

I was not appointed because I didn't want to stay silent

Interview with Dragana Boljević, Serbian Judge Society president

“For the past three years of my effective work, I was always over fulfilling labor standards (172%, 155% and 163%). Correspondingly, for those three years only one of my rulings got revoked, which is the best result that I share only with several judges among 40 of them in my department. I am positive that Council, where out of seven, five were Criminal Law judges, hasn't red any of my rulings”

VREME: Are you surprised with names on the list of appointed and how do you interpret the fact that you are not one of them?

DRAGANA BOLJEVIĆ: I am not surprised by changes, because none of the list didn't came to my knowledge previously. Although, some people were talking the list is changing so often like exchange rates. Unfortunately, about this process one could hear only rumors - transparency, fair and respectful treatment failed, but it turned out that most of the rumors were true. As well as my and assumptions of the Judges' Association of Serbia, only worse.

I was not appointed because authorities does not like criticism. And as far as criticism is more accurate, thus is more inconvenient. Those who lead judiciary, and those are, I emphasize, politicians not judicial bodies, imagined that everything they do must be praised, new, progressive, reformistic and reality that employees in judiciary are living, does not fit into that image. Citizens are malcontent, but unaware of the reality they will soon start to feel.

VREME: It is unknown why you haven't been appointed and according to rumors, two version exists: Nata Mesarović (the president of the High Court of Cassation and, by position, the president of the High Judicial Council) said that you know why, according to the number of your rullings, and other theory is the fact that you are married to a lawyer.

DRAGANA BOLJEVIĆ: The claim, how every judge knows reasons for not being reappointed because the criteria is public (competence, qualification and honorability) is absurd, Kafkian, insulting and inappropriate for person who should lead reforms in judiciary.

Each of these three criteria are comprised of values that one judge should fulfill. Whether the one fulfills them is measured by certain measures. High Judicial

Council passed Decision on Criteria Determination and Measures for Evaluation of Competency, Qualification and Honorability, but Venice Commission estimated such decision as inaccurate. Such decision introduced secrecy into whole procedure.

About clandestine and uncivilized criteria (marriage between lawyers and judges as an obstacle), which as such, could not be official, (for such situation in every normal country exists institution of exemption), I've only heard. I've seen there were exemptions, probably only to confirm the rule or to mud the water, and maybe those exemptions were made because of relationships with lawyers, and their importance for decision makers. I've heard that some marriages were split and some lawyer firms closed because of that. For me, that is problematic and immoral. I don't understand what is that rule stands for. If there were some irregularities in the past concerning that issue, those judges should have been removed long time ago. If they feared of inappropriate influence that lawyers could have on judges, why they were not bothered by situation where close siblings were involved (sons, daughters, brothers, etc. in lawyers role)?

As far as my case is concerned, I'm sure they didn't look for some special reason – long before, at certain point, when they realized that I will not give up, I was anticipated as persona non grata.

VREME: Nata Mesarović says that everyone knows why are they “bellow the line”. Could you summarize your working-judicial results in the past year or two, no matter how subjective you may be?

DRAGANA BOLJEVIĆ: Mrs. Mesarović mentioned that I was writing about problems with statistics and she “presumed” that I was writing about me. She “forgot” to say that I was writing about that problem in the book “Evaluation of Judicial Performance”, published by Serbian Judges' Association in 2007, upon two year project that I led.

Anyway, I've thought about all the wrong things that she could find in my work for the past three years, considering her 5 minute estimation was “thorough and conscientious”. Just to remind you, Mrs. Mesarović publicly stated several days ago, that High Judicial Council devoted 400 hours of thorough and conscientious work to 5020 applications. And, I can tell you, statistics is science that can proof all kinds of things. Especially if it is used selectively. For example, not counting holidays, I was three months on sick leave in 2006, and four months in 2007. That means that I could never have the same number of cases as someone who didn't use sick leave, but comparing to the same amount of time and number of the solved cases to other judges, I'm having an astonishing percent of finished cases

(172 percent, 155percent, and 163 percent). If the judge and Court cannot solve all the cases set before them, that is not the problem of a judge, but of those who run the judiciary system. Judge is responsible for the number of cases in comparison to labor standards, but not for those remaining. Besides, only one of my rulings for the past three years has been canceled, which is the best result that I share with only few of my 40 colleagues in the appellate department of the District Court of Belgrade. I am positive that Council, where out of seven, five judges are dealing with criminal law cases, hasn't red any of my rulings.

