors. Despite submitted demands for bribery, the entities usually have never agreed to pay it. Corruptive actions, due to fear of losing the case and because the authorities have undertaken nothing, weren't reported.

The prosecutors explain this with insufficient consciousness of the citizens on independency of the judiciary and the role of ombudsman, whereas the judges believe that their bribing doesn't have effect, because if the entity complains on outcome of the judicial verdict, the case is being processed by five member council during the revision, and it isn't possible to bribe all members.

As it was said in the report, formulation and content of the directions developed according to international methodology, applied in this case, don't give possibility to establish if these demands for bribery are being sent by one judge or those entities had experience with more of them.

The analysis referring quality of conducting justice demonstrated that complaining to work of the judges, prosecutors and police officers in last year were present "in some degree". Most number of them refers work of the police officers. In most of the cases the complaints have been checked and announced groundless.

The entities, victims of some felony, that have informed on police on such case in recent year -60, 9 of

the examinees weren't satisfied with attention of the police in their solving.

Mr. Miodrag Dragisic from UNDP stressed that results of this survey are important from many aspects. They will give the state institutions an instrument for monitoring and measuring of the progress and carrying out of the strategy and Action Plan adopted with a view to fight corruption. Objective problems are to be set up and analysed and in that sense, recommendations will be given and it will be provided better focus and aiming of the measures of the causes. The fact that survey of this kind will be used later for analysis and monitoring of trends in the corruption represents particular value of the reserch.

Ms. Ratkovic: They Demand More From Us

Ms Vesna Ratkovic said that she didn't have chance to read the report of the Commissioner of Council of Europe Thomas Hammarberg on the situation of human rights in Montenegro that will be reconsidered by Committee of the Ministers, but she doesn't agree with his evaluation that corruption and impunity against certain criminal offences are mostly to be blamed for weak implementation of the human rights standards. I wouldn't agree that Montenegro haven't applied international standards. They have been implemented in the legislature through forming of special bodies for fighting corruption and they always demand more from Montenegro. Every year, International Community launches some new corpus of most complex and higher standards regarding the corruption. The newest international standard is zero corruption tolerance, Ms Ratkovic explained.

She said that most of the standards aren't in the Convention of the United Nations (UN) for fighting corruption and in criminal-legal convention of the Council of Europe.

Mr. Hammarberg claimed that perception of the public still singles out judiciary to be particularly affected with corruption and that it indulges the pressure of the executive authorities despite adopting of the Law on Right to a Trial within Reasonable Time and new manner for selecting of the judges- which is only partially dealing with perception that judiciary isn't independent because only four members of the Court Council are selecting the judges.

In response of the Government to Mr. Hammarberg is said that "proves and arguments are necessary for such claims and as it was said in the report , there are some indicators for high level of the achieved independency and autonomy of the judiciary regarding selection, salaries and financing of the judiciary institutions". It is added that salaries of judiciary officials are raised last year.

Even though there is wide spread perception of high level of corruption in the public, the fact is that it is only a perception, since in the practise there isn't any case of demand for investigation against any judge for taking of the bribery, this was made clear to the Commissioner of Council of Europe.

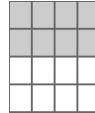
Family Ties And Politics Influence Decisions Most

Researching on influence of political and executive authorities on the courts and selection of the judges turned demonstrated that attitudes of the judges and prosecutors are significantly different. They stated that their decisions have never been influenced by policy of the executive authorities, whereas the lawyers say that there were such cases.

All examinees mostly agree that judicial verdicts in recent year and half were independent and unbiased. However, if some judicial decisions passed under certain influence that was mostly due to political and social ties, policy and corruption. Sex and religion influenced least at the judicial verdicts, this was said in the report.

It was added that similar question was asked to the inspectors of the Criminal Police Sector.

According to their view, in most of the cases some of above stated segments haven't influenced in most of the cases. However, family and social ties had most influence on decision of the police, the region had least influence on this, this was said in the analysis.



