CORRUPTION IN THE JUDICIARY

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*"Then, the countries in the region have multitude of anti-corruption laws, but they also have judges appointed and beholden to politicians who are selective about the enforcement of these laws. What good are these laws when crooked politicians know they will not be applied 1*".

Corruption is a frequently mis-used term. It is a lega[[2]](#footnote-3)l2, sociological, political and colloquial terms[[3]](#footnote-4)s3.

Corruption is a clearly negative expression. It carries a markedly expressive and symbolic meaning, which can result in manipulation of the term, its confused use or, on the contrary, avoidance of any discussion about it. There is a long history of manipulation with anticorruption campaigns, dangerous not only for the absence of their actual effects, but also for their marked damages, direct and indirect, to peopl[[4]](#footnote-5)e4, nations, citizens and institution[[5]](#footnote-6)s5. Such bad experiences give an argument for avoiding any discussion about corruption. Even the benevolent hold that mere debate about corruption in the judiciary is harmful and that the same issue can be viewed from other starting points - such as an organizational defect of inaccessibility to the public, inefficiency, or disciplinary responsibility of judges. We cannot agree with this view. Publicity of court proceedings is not a procedural principle but rather demand for responsibility towards democracy. Autonomy and responsibility within the judiciary are inseparable requirements. Arguments over whether discussion about corruption can cause harm have been defeated, in theor[[6]](#footnote-7)y,6 a long time ago (even in the practice of the Strasbourg Court of Human Rights[[7]](#footnote-8)) 7. “In cases (of corruption in the judiciary) of public indictment (occurring in stable and new democracies too) judges must not be, nor must they believe that they are, excluded from any public criticism. They cannot present themselves as the guardians of freedom of public opinion and simultaneously misuse this status in relations with their critics. They must not repress public debate about the problems and restrict them to the judiciary, as is the case in some countries in which the debate about corruption in the judiciary has been raised[[8]](#footnote-9)” 8 (Bangladesh).

The publicly global and non-specific impression that there is corruption in the judiciary is not righteous and accurate in all aspects, at least subjectively. Those working in the judiciary have a permanent feeling of tension, responsibility and burden, and think all accusations of corruption are unjust. From their day to day perspectiv[[9]](#footnote-10)e9 they blame this primarily on poor law[[10]](#footnote-11)s10 and demanding clients. It is true that laws are: poor and incapable of regulating ordinary court operations and decision-making process, the number of cases, the culture of litigation, misuse of legal authority, poor material background, poor motivation, etc. Formally, they are there but the stress is on the conditions that are hard to change and that are not directly related to corruption, which puts the debate about corruption in the second place and its cases are proclaimed as isolated incidents.

Corruption in the judiciary is a delicate subject, although it should not be so. An abundance of emotion is usually expressed in distressful accusations, equally true and false. Truth is, however, established only when sought, denied and proved. Statements should not be taken as accusations. They contain dilemmas, giving us a clearer image of truth. Accusations encourage defence irrespective of the power of arguments. The analysis of corruption in the judiciary is not an accusatio[[11]](#footnote-12)n11. This text is a mere analysis of the phenomenon of corruption in a particularly important field - in the judiciary. Corruption is a phenomenon that, irrespective of all persuasive words and emotions, cannot be entirely eliminated. It cannot be justified or challenged either. This phenomenon can be understood and explained, so let this general agreement be the starting point of our further debate.

**81. Corruption in the judiciary: a thesis on the number of cases**

There is corruption in the judiciary. It exists in a form in which every institution is prone to being spoiled. It is an unavoidable outcome of the professional and moral imperfection of humans who have the power to make decisions that affect various interests. In addition to the economic market every society has an exchange of status and power and a supply and demand of illegal services. These interactions are an integral part of the system and its institutions; undesirable and dysfunctional, but an accompanying “grey” part of it. From this standpoint, corruption in the judiciary is nothing but a reflection of human imperfection. It is a problem of values and norms, rather than an institutional problem. Corruption is said to be a problem of individual moral weakness.