I just want to mention that even if you look only the numerical results you will find lot of appointed judges with far worse results than mine. And I am not claiming that they are not fit to be a judge. Shouldn't be forgotten that those results I achieved through hard work, not only in Judges' Association, but also through different task groups working on some serious stuff for this country. I've ruled over Commission for Judicial Reforms on Guidelines for Laws on Judicial System, and solutions that Commission achieved are implemented in some new judicial laws, specially those concerning regular estimation of judge work, initial and permanent trainings as well as system for disciplinary actions. Ex Minister of Justice Dušan Petrović appointed me in working group for Drafting Judicial Laws, and we made draft of law on High Judicial Council, as well as in task group for drafting law on Judicial Academy. I've already mentioned book "Evaluation of Judicial Performance", where we advocate for establishing reliable, certifiable and comparable evaluation system, that enables not only reliable evaluation of judges, but also reliable management of judicial system through just estimation of necessary number of judges and equal distribution of work to judges and courts. Council did not include those evaluations in their verifications. Even more, (re)election criteria made by Ministry of Justice task group and commented by Venice Commission included published papers and participation in working groups as an element of judicial competence, but HJC adopted it's own (re)election criteria and rejected that element. Never the less, someone did notice my work and serious commitment – OSCE by giving me reward Rule of Law Person of the Year for 2007.

VREME: You are presiding over Judges' Association, organization not long ago seen as a partner to Ministry of Justice and others involved in implementing judicial reforms. When did break/collision occurred, and is this lack of appointment direct punishment?

DRAGANA BOLJEVIĆ: All of us from Judges' Association, who worked in working groups were aware of the possibility our engagement could be misused subsequently by some poor decisions, and for our work to be proclaimed as our "baby". That really happened in October 2008 when judiciary drafts laws were published with some transitional and final provisions which ruined some good solutions they were comprised of. Provisions in question are concerning Law on Judges and Law on High Judiciary Council that enables politization of judicial system and inadmissible political influence and interference by proclaiming general reappointment for judges, contrary to exclusive constitutional provisions. Furthermore, opposite procedures to those regulated by Law for HJC candidates recommendation were established and thereby excluded judges voting for their representatives for members of HJC. There is also inapplicable Law on Court Seats, drafted only in two weeks by close group of people, adopted without respect for legal procedure which envisage recommendation from Supreme Court.

First it took us the time to explain to our members that we didn't participate in that, and than to inform public, specially professionals, about such disastrous decisions, because we believe they will jeopardize citizen right on fair trials before independent and unbiased court in long terms. Therefore, in October 2008, we made decision not to participate in work on criteria for reappointment, because we consider it unconstitutional and in disproportion with standards, as well as unnecessary and impossible to be realized in intended time with the provision of good results.

It turned out that we were right about everything, except in matter that Constitutional Court was supposed to give the opinion and they didn't – whether the reappointment (or the interrupting the lifetime tenure which judges already had) is unconstitutional. Constitutional Court simply did not accept debate upon our initiative, considering it non disputable. Despite Declaration on CCJE from the November 2008, and EU Commissioner Olli Rehn warnings from 5th February 2009, opinion of Kopaonik School for Human Rights, and of all professors of Constitutional Law and Theory of Government and Law. And despite dissenting opinion of judge Olivera Vučić, professor of Constitutional Law on Belgrade Law Faculty. I believe that, by such proceedings, Constitutional Court accepted huge responsibility that would never be forgotten. The peculiar thing was that and EU officials told us that they were informed by the people from the Ministry of Justice on such decision of Constitutional Court even before this Court went into session. This outcome, which envisages discontinuance of judicial tenure and practically

“force” judges to deny their lifetime tenure and to apply for the reelection process otherwise they will not be reappointed by the Law, has never happened anywhere in the world.

Naturally I could not stay silent, as well as I think that is wrong not to speak about problems that are about to come with network of courts seats, currently hidden behind irresponsible silence and empty promises. I deeply love my country and I want to see it normal and organized. I want my daughters to stay here after they finish school and to live in normal conditions. Some judges apparently had some different reasoning and interests. I represent those who think like me and I was obliged to speak. And of course, that’s why I’m not appointed.