AGENCIJA ZA ANTIKORUPCIJSKU INICIJATIVU PREDSTAVILA ANALIZU O INTEGRITETU PRAVOSUĐA

Da nema medija, ne bi bilo pritisa na sudove

Podgorica – Prema analizi o integritetu i kapacitetima pravosudnog sistema u Crnoj Gori, građani ne vjeruju u nezavisno i pravedno sudstvo, dok sudije tvrde da su nezavisne, a najviše problema im zadaju mediji koji najviše stvaraju pritisak na njih, jer presuđuju prije sudova.

Odgovarajući na pitanja novinara, direktorica Agencije za antikorupcijsku inicijativu Vesna Ratković je kazala da bi to trebalo da obrazlože sudije, ali smatra da su one mislile na složene procese i rane stadijume istraga kada se u nekim slučajevima prate na senzacionalistički način.

Porodične i društvene veze, politika i korupcija su faktori koji utiču na donošenje presude, smatraju građani i advokati. Stranke u sudskim postupcima smatraju da pravni sistem štiti samo bogate i moćne. Istraživanje je urađeno u saradnji Agencije za antikorupcijsku inicijativu i Kancelarije programa Ujedinjenih nacija za razvoj u Crnoj Gori (UNDP) za posljednjom godinu.

Direktorica Centra za preduzetništvo i ekonomski razvoj koji je izradio analizu, dr Dragana Radević, istakla je kako je percepcija o korupiranosti pravosudnog sistema veća nego što pokazuju podaci koji proizilaze iz direktnog iskustva ispitanika.

Prema njenim riječima, upitani da ocijene korupiranost pravosudnog sistema, nešto više od jedne trećine anketiranih i jedna četvrtina preduzeća ima percepciju da je pravosudni sistem u Crnoj Gori često i uvijek korumpiran. Ipak, podaci o direktnom iskustvu su drugačiji, tako većina ispitanika ističe da strankama ili njihovom



Različiti odgovori građana i predstavnika pravosuđa: Sa prezentacije

advokatu nije traženo mito. - Da su ovakvi zahtjevi ipak upućivani, navodi 10,9 odsto stranaka, 8,5 odsto advokata i 6,7 odsto predstavnika preduzeća. Stranke navode da je korupcija zastupljena zbog ubrzanja sudskog procesa, a ispitanici iz preduzeća zbog povoljnog ishoda spora - navodi se u analizi.

Činjenicu da korupciju nije prijavili objašnjavaju tvrdnjom "da je bilo prijave ne bi bilo reakcije nadležnih organa". Građani i preduzeća uglavnom nemaju povjerenja

ni u policiju. Sudije tužioci i inspektori, međutim, ne znaju za neki slučaj u kojem je stranka dala mito. Zahtjeve da daju mito sudiji prijavilo je 4,9 odsto stranaka, 3,9 odsto preduzeća i 1,8 odsto advokata. Prema odgovorima ispitanih postoji nešto manji procenat tužilaca koji, takođe, nijesu imuni na mito kao ni inspektori. Bez obzira na upućene zahtjeve za mitom, stranke najčešće nikada nijesu pristale da plate. Koruptivne radnje nijesu prijavljene zbog

straha od gubljenja slučaja i zato što nadležni organi ne bi ništa preduzeli.

- Tužioci ovo objašnjavaju nedovoljnom sviješću građana o nezavisnosti sudstva i ulozi ombudsmana, dok sudije smatraju da njihovo podmičivanje nema efekta, jer ako se stranka žali na ishod sudske presude, predmet tokom revizije procesuiraju petočlano vijeće, u kojem nije moguće podmititi sve članove.

Kako se navodi u izvještaju, formulacija i sadržaj uputnika

Ratković: Traže nam sve više

Vesna Ratković je kazala da nije imala priliku da pročita izvještaj komesara Savjeta Evrope Tomasa Hamarberga o stanju ljudskih prava u Crnoj Gori koji će razmatrati Komitet ministara, ali se ne slaže sa njegovom ocjenom da su glavni krivci za slabu primjenu standarda ljudskih prava korupcija i nekažnjivost za određena krivična djela.

- Ne bih se složila da Crna Gora nije primijenila međunarodne standarde. Implementirani su u zakonodavstvo i osnivanjem posebnih organa za borbu protiv korupcije i od Crne Gore stalno se zahtijeva sve više. Međunarodna zajednica svake godine izbacuje novi korpus kompleksnijih i viših standarda kada je u pitanju korupcija. Najnoviji međunarodni standard je nulta tolerancija korupcije - pojasnila je Ratković.