We have now got to a point of disagreement. I cannot accept the statement that, there is corruption but, because it is incidental and seen as an individual’s weakness, it does not appear to be dangerous. On the contrary, it is understandable, for some people it is relativ[[12]](#footnote-13)e12 and justified. According to some, a major disputable issue is its SCOPE, the grounds for saying it exists, how it is measured and, optionally, whether the situation is aggravated, or not. “Scope” means the number of cases, although strict logical analysis should not pay any attention to i[[13]](#footnote-14)t 13.

In social sciences such a methodological position is not acceptabl[[14]](#footnote-15)e14. Positivistic methodological position is not the only legitimate method of social sciences. On the contrary, the scope of social study is overburdened with reductions to causal and nominalisti[[15]](#footnote-16)c15 expressions. The extreme empirical standpoint (immeasurable is nonexistent[[16]](#footnote-17))16 and analytical starting point are not the prevalence of a dogmatic legal method, criticism of metaphysics or a critical vie[[17]](#footnote-18)w17. If there is no evidence of corruption, if its cases cannot be unveiled and quantified, if it is not indisputable, then it is invisible and nonexistent. This is silent about the subject, a consequence of the standpoint: “What cannot be discussed, must not be discussed[[18]](#footnote-19)”18, which is implicit from an epistemological standpoint. “Denial of immeasurable phenomena”, according to Kolakovski “is, as a rule, governed by the rule of silence and the gesture of denial, the articulation of which is the principle of confidentiality. So understood positivism represents some sort of a life program, voluntarily narrowed, which avoids taking part in everything that cannot be well expressed. An attempt is being made to impose the language which releases from obligation to create the view about major human conflicts, which creates a shield and unresponsiveness to *ineffabilia mundi* and to the mentioned experience that being of qualitative importanc[[19]](#footnote-20)e19 cannot be described”. Hidden behind such methodological restriction, the burden of evidence is placed on those claiming the absence of corruption, and for any unambiguous case there is still the explanation that it is the exception rather than the rule, and that it is about an individual rather than the system.

Actually, it seems to us that the background of this view is not the suspected methodology or epistemological dilemmas, unfamiliarity with the methodology of social sciences, or a reflection of legal positivism, but pure practical reasons: interest and political position, lack of knowledge and erroneous education. They can be overcome by moderation and sound, scientific objectivity. Corruption in the judiciary can be discussed without accusing or defending, denial of topics and cases.

Hence, corruption in the judiciary is a legitimate and, in principle, scientifically neutral object for analysis. It should not be mixed with the discourse of political debates and media sensationalism, nor it must be brought down to its penal law aspect or, more broadly, to the positive empirical determination of the number of cases.

But, if I disagree with the approach, it does not mean that I do not accept part of the statement. Corruption is not a rule, but an exception in the judiciary. It is, however, a part of the established system, it is systemi[[20]](#footnote-21)c20, not accidental. As a matter of fact I have written that: “A general task is the upgrading of the judicial environment which comprises stabilization of the judicial system. Legitimacy of judiciary along with public confidence in impartiality and efficiency of the judiciary are the prerequisites for creating a due legal system and, consequently, for the control of corruption. Although corruption in the judiciary is incidental (the judiciary is not any different from its social environment) and despite the reasonable assumption that the moral qualities of judges as professionals are outstanding and highly rated, one cannot oversee very poor effects of law”.

In the first place there are internal and autonomous requirements of the profession and associations of judges that must be met and, on the other hand, public demand for social responsibility. Changes in the structure within the judiciary authorities are also motivated by the need to link autonomy with the awareness about responsibility for the outcome. Bearing in mind the principle that it is primarily the profession that can explain why penalty norms are ineffective, and avoiding any pressure upon the court, the assessment has to be made as to the achievement of the goals set by the legislative authority, with respect to control of corruptio[[21]](#footnote-22)n 21.

**2. Corruption in the judiciary: what does the number of cases show?**

There is another standpoint from which to disclaim the statement that there is no corruption in the judiciary because there are no criminal charges or verdicts. In criminology, deviation and criminality are very much differentiate[[22]](#footnote-23)d22 by the type of violation. Not everything that provokes accusation is a criminal act which requires criminal proceedings.

