

# PUBLIC PERCEPTION OF THE JUDICIARY FROM THE PERSPECTIVE OF PUBLIC AND GLOBAL MENTAL HEALTH

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## SUMMARY

According to the European Commission's 2020 Rule of Law Report, in regard to Croatia, the level of perceived judicial independence remains among the lowest in the European Union, mostly due to perceived political corruption. The authors analyse the causes of such a perception of the Croatian judicial system, especially the length of criminal proceedings in high profile cases, and try to evaluate it by comparing available statistical information concerning the judiciary in Croatia with that of other EU countries. The authors also take into account and describe the effect which contemporary issues like news coverage by increasingly partisan media have on public perception of the judicial system, and polarization of public opinion on key social and legal matters. In conclusion, the authors give an overview of recent studies which found that corruption has a detrimental effect on mental health.

**Key words:** public perception – judiciary - media coverage – corruption - mental health

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## INTRODUCTION

According to the European Commission's 2020 Rule of Law Report, the level of perceived judicial independence in Croatia is among the lowest in the European Union (EC Report, 2020), with just 24% of people and only 16% of companies perceiving judicial independence to be fairly and very good. Along with efficiency and quality, independence is a key element of the justice system that is analysed in annual overviews of the EU Justice Scoreboard and European Commission's Rule of Law reports, but also in reports made by other international institutions (notably, the World Bank). Independence differs from the other two elements of a justice system because (unlike efficiency and quality) it is not a purely technical issue. Instead, it is closely connected to politics which makes it a matter of profound importance in modern democracies built upon three independent, separate powers: legislature, executive and judiciary. It is also an aspect of the judiciary which is scrutinized in the media and sometimes unfairly portrayed due to omnipresent political polarisation in society and media.

In this article, the authors question the possibility of adverse effects that such circumstances might have on mental health, using the results of recent studies concerning the connection between perceived corruption and mental health issues.

## METHODOLOGY AND SOURCES OF INFORMATION

Firstly, the authors indicate that they are jurists, i.e. not psychiatrists or medical experts, and are therefore not able to analyse the validity of methods and conclusions given by medical experts in studies which were used.

The primary sources of information on perceived levels of efficiency, quality and independence of the Croatian judiciary that were used, were the EU Justice Scoreboard for 2020 and World Bank's DataBank – the methodology used in collecting and analysing data by official bodies of the EU and the World Bank is thoroughly explained in these documents.

## PERCEPTION OF THE JUDICIARY IN CROATIA

Since the accession of the Republic of Croatia to the European Union on 1st July 2013, some improvements were made concerning the quality and efficiency of the judiciary, but the public perception of independence of our justice system has not improved and it is continually among the worst in the EU.

EC's Report on the Rule of Law in Croatia states that „according to the 2020 Eurobarometer study, the main perceived reason cited by the general public for the perceived lack of independence of courts and judges is the perception of interference or pressure from the Government and politicians“ whereas the main reason for such a perception stated by the companies is „the perception of interference or pressure from economic or other specific interests, closely followed by the perception of interference or pressure from the Government and politicians.“ (EC Report, 2020).

Interference or pressure from the government or politicians in the judiciary is in fact political corruption appearing usually in the form of influence peddling, also called trading in influence which is regulated in Article 12 of the Council of Europe Criminal Law Convention on Corruption of 1999 as well as in Article 18 of the United Nations Convention Against Corruption of 2003. In Croatia trading in influence presents a criminal

offence punishable by imprisonment (art. 295 of the Croatian Criminal Code). Another form of corruption in general is bribery, also a criminal offence punishable by imprisonment.

But the actual occurrence of such crimes and the rate of effectuated prosecution of judges in Croatia does not correspond with the abysmal perception of the justice system by the Croatian people. In 2019, the State Judicial Council registered the opening of 12 disciplinary proceedings and 35 requests for granting the opening of criminal proceedings against judges - of those requests, 20 were dismissed while others were pending (State Judicial Council Report, 2019). Taking into consideration this information and the fact that at the end of 2020 Croatia had 1675 judges (Report of the President of the Croatian Supreme Court for 2020), we can come to two conclusions: either there is a large gap between publicly perceived and actually existent problems regarding judiciary's independence and integrity, or corruption is so widespread that it blocks prosecution of the above mentioned crimes, which we find less likely to be the case.