VREME: What do you think about discussion on prosecutors and judges away from public, even labeled as official secret? How will you, and your non appointed colleagues, find out on what basis someone is appointed and others aren’t? How will you solve the problem of potential appeal (not envisaged by regulations), whether is the Strasbourg Court only solution and how much it will cost Serbian citizen?

DRAGANA BOLJEVIĆ: I’ve already answered to that, partially. In my opinion, judicial bodies made number of oversights, starting with the fact they began their work in incomplete composition. One of the major oversights of HJC is importing secrecy of work (Rules of Procedure, 5th. June 2009), contrary to the fourth goal – transparency – of National Strategy for Judicial Reforms.

First Law on HJC says in its 1.Paragraph, Article 14. “Method of Work” that Council “shall pass the decision to work on public Sessions, in accordance to Rules of Procedure”, meaning usually their work is out of public.

Further, Rules of Procedure of HJC says in Article 5. – “Council Sessions are closed for public.” Council makes its work public in four ways (Article 34.): by publishing general papers in Official Gazette, public announcements, press conferences and internet publishing. Finally and most important, Article 12. of Rules of Procedure, named “Duties of Council Members” envisage that Council member should keep in secret data previously marked as secret, or secret by Law and not to reveal information concerning to Council decision making! Whereby Rules of Procedure does not stipulate what data is secret, the terms of procedure for determination of secrecy, or when secrecy expires!

Such procedure, even “bundled” in legalistic puzzle is totally illegitimate. That is why we, the members of Serbian Judge Society, passed few decisions on 16th December, day before announcing the names of reappointed judges. First, we are still consider non appointed judges as our members, at least till the issue of their status is solved within appropriate institutions. Then we scheduled JAS Extraordinary Assembly for 26.th December, in order to bring a little light in such process of appointment, specially for those who already acted as judges, considering our judges are obliged and called to help their colleagues within their professional association and to give their contribution to independent and responsible judiciary system and to fair trials of our citizens who are entitled to. We called HJC to respect Venice Commission suggestions and to give to every non appointed judge explanation what led to the conclusion that they not fulfilled criteria of professionalism, competency or honorability. Finally, we formed Information and Legal Team, which is going to make the list of non appointed judges (it is disgraceful that HJC would not provide us with such list), gather information on both appointed judges and those who were not and then to formulate all possible legal remedies that should lead us to the final exercise of their rights.

I’m sure that it would, in the end, cost citizens extremely, because government should pay for such arrogant acting. And first of all it will pay in moral sense.

VREME: You alarmed authorities even before reappointment started, stating warnings from Venice Commission and EU Commission, but Ministry of Justice and HJC, as well as the other relevant institutions did not accept your observations?

DRAGANA BOLJEVIĆ: We made warnings on longterm politization threatening judicial system due to disputable solutions. By the way, European Commission states the same on 11th page of its Report on Progress in Serbia, dated 15th September 2009. We claimed that reforms should be approached synchronized, thoughtful with certain prediction of all bad outcomes and in order to find positive solutions in advance. We were trying to explain that our country is not wealthy enough to implement everything at once, even much wealthier countries could not manage it. Our suggestion was to establish High Court of Cassation, Administrative Court and courts of appeal, to incorporate misdemeanor courts, and to, so to speak, “install” HJC, governing judicial body of high importance. And we thought that was even to much for the beginning. And in future, when we

assess needs and possibilities, to introduce changes in jurisdiction and new court seats network. But they didn't listen us.

VREME: If 16 out of 20 judges of Supreme Court were not appointed and their jurisdiction was to overview verdicts of County Court judges, what is the message and how is that incorporated into criteria? Judges from County Court probably were noting such data into personal statistics, but was that data part of the criteria despite the fact those who were creating them were not appointed?

DRAGANA BOLJEVIĆ: You've asked essential, deep question. Everything now can be challenged. First recommendations from Venice Commission should have been carefully analyzed, than not to start with reducing number of judges (for more than 25%) but first to “reappoint” them, since the political will was so strong. It was necessary to make one restrictive approach, not vindictive and ad hominem as it was.