Many phenomena that point to corruption are not in principle treated as considerable violations of judicial ethics or juridical code of honour. The following examples are not considered violation of norms: a judge’s acceptance of a client’s invitation to a free lunc[[23]](#footnote-24)h 23, spending time at court with attorneys, accepting donations for construction works and court equipment, and sponsorship of trips. Attorneys frequently tell their clients which judge is “ours” or “theirs” and promise mediation in speeding up the procedure. This should be distinguished from the criminal act when they ask for some extra money “for the judge”. We, frankly, do not have any information about the frequency of such cases, but the point is in that they do exist and are not treated in practice as criminal acts, although they are unambiguous manifestations of corruption in the judiciary. The absence of proceedings against them does not mean that they do not exist.

In addition, corruption is certainly an act difficult to reveal and prove as the moment of interaction in corruption is frequently concealed and the matter of two fully dependent parties. Giving and taking bribes is a criminal offence and exchange of services can be easily disguised and explained by some good reasons. Because of these risks, corruption in the judiciary cannot be unveiled in the usual course of events but if it is, it cannot be proved. Special investigation methods are based on the awareness about this very fact. “As a rule, the act of corruption is a matter of extreme confidentiality. All parties included in the direct transaction (bribee and briber) are usually satisfied with its outcome and aware of negative consequences if their part in this criminal behaviour is unveiled. This equally applies to those dissatisfied. At the same time the victims of corruption, being most frequently the general public and society as a whole, are either unaware of the specific acts of corruption, or already so tired of it that they are insensitive to it[[24]](#footnote-25)” 24.

Finally, in his study of the statistics of corrupt criminal acts in Croatia D. Derenčinović gives substantial evidence about “filtering during criminal proceedings”. As a matter of fact, registered corruption acts are dropped in the later stages of criminal proceedings, and there are few cases that are dealt with and verdicts brought against their perpetrators[[25]](#footnote-26)”25. These figures are not negligible. “The amount of registered criminal acts, accusations and final verdicts against criminal acts related to corruption, helps in coming to the conclusion about the so called “filtering procedure” i.e. gradual classification of some corruption events into “dark figures”. This is, actually, the number of realized criminal acts that are not known either because they are not registered or are subject to various procedural-judicial mechanisms that lead to filtering. The effects of filtering in this case are the following: total number of registered acts 3316, of which accusations account for 1408, and final verdicts 570[[26]](#footnote-27)”26. This does not cover everything: 75% of the sentences are probation sentences and the unconditional ones are within “the lower third and even lower fifth of the established penalty legal frame[[27]](#footnote-28)”27. After a detailed analysis of criminal policy, the quoted author comes to the profound, however documented, conclusion: there is a difference between the legal and judiciary penalisation policy, or, to make it simple, irrespective of relatively severe penalties for criminal acts of corruption (severe legislative policy), most sentences are suspended, almost close to minimal.

Hence, the number of criminal charges for corruption against judges and other court officials is only of relative importance (“the dark figure” of criminality) and unpronounced sentences are entirely pointless. Moreover, this shows that one of major issues of corruption control and penalization exists in the very courts. The outcomes of inappropriate penalizing policy are used as proof that there is no corruption (medice cure te ipso!), and this really is a paradoxical twist.

The problem of corruption in the judiciary is not brought down to the level of its scope, or an unambiguous proof of suspected or performed individual act. It is not only a question of professional ethics and deontology, but also evaluation of the system and structural generation of corruption. Similarly, bringing corruption down to its penal law dimension hides and blurs the problem. Therefore, the demands for valid and unambiguous evidences are epistemologically and logically pointless. They carry their weight only if there is the initiative to take criminal proceeding; otherwise they are obsolete in a democratic and professional debate. Understanding of this phenomenon requires broader methodological and theoretical frame.