Ona je kazala da se većina standarda nalazi u Konvenciji Ujedinjenih nacija (UN) za borbu protiv korupcije, kao i u krivično-pravnoj i građansko-pravnoj konvenciji Savjeta Evrope.

Hamarberg je utvrdio da percepcija javnosti i dalje izdajava pravosuđe kao posebno pogođeno korupcijom i popuštanjem pod uticajem i pritiskom izvršne vlasti, uprkos usvajanju zakona o pravu na suđenje u razumnom roku i novom načinu izbora sudija - koji se samo djelimično bavi percepcijom da pravosuđe nije nezavisno jer samo četiri člana Sudskog savjeta biraju sudije.

U odgovoru Vlade Hamarbergu se ukazuje da su "potrebni dokazi i argumenti za ovakve tvrdnje, a kako je i navedeno u izvještaju, postoje indikatori za visok nivo postignute nezavisnosti i autonomije pravosuđa u smislu izbora, odgovornosti, plata kao i u finansiranju pravosudnih institucija. Dodaje se da su plate pravosudnih zvaničnika povećane prošle godine.

- Iako postoji raširena percepcija visokog nivoa korupcije u javnosti, činjenica je da je to samo percepcija, pošto u praksi nema nijednog slučaja zahtjeva za istargu protiv ličnog sudije zbog primanja mita - pojašnjeno je komesaru Savjeta Evrope.

koji su urađeni po međunarodnoj metodologiji, primijenjeni u ovom slučaju ne daju mogućnost da se utvrdi da li su zahtjevi za mitom upućivani od strane jednog sudije ili su stranke imale takvo iskustvo sa više njih.

Analize koje se odnose na kvalitet sprovođenja pravde su pokazale da su pritužbe na kvalitet rada sudija, tužilaca i policijskih službenika u posljednjih godinu dana bile zastupljene u "određenoj mjeri". Najveći broj pritužbi je na rad policijskih službenika.

U većini slučajeva pritužbe su provjerene i proglašene neosnovanim.

Stranke koje su bile žrtve nekog krivičnog djela u posljednjih godinu dana i koje su taj slučaj prijavile policiji - 60,9 odsto ispitanih, nijesu bile zadovoljne pažnjom policije u njegovom rješavanju.

Miodrag Dragišić iz UNDP-a istakao je da su rezultati ovog istraživanja važni sa više aspekata.

- Državnim institucijama će se pružiti instrument za praćenje i mjerenje napretka u sprovođenju strategije i Akcionog programa donesenih u cilju borbe protiv korupcije. Utvrdiće se i analizirati realni problemi, i u tom smislu, dati preporuke i omogućiti bolje ciljanje i usmjeravanje mjera uzročnika. Posebnu vrijednost istraživanja predstavlja što je ovo prvo istraživanje ove vrste koje će služiti za kasnije analize i praćenje trendova u korupciji.

D.B.

Na odluke najviše utiču porodične veze i politika

Istraživanje uticaja političke i izvršne vlasti na sudove i izbor sudija pokazalo je da se značajno razlikuju stavovi sudija i tužilaca, koji su ocijenili da na njihove odluke nikada nije uticala politika izvršne vlasti, dok advokati kažu da je bilo takvih slučajeva.

- Svi ispitanici se u najvećoj mjeri

slazu da su sudske presude, u posljednjih godinu dana, bile nezavisne i nepristrasne. Ipak, ukoliko su neke sudske odluke donijete pod određenim uticajem, to je najčešće bilo zbog porodičnih i društvenih veza, politike i korupcije. Na sudske presude su najmanje uticali pol i religija - kaže se u izvještaju.

Dodaje se da je slično pitanje postavljeno inspektorima Sektora kriminalističke policije.

- Prema njihovom mišljenju, u većini slučajeva nije bilo uticaja nekog od navedenih segmenata. Ipak, na istrage ili odluke policije najviše uticaja imale su porodične i društvene veze, a najmanje religija - kaže se u analizi.