This specific problem was addressed in a recent official opinion in which the Consultative Council of European Judges (CCJE – an advisory body of the Council of Europe) concluded that „a non-negligible number of member States have reported in their replies to the questionnaire preparing this Opinion the phenomenon – at first sight quite odd – that the public perception of corruption inside the judiciary is considerably higher than the actual amount of cases against corrupt judges would suggest. Even though only a very small percentage of interviewees could report on personal negative experiences with corrupt judges, a very significant share of the same polled group was of the view that the judiciary was among the most corrupt institutions in the country.“ (CCJE Opinion no. 21, 2018). CCJE claims that the reasons „for the existence or non-existence of a significant discrepancy between actual and perceived judicial corruption in a given country lies principally in the (non-)transparency, i.e. (non-)openness or taciturnity of the judicial system“, and further that the judiciary has an information policy which is bound by „specific obligations which make it difficult to respond effectively to criticism from the outside“. CCJE found other reasons for this phenomenon, in particular „the misbehaviour of other professional groups... For example, in pending cases it is not uncommon for prosecutors and lawyers to use tactics, such as litigation through the media, to influence public opinion.“ (CCJE, Opinion no. 21, 2018).

### **Comparison of Croatian Judiciary's Perception to that of other EU Countries**

Given the fact that Croatia is the newest member state of the EU, and that it still has to manage to keep up with high standards set by the EU, we compared the data available for EU countries of (roughly) similar size,

population and historical background as Croatia – Czech Republic, Slovakia, Slovenia and Hungary (all joined the EU in 2004).

Among these four states, the Czech Republic has the best perception of judicial independence among the general public and companies. But compared to all EU member states, this perception is only average, with 56% of the public and 44% of companies having perceived the independence of the judiciary as „fairly or very good“ (EC Rule of Law Report CZ, 2020).

Slovenia, Croatia's neighbouring state and, as Croatia, a former federal republic within SFR Yugoslavia, has a substantially better level of perceived judicial independence than Croatia, and this perception has been improving through time, but it also „remains low to average“ in EU standards, with 42% of the public and 36% of companies stating they find the independence of the judiciary „fairly and very good“. (EC Rule of Law Report SL, 2020).

With 48% of the public saying it finds the level of independence of the justice system to be „fairly or very good“, Hungary has an average level of perceived judicial independence among the public but this level is very low among companies (26% „fairly or very good“). In reporting on the state of the rule of law in Hungary, EC expresses concern due to the fact that „judges and lawyers are subject to negative narratives in the media“ (EC Rule of Law Report HU, 2020).

Slovakia's perceived level of independence of the judiciary resembles the one in Croatia, with only 26 % of the population and 15 % of companies perceiving it as 'fairly or very good'. Also, people in Slovakia state the same (main) reason as Croatians for such a perception – interference or pressure from politicians, and in both Slovakia and Croatia such a „low level of perceived judicial independence has persisted over an extended period“ (EC Rule of Law Report SK, 2020).

Comparing these results it is noticeable that even in countries that have been members of the EU for almost ten years longer than Croatia, problems with perception of the independence of their justice systems still exist, yet the difference between them and Croatia lies in the perception of the general public which is significantly better than in Croatia.

Although it is undeniable that the Croatian justice system faces a myriad of problems and that the public's awareness of these problems is increasing on a daily basis, we hold that such a perception is linked to several ongoing high profile criminal cases that attract a vast amount of media attention and coverage.

### **Lengthy „high profile“ criminal cases and the media**

Several criminal cases have plagued the public space in Croatia since the beginning of 2010's, including cases against a former Prime Minister of Croatia and the

biggest Croatian political party, against the former Mayor of Zagreb (capital of Croatia), as well as against ex-Ministers, all for corruption offences.

Although some of these lengthy criminal proceedings have finished with defendants being found guilty and sentenced to imprisonment (most notably the „Platininska“ case), a lot of such cases are still ongoing, some of them for more than a decade (e.g. the „Fimi Media“ case).