**1. Corruption in the judiciary: relativisation**

So far we have disproved two theses. Firstly, corruption (in the judiciary) can be elaborated and so methodological disapproval (insufficient induction) is not justified. Secondly, it is a false thesis that the absence of reports and sentences for corruption in Croatian the judiciary denies its existence. Such statements devalue every debate about corruption in the judiciary and relativis[[28]](#footnote-29)e28 every statement about it. Unfortunately, there is another thesis, this time a true one, that relativises corruption in the Croatian judiciary.

It says that the judiciary is not any different from its social environment. This frequently used colloquial statement is only partly true. It is true that court proceedings depend on many social, economic and political variables, and that the courts do not act in socially neutral environment. Judges and people act rationally. In the crisis of social values and norms, one cannot expect immaculacy and internal consistency of the professional, civic or human moral. Economic situation plays a very important role. Insufficiently paid judges are prone to being bribed. In crises judicial institutions carry the burden of conflicts. Politics is very influential. Authoritarian and non-democratic systems can hardly resist the pressure of external power and reject abiding by otherwise unjust laws.

This is very much true under our historic context. Over the past decade Croatia has undergone rapid social change. Its society, only partly and in the last decade of the 20th century, has adapted to the values and norms of the modern industrial society. Tradition of rural values and ideological socialist phrases has created anomic confusion and the lack of clear orientation to values. Social changes were rapid. There is a new order of relations between social groups. Actually, opening and rapid closing of the channels of social promotion and vertical stratification occurred simultaneously, differentiation and tensions between social groups have increased, there is a new division by the criteria of fortune and power, and there are new standards for the assessment of reputation and status. Social conflicts, entirely beyond institutional structures and law, have escalated to open war. Just in its nature, defensive and liberative, nevertheless the war was destructive in its social consequences upon tangible goods, peace, legal and physical safety. War is destructive to property, people and institutions equally. To put it simply, along with all the evils of war, we got all the evils of social conflicts and divisions, and new tensions of the new order of social interests. The legal system, formally harmonized with the norms of the modern democratic constitutional organization, is being over-flown by the inflation of low technical level regulations, poorly prepared actions and improvisations, under clearly expressed habit (legislative optimism) of taking for the norm mere enactment of the law, rather than its realization and possibility of implementation.

The economic situation is devastating. Its system is characterized by low efficiency and competitiveness, slowed down modernization and structural adjustment. Industry is destroyed, whereas consumption is increasing. Local currency is stable, but there is no economic development. The investments are low and foreign ones are channelled to monopolies and state businesses. The national budget is in excess of the tax burden, its formulation is non-transparent and its spending is uncontrolled. The level of state spending and guaranteed rights is above the subsistence level. Wages are in continuous realistic growth, but always below the aspiration. All this accompanies the change in ownership structure and is only an elusive expression of the (limited?) robbery of state ownership formally carried out through legally sub-regulated privatisation and denationalisation. There are clear signs of emerging criminal groups. Entrepreneurship is very often on the edge of law (particularly in application of tax, construction and contractual standards).

In political development, the initial optimism over democratic pluralism is replaced by ambiguous political polarization, domination of the party elite, and personalization of politics in its leaders. The established authoritarian order is adjusted to the aggressive goals of, not only defending, but militant defending of positions through the control of repressive instruments. State administration is degenerating into a bulky and wasteful apparatus accommodated to personal (even by nepotistic standards) and political criteria. A merit system in employment, education, selection and advancement in state administration has collapsed.

The objective herewith is not to give a clear analysis of social and political processes, but to elaborate on the thesis “ The judiciary is simply a reflection of its social environmen[[29]](#footnote-30)t29”. We cannot agree with this conclusion. The described social processes are either irrelevant or of secondary importance for the judiciary. Even if this statement were true, a major implication is not the expectation of a better society and better times, but acceptance of the fact that the problem of corruption exists, both in society and the judiciary. Moreover, a **major feature of the judiciary is that it is different and separated from society and is “simply ” not a reflection of social processes**. The judiciary has a special normative and symbolic identity, its organization principles and institutions, daily operating routine, everything that is other than, and different from, the society which is its environment. Indeed, this very difference in relation to society characterizes the judiciary. When we say that it resembles or reflects society, we acknowledge that something must be wrong about its main characteristics, and that it has failed systemically.