In advance all the logics went into wind when you know that number of judges was reduced actually for about 200 (systematization foresees over 2400 judges, and before the reappointment started there were 2230 of them, because not one judge was appointed in period of four years) and formally for around 400 (on 1838). Theoretically, what would happen if all the judges fulfill the criteria? How could then their number would been reduced, by force? Whole maneuver was intended to reduce number of judges as much as possible, to force out not only 400 of them, but much more. You will see, the needed number of judges will be upraised in future months, but some others persons will be appointed, not the judges who were not appointed now. According to the information that we have, there is significant number of reappointed who are about to be retired soon, so there will be a lot of free space. But when you once stamp over the law, than it is possible to do it over and over again. Only the first time matters. Let me paraphrase Dostoevsky – only once you became a killer. And living in such society becomes hazardous life: pretty much the same as when you pass through the red light in the street, other driver does the same and you both still alive. Till next time.

VREME: Do you find any part of guilt in Serbian Judges' Association when it hasn't react upon cases when colleagues bluntly violated criteria of competence and honesty in their work, even if it is common knowledge that Judges' Association was established in difficult circumstances and many of

judges were strayed? How do you feel today as chairwoman of Society and not been reappointed but some of your colleagues with tainted work practice are?

DRAGANA BOLJEVIĆ: As judges, we always have scruples when it comes to estimation based upon only one side, and since we were not “court” for colleagues we didn't do that. We were helpless when we saw how our membership tripled in 2000. Some went in out of pure opportunism and abate us, but on the other side, they gave us even higher legitimacy by increasing the number of our members. Knowing our weak sides, we tried to push even into Constitution system of disciplinary action, in order to have regular evaluation of judges (which has not been the case in the past), to pass necessary trainings (we established Judicial Center, dragging Government into it). We passed Judicial Ethics Standards, which replaced Ethical Code, published comments on unethical judges behavior (participating in political gatherings. for example), trying to accustom colleagues as well as citizens on approaching to Ethical Council when they have an ethical dilemma concerning judicial issues. Even then we were experiencing problems with some colleagues and specially with those who are now on high positions.

When you are existentially endangered then you fight only for basics, and some higher goals puts aside. That could be the short answer to your question.

VREME: Was there politics meddling in current judge and prosecutor selection?

DRAGANA BOLJEVIĆ: Yes. I've already answer to that. Starting with manner of member selection for HJC. Methods for suggesting candidates for the first composition of HJC differs from methods for selecting members for all future compositions, and it represented derogation from clear, transparent and established procedure according to European standards. Having in mind that the first composition of HJC is responsible for all vital changes envisaged by National Strategy for Judicial Reform (including dismissal, appointing, establishing - for the first time – system of judges performance evaluation and the system of the disciplinary accountability) it had to have legitimacy based upon understanding and trust by judges. It is needles to say that judicial independency fails without independent appointment for members of HJC, which is by the way proclaimed by Constitution. The meaning of presence of judges in Council lays in necessity to give right to protect independence and autonomy of judges to the representatives who gained their trust. That is why international standards provide selection of

HJC members to be performed by judges themselves in democratic manner, and not by executive or judicial authorities who will blindly follow the Law.

Selection of judges for HJC candidate/members was simply skipped by disputed legal provisions and thereby prevented expression of free will of judges. Former HJC was given judicial discretion to suggest any judge for candidate. Since that former HJC made exact number of suggested candidates as there were positions in judicial system, it was essentially preselection. Besides, members of former HJC were then actual politicians – Ministry of Justice representing executive authorities, as well as some people outside judicial system: acting Chief of Prosecution Office, lawyers representative and MP - so it was obvious that decision upon selection of judges were made by people who were not legitimate judicial representative but people influenced by politics.

VREME: How do you interpret the fact that some of appointed names became judges for the first time, their names and biographies are completely unknown, and on the other side so many well known judges were left out? How much time is needed for training and education of strong judge? How do you see future of Serbian justice considering newly adopted personal solutions?

DRAGANA BOLJEVIĆ: That represents the wish to have loyal judges. It does not matter if they don't know much, it is important they are “ours” For producing good judge first it is necessary to have a good teacher, and we do not know who are the teachers, and then it takes at least 10 years. I am not an optimist about current and future development in judiciary.