In an Analysis of the Croatian justice system made for the National Development Strategy of Croatia until 2030 the World Bank noted that according to the Evaluation of the functioning of the justice system in 2016, 59% of judges and clerks thought that the length of proceedings is the main reason for such a widespread perception of corruption in the judiciary, and 63% of judges and clerks thought corruption was the chief problem that was influencing the effectiveness as well as the integrity of the justice system (World Bank Analysis, 2019).

These „high profile“ cases attract media attention in a measure that is in disproportion with the attention journalists give to „less important“ cases, thus focusing the public eye on a few criminal cases whose complexity makes them ideal for protracted proceedings which seem to be endless. So, a number of cases can be handled swiftly and with success but without media coverage, while at the same time one „high profile“ case will get all the attention and, to an average citizen, present a basis for making conclusions about the judiciary.

The media have an important role in modern democratic societies, especially in indicating problems (such as corruption) to the public. But, media business is also an economic activity and if publishers want to 'survive' in an open market they are bound to be more and more profit oriented. Reporting on the proper work of institutions does not sell newspapers – but, reporting on corruption and bad performance of those institutions will undoubtedly sell newspapers.

Another issue is the question of ideology of the subscribers of a certain newspaper. Privately owned media take into consideration the political attitudes of its customers and accordingly adjust their approach to reporting on certain matters (Halimi, Rimbart, 2021). The United States are an example of profound political and media polarization, with Republicans distrusting a large number of news sources which are considered liberal or closer to Democrats and vice versa (Pew Research Center, 2020). These tendencies make it harder for the media to give a balanced report.

Also, new media that came into existence with the creation of social networks, blogs, Twitter, Youtube etc., enabled anyone who wished to say something about certain problems to do so, including criticizing the functioning of the judiciary. In a time before Internet, it was customary that reporting on the func-

tioning of state institutions was done by professionals (journalists and public officials) through official channels which had a set of rules that, although it did not enable full access to information, it at least resulted with information that was fact-checked and verified. Nowadays, any person with a computer can create its very own world in which everything he or she reads and writes is „true“, while everything that differs from these „truths“ is „fake news“ – and this is supported by internet tools that process data about customers, users of e.g. social networks, giving them links to information which those tools consider interesting for the particular user.

In this context, it is useful to note that journalists and reporters, whether professional or hobbyist, don't read the full case files (some containing more than 100000 pages) concerning the cases they are reporting on, and are therefore not fully informed themselves. They combine sources (information they get from court, the prosecutor, attorneys) to try and provide the public with a report that can't really encompass all of the issues of a case.

All of these tendencies are present in Croatia. In a recent study conducted in Croatia regarding the opinion of judges on key issues concerning the media and the judiciary, over 80% of 84 judges (from municipal, county and higher courts as well as the Supreme Court of Croatia) who participated in the survey, think that the media are interfering „too much“ with their work, and 93.9% of them think the public overreacts to certain cases with higher media exposure, while 96,3% of them told they have never been influenced by politicians and members of the government in doing their job (Konjević 2020).

Aside from the length of „high profile“ criminal proceedings and their depiction in the media, there is another factor that the people care about when talking about criminal law and the fight against corruption – sentencing. Which punishment is appropriate for a defendant who has been found guilty of corruption on the highest level, an offence whose scope and consequences are never fully determined? In Croatia, the perpetrators of corruption offences are usually given a suspended sentence. The World Bank notes that of 141 guilty verdicts for corruption, only 20 perpetrators were sentenced to imprisonment (14.2%), while 87 of them were given a suspended sentence (61.7%), with 34 perpetrators whose prison sentences were substituted with community service (24.1%), i.e. 85.8% of people found guilty for corruption offences were not imprisoned (World Bank Analysis 2019).

All of these circumstances have a negative impact not just on the perception of the judiciary, but on well being and mental health of individuals in a society that is encountering the above mentioned problems, a fact that has been investigated and established in several studies.

## CORRUPTION AND MENTAL HEALTH

Although the connection between corruption as a socio-economic issue and mental health of individuals as a medical issue has not been researched to the fullest extent, there are recent studies that have established the existence of such a connection.