Let us for a moment discuss specific features that distinguish the judiciary from societ[[30]](#footnote-31)y30. First of all, let us list the principal arguments. Typically, judges are the people of unambiguous and solid moral characteristics. The law is, for them, a clear instruction and an orientation in behaviour and decision-making. Instead of arbitration there is hierarchical control and the appeal against a verdict - the right to appeal. To become a judge one undergoes special education and a set of examinations, as well as practical work, training period and specialisation. Once appointed, they must be continuously trained. They have an autonomous position granted in terms of professional authorities. Wages in the judiciary are related to status, rather than to merit rating. They are not strictly linked with the overall economic status or the efficiency of the judiciary. The profession is extremely reputable. These are clear elements for the overall conclusion that the judiciary is an autonomous system characterized by its differentiation and isolation from social context. Organization principles of the judiciary point out its differentiation (Ausdifferenzierung[[31]](#footnote-32))31. A **Court is an organization rather than the communit[[32]](#footnote-33)y32**. The elements of public proceedings and sham justice were abandoned, in principle, as early as the end of the 19th century. Leftovers of these traditions (lay jury, lay proceedings, arbitration, principle of publicity and ceremonies) have the effect, in entirely different legal and political, actually social, contex[[33]](#footnote-34)t 33. Rational law implies legal positivism, legalism and formalism. Modern law is considered to be something proclaimed by an appropriate act, i.e. the positive law applied or sanctioned by the state. It expresses the will of the supreme legislative authority that regulates social relations by customs and judiciary means. Modern law has no demand upon legal entities for any moral motive. It distinguishes moral from legal requirement. Everyone abides by laws as publicly sanctioned agreements that can be legitimately amended at any time. It is assumed that legal entities use private autonomy in the designated rational manne[[34]](#footnote-35)r34.

So, what is the point? A modern, autonomous the judiciary is not a mere reflection of social changes. It is the system with its own SYSTEM rules, under which corruption is manifested (not only) as a defect and deviation of the system, as a stable aberrant system, a dysfunction caused by the lack of indispensable and sufficient conditions for the emergence of the modern judiciary and modern law.

**4. Cases**

Cases of corruption or corruption scandals do not occur in totalitarian regimes. If they do, their function is political retribution against the people, rather than against the phenomenon. In authoritarian political systems discussions about social pathology, let alone corruption, are not welcome. Where there is no freedom of speech (press and media) there are no corruption scandals. The judiciary has been discussed for too long, but only in the terms of procedural rules, and amendment of material rights. Only now and then has it been considered in the light of organization, system and technology, and very rarely in the context of professional deontology. Therefore, several hot scandals shocked everybody - public and professional circles equally.

Here are some of the[[35]](#footnote-36)m35. Charges were brought in Gospić against the judge who personally took from a client DEM 1000 for court fee, although it was ten times lower. Criminal charges were brought against the judges of a Commercial Court for suspicion of discrimination in favour of the client in bankruptcy proceedings. Many judges were found to have had close connections, received gifts and enjoyed benefits in the bankrupted savings bank. One of them, otherwise very active in the professional association of judges, was accused of receiving gifts and enjoying benefits in buying things from the companies that were the clients at his court. Some time ago the whole system of collection of high compensations for car accidents was revealed as well as its involvement of lawyers, medical doctors and judges. In a scandalous tapping of the former President of Supreme Court it was found out that he had had friendly relations with a notorious criminal, whom he had protected. Similarly scandalous shorthand records, from the presidential office, revealed that the intervention at court in specific cases had been a usual routine. Not long time ago many lawyers and judges were accused of corruption to adjourn serving the time. The press unveiled systemic connections between organized crime and its political patrons, prosecution authorities, the police and the court.

All these cases have something in common: nobody has ever been sentenced. In most cases there were no criminal charges. How it was possible was revealed in the statement of the new President of the State Judiciary Council who, on assuming the office (July 2001), found in the drawer of his table many criminal charges against the judges. There is no record of any charge for corruption of judges or lawyers. However, there is one charge against a medical doctor for taking part in a bribe.

