

## **6. Aleksandar Shopov**

### ***“ The Corruption in the Judiciary and its Defining, Delimitation and Elimination “***

An independent, trustworthy and effective judicial system is an essential pillar of a democratic state. The judicial system is a guarantor of property rights and a mechanism of dispute resolution, and is crucial to the achievement of good corporate governance in the private sector as well. The efficiency of the courts is an essential discipline on other structures of the State and thereby underpins their credibility also.

In this paper, at first, I intend to explain that, unfortunately, in many countries, especially in the developing ones, the judicial system is not effective, but corrupted and inadequate to its' right dimension and incompatible with the model as it should be: effective, independent and appropriate. The judges and court officials are liable on corruption and bribery and, in many cases, they are not doing their job in the face of the justice, but often in the face of their own interests. Inefficiency in courts and other systemic corruption have led to the deterioration of the quality of service delivered by government agencies. Because corruption has been an intrinsic part of the way the state has operated in many countries, it will be impossible to remodel the state if corruption persists.

The first step to be made in researching this type of problems is defining and delimitation of the corruption in judiciary. It is important to divide overlapping and complicated terms such as corruption, scandal and fraud. Corruption is defined as an “illegal transaction, where both actors benefit from their special position in the market or the government”. Scandal is “the public reaction to allegations of corruption and thus it is interconnected with the issue of legitimacy”. Fraud, however is a purely criminal category. As it is mentioned in the book of Ph.D. V. Chingo, corruption can only be defined within a specific society and at a specific time. This culture specific aspect of corruption is reflected in the division of so called black, white and grey corruption.

Black corruption in a given society is a reprimanded behaviour both by the public and by experts. It is a well defined area of the untolerated behaviour. White corruption on the other hand is the behaviour that is tolerated by the public in a given society and not looked upon as misbehaviour. Grey corruption is the area in between, which is tolerated by a part of the society, while seen as corruption by the other part. It is also important to realize the dynamics of the definition of corruption, as it changes with geography or time from black to grey and to white corruption (or vica versa). Corruption scandals are often only a sign of this change in the public perception of corruption.

It can be obvious that in countries with cultural and social differences a behaviour of a court official person can be considered as corrupted by one country, and considered as “white corruption” by another country. Anyhow, the corruption as a problem persists and will be present in the judiciary for time to come, but the objective is to minimize it and turn it to high risk for anyone who's behaviour is corrupted. This is because corruption in the judiciary gives the rest of the government a bad name and seriously impedes the effectivity of governance. Corruption degrades the judiciary and transforms it to a marketplace where justice goes to the highest bidder-regardless of the law, regardless of the fundamental principles of fair play, and sometimes, regardless of plain common sense. Also, many judges reportedly sit short hours, often from 9am to 12pm, three days a week. Recourse to the courts is seen as impractical and outcomes are seen as unpredictable, partly because of incompetence but very often because of corruption.

Corruption in the judiciary has the potential to do far more damage to society than corruption elsewhere. An independent, impartial, judiciary is often cited as a fundamental institution supporting civil society and a well-functioning market economy. When judicial decisions become suspect due to corruption, businesses reduce productive

activities, particularly those with greater potential for disputes, such as long-term investment contracts or the production of complex goods. There are several motive forces behind corruption: greed, ambition, and the desire to put one over others, and these forces influence directly to judges and court officials to their corrupted behaviour. But shouldn't we ask ourselves why are judges bribable and liable to corruption? And what is the cause that makes the level of courts' mistakes great, and a lot of judicial decisions or verdicts of regional courts to be frequently cancelled by the Supreme Court? The most widespread phenomenon is a fact that among the judges there are persons who absolutely don't merit the high status of a judge, and when their responsibility is questioned, the corporate solidarity is shown. And at last, how can this dangerous social disease be cured?

It is important to identify the causes of corruption in order to design measures that should be taken to prevent and control corrupt behaviour. Identifying the sources or causes of corruption will allow countries to develop a corruption prevention plan that changes the organizational features that allow corruption to occur. A corruption prevention plan should address issues of accountability, efficiency and effective administration. This would improve the attitudes of the staff and the overall integrity and performance of the institution by minimizing the opportunities for bribery and corruption. The judiciary is supposed to provide an essential check on the other public institutions. As a result of this role, a fair and efficient judiciary is key for any anti-corruption plan. Therefore, corruption in the judiciary should be dealt with from the start. In order to design policies in the fight against corruption, it is necessary to build a data base with quantitative and qualitative information related to all the factors thought to be related to certain types of corrupt behaviour (embezzlement, bribery, extortion, fraud, etc.).

Based on some empirical researches, I can get to a conclusion that in the judicial systems of the developing countries, consideration should be given very soon to the status, training and pay of the judicial profession. Rather than being seen as the crown of the legal profession and an essential arm of the state, judges are low-paid and not well respected. The low pay of judges and court officials creates incentives for corruption, and the low status of the profession undermines efforts to make professional standing and reputation for integrity a disincentive to corrupt behaviour. Issues of financial autonomy and personal safety of judges depended also upon the will of the executive. In developing countries, not only that the judges are not receiving salaries according to their position, but those salaries could not satisfy the basic minimum of existence at subsistence level. The court budget is a part of the state budget, hence it was determined and mostly spent without the control of the judiciary. The financial status of judges just used to show how government was disinterested in making the judiciary truly independent. Moreover it leads to the inclination of corruption in the judiciary. The ruling parties are involved in most cases of corruption also. They are granting apartments loans and promotions to obedient and "suitable" judges. And the judges bring corrupt verdicts just because they can really use the money or other goods that they will "earn" with their obedient decision. And that is because their salaries, as I mentioned, are very low. If the salaries were higher, then it would be much more expensive for one party in one case to bribe a judge, and also, the judges themselves would made no risks of their job and their credibility that easy! So, I can argue that a possible solution of the corruption in courts is raising the salaries of the court official persons. But that does not mean that the problem is solved. There are more things to be done.

Some countries implement other instruments on fighting corruption in courts. Combating corruption is not confined to the government alone. The private sector, which has a considerable stake in suppressing corruption, must help the government in this mission. One partnership between the government and the private sector in eliminating corruption is the

improved feedback loop arising from greater transparency and effective information dissemination system. In the Supreme Courts in some countries, this strategy is being implemented through the operations of the Public Information Office (PIO), which is mandated, among other things, to inform the public on the policies, plans, activities, and accomplishments of the Office of the Court Administrator and the lower courts. The PIO demonstrates the effort of the Supreme Court to engage the public-more specifically the media-in a cooperative and constructive partnership that would increase the changes of corrupt practices being uncovered. Thus, making judiciary officials directly accountable to the public.

To confront the problem of corruption in judiciary, there are a variety of approaches and possible solutions and actions that should be considered and taken, both in higher and lower levels of court systems. And anyhow, the result should go to strengthening judicial integrity and getting back the trust and confidence in the system. The objectives of strengthening judicial integrity are to:

- **Design** practical approaches which will result in better judicial conduct and raise public confidence in the Rule of Law;
- **Define** judicial accountability and devise ways to introduce that concept without compromising the principle of judicial independence;
- **Facilitate** a learning environment in which judges can be exposed to tested practices for judicial reform, management of change and the strengthening of the rule of law; and
- **Raise** awareness regarding the level of corruption in the judiciary, the proof that an anti-corruption strategy can and does work and the role of judges in combating corruption.

In closing, I have to argue that judiciary corruption is not likely ever to be fully eliminated, but the objective is to minimize it, so that it becomes an exception and not a rule, by turning it from a low risk and high return activity into a high risk and low return activity.

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