A link between corruption and subjective well being (SWB) and life satisfaction (LS) was found in a research that used „representative data from 150 nations“, concluding that perception of corruption (both individual and public) has a detrimental effect on subjective well being, a „finding held across nations and over time. Residents who have higher perceptions of corruption - likely due to perceived injustices and experiences of corruption - have lower LS. Moreover, living in more corrupt societies lowers LS even above individual perceptions of corruption“ (Tay et al. 2014).

In another study which examined data on 185 states from 2005-2017, the researchers claim they obtained „clear evidence that the level of corruption significantly affects physical health (expressed as Mortality rate and Life expectancy) and mental health (expressed as Happiness)“, reporting also that mental health is „more strongly affected by corruption in high-income countries than in low-income countries.“ (Achim, Valdean, Borlea, 2020).

Researchers studying this problem in Vietnam reported the same findings, finding that the „robustness of our results indicates that daily stress factors like corruption are important determinants of mental health in developing countries“, and that women's mental health is more likely to suffer because of corruption – an important finding that implies the possibility of „intergenerational transmission of poor mental health“ given that women are primary caregivers (Sharma et al. 2020).

Concerning the European Union, a study showed the same results while linking levels of perceived corruption with levels of depressive symptoms. Using data from the European Social Survey (99159 participants in 2006, 2012 and 2014), van Deurzen (2016) found „that corruption had a detrimental effect on mental health“, i.e. that there is „a positive ... relationship between higher and increasing levels of corruption and elevated levels of depressive symptoms in the European countries between 2006 and 2014“, and that religious persons and people experiencing material adversity are more prone to this effect of corruption on mental health (van Deurzen 2016).

While explaining how measuring corruption using CPI-Corruption Perceptions Index may be problematic, van Deurzen also observed that according to the stress theory „it is the perception of the stressor that determines its effect“ thus making public perception of corruption more relevant for individual mental health than actually existent corruption.

Therefore, disorders within social systems such as the judiciary, no matter what their true scope might be, have a harmful effect on mental health and are possible roots of mental disorders, depression in particular.

No studies were found in regard of corruption's effect on mental health in Croatia, and hopefully inquiries in this field will be done. The importance of researching this issue stems from the fact that after cardiovascular and malignant diseases and injuries, mental health disorders are the fourth most common reason for seeking treatment in Croatia (HZJZ, 2018), and more than a quarter (25.9%) of those patients suffer from depressive disorders.

## CONCLUSION

In spite of the fact that it is not possible to ascertain the true measure of corruption within any system, including the judiciary in Croatia, there are tools by which we can determine levels of perceived corruption and these have shown that Croatia has been struggling with high levels of perceived corruption in the public sector (ranked 47<sup>th</sup> in Transparency International's CPI for 2020, having the same result as Belarus and Cuba), as well as one of the worst public perceptions of the judiciary in the European Union.

One of the main perceived reasons cited by the general public for such a perception of the judiciary in Croatia is the interference or pressure from the government or politicians in the judiciary, i.e. political corruption, but the perceived extent of corruption within the judiciary surpasses the number of actual criminal or disciplinary proceedings concerning such illegal behaviour. Compared to other EU countries of similar size and population, it is obvious that all of the countries which were compared have yet to attain the standards set by the EU, but among them Croatia has the worst (general) public perception of judicial independence.

Lengthy, seemingly endless criminal proceedings in „high profile“ cases attract a disproportionately vast amount of media attention (when compared to other legal proceedings), and their correct portrayal in the media presents a challenge due to a variety of reasons. This is a serious issue given that modern media present an important source through which the public gets the information and impression of the judiciary's functioning. Another factor that influences the perception of the judiciary is the mild sanctioning of offenders found guilty for corruption offences in Croatia, which are usually given a suspended sentence – a sanction that does not instil confidence in people that real progress is made in the fight against corruption.

Several studies conducted in different parts of the world have established a clear connection between the perceived level of corruption and its negative effect on mental health, finding that corruption has a detrimental

effect on mental health, with women, religious people, and those experiencing economic hardship being more prone to its harmful effects.

Further research in this field is of importance for many fields of science, in particular for psychiatrists and public health experts, but also for jurists, media experts and policy makers planning anti-corruption campaigns.

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The authors contributed equally to this article, and both have read and approved the final manuscript.

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