We have already commented on the “dark figure of criminality” and corruption. Indeed, corruption is an act that is not easy to unveil and deal with in a just manner with a sentence. The fact that there is no such sentence does not mean that there is no corruption (because it is unveiled) or that it is there (but there is no wish to unveil it). The consequences of unveiling a scandal and the legitimacy of the judiciary to public opinion are not disputable.

A particular issue, not a minor for final conclusions, is the question “Why now, and in this form, to have a debate about corruption in the judiciary?” After a decade of passive watching its expansion, corruption is imposed as the hottest public, political and media issue. Why is it unveiled in the form of many scandal[[36]](#footnote-37)s36? Why are the scandals linked with raised emotions, exaltation and moral indignation? There are many explanations of this.

1. Firstly, the reason for discussing corruption in the judiciary is to open a general debate about corruption in the Croatian the judiciary. Corruption as a personal experience, known to its participants and the general public, has become a frequent topic of public discussions and public accusation. Political changes have triggered open discussions about it. There is no more political protection and patronage over the corrupt elite, whose fortune is explained by links with the political, police and judicial elite.

2. Secondly (evident in the judiciary), corruption as a topic is used as the background in designing and achievement of political goals, and in carrying out institutional reforms. It is a wonderful means of legitimising the program of a political group or a party. It is true that political rhetoric pointed out quite general goals of the war against corruption, but when it came to undertaking specific legal measures against it, there were hesitations and backlogs.

3. Thirdly, and perhaps most importantly, the public is desensitised to corruption and organized crime. Although the events of corruption had been evident for at least a decade, it was necessary that the independent media unveil the cases of apparent illegal acts, and channel and mobilize public opinion. Freedom to criticize high-ranking officials preceded mobilization of the public in their accusation of corruption.

4. Fourthly, the war against corruption is a global trend and topic. Therefore, this issue reached the creators of political and public opinion through various channels.

5. Fifth is the explanation of changes in public opinion under the influence of value patterns, transferred from developed democratic countries. After all, corruption really causes outstandingly damaging consequences upon market competition, efficiency of the economy and development. Hence, the difficult social and economic situation revealed the presence of influential social groups that had bought their powers and influence for money, and by their influence the status and economic privileges.

The list of factors might even be longe[[37]](#footnote-38)r37, but can be summarised in the following two conclusions: corruption has been acknowledge[[38]](#footnote-39)d38 as a social problem because it is there, in the experience of people as a humiliating experience; and in society there is moral disapproval of corruption.

**5. Reports**

There are two groups of reports made by different organizations that refer directly to corruption of the Croatian judiciary.

The first one is primarily concerned with the analyses of the political situation in Croatia. It tangentially refers to the problem of the Croatian judiciary. The reports also evaluate the status of human rights in the country and the respective role of the judiciary.

Both reports have several things in common. First of all, they show some advancement in the development of democratic institutions and practice, which is also applicable to the status of the judiciary. “Until December 1999 the Croatian judiciary had functioned mostly as a tool of Tuđman’s regime. After new elections it has functioned as an autonomous body[[39]](#footnote-40)”39. In the same report the index of the judiciary function improves from 4.75 (1997), 4.75 (1998) and 4.75 (1999/2000) to 3.75 (2001). The corruption index also drops from a very high 5.25 to 4.50. The index for the rule of law goes from 5.00 to 4.13. These figures must be interpreted with regard to a previous report (1998), which explicitly acknowledges the corruption of the Croatian judiciary: “Domination of one party in the Croatian political scene has encouraged spreading of corruption in all segments of government[[40]](#footnote-41)”40. A similar finding is given in the report of HH[[41]](#footnote-42)O41, reports of various agencie[[42]](#footnote-43)s42, commercial risk-assessment for potential investors, etc.

Another feature is a negative opinion about the efficiency and professional ethics (a milder expression for “corruption”) of the judiciary. When discussing corruption in the judiciary, it is very important to mention the study of the World Ban[[43]](#footnote-44)k43 in which Croatia, compared with other transitional countries, has a relatively low level of everyday corruption (administrative corruptio[[44]](#footnote-45)n) 44, but a very high degree of corrupting influence on the state captur[[45]](#footnote-46)e45. This result is very much affected by the analysis of judicial corruption. The World Bank study has unambiguously shown that “weaknesses of the judiciary and inappropriate application of the constitutional state laws, appear to be major individual reason for corruption” and that “the studies show very poor public scoring of honesty and honour of the courts”. Compared with other transitional countries the judiciary corruption index (JCI) in Croatia has been shown to exceed the average, and even the index of former Soviet Union members. Moreover, in a review of factors that are “a limitation of free entrepreneurship”, an inefficient judiciary surpasses (by far!) the factors such as financial instability, over-regulation and high taxation, organized criminality and political instabilit[[46]](#footnote-47)y 46.

Precisely, the index of administrative corruption is nearly 0.619, corruption of the state apparatus 0.429 and JCI is 0.334. Let us elaborate on the corruption index of the judiciary: out of 22 transitional countries, five have achieved poorer results (Azerbaijan, Moldova, Lithuania, Slovakia and Ukraine). Almost the same scoring (slightly better) for Albania, Bulgaria, Latvia, Georgia and Kazakhstan. All others are better (Armenia, Byelorussia, Uzbekistan, etc.). Croatia is not comparable with Hungary, Slovenia, Czech Republic, Poland and Estonia. The point here is, in those total scores Croatia is well positioned, so that the JCI score is totally atypical.

This view of the World Bank is probably best expressed in the tender for the loan given for modernization of the Croatian judiciary (US 8,250,000). The following words address the Croatian the judiciary: “Particular efforts are needed to reduce corruption in Croatia. Transparent and predictable actions of the government’s institutions, an efficient judicial system with responsible public administration, and a banking system free of political influence, must help reduce corruption[[47]](#footnote-48)” 47.

This statement is supported by the study of UNICRI and Gallu[[48]](#footnote-49)p 48 in which the findings about corruption in the judiciary are alarming: 49% of the interviewed subjects think that the level of corruption in the judiciary and judges is **very high**, which ranks Croatia the worse of the eight simultaneously tested countries. Even worse is the public opinion about corruption in various professions: court officials top the list of all professions to whom the subjects would offer bribe. Similar findings are those of the European Bank for Reconstruction and Development (EBRD), which do not consider Croatia a highly corrupted country either, but finds that the efficiency of its the judiciary is poo[[49]](#footnote-50)r49. According to the report Croatia is one of the countries with the least stable legal system, and state operation (good governance), but ranks high in corruptness of its society.

Standard CPI (Corruption Perception Index) published by Transparency International does not refer explicitly to the judiciary, but shows the frequency of changes. Actually, in 1999 when Croatia appeared for the first time on the CPI list, it was positioned and scored dramatically low (74). With democratic reconstruction its position markedly improved (in 2000 it was 51st) and in 2001 it shared 47th position with Bulgaria and Czech Republic. With satisfactory average (3.9) it was grouped among the countries in which corruption was a serious, although not a critical, phenomeno[[50]](#footnote-51)n50. Almost two thirds of the world countries are scored below 5.

Finally, everything that has been said corresponds to empirical studies of corruptio[[51]](#footnote-52)n51 conducted by the press. In these studies (there were several of them) some 50% to as high as 97% (“Jutarnji list”) subjects agree with the statement that the Croatian judiciary is corrupted. “The fact that half of the interviewees believe that the judiciary is corrupt is devastating. This figure is in sharp contrast with 13% of those who do not agree with the statement about corruption (which might be a part of halo-effect). So a high percentage of those convinced of bribery and corruption of the judiciary may be based on generally accepted views and personal experience with Croatian courts. Nearly 60% of those interviewed do not consider Croatia a state with the rule of law. Even if this attitude is partly attributed to the influence of the stereotyped “non-functional constitutional state”, there is still a minor opposition with a different opinion. However, the fact that some subjects base their opinion on their personal experience, probably corrects the influence of the above stereotype. A percentage of the subjects with a markedly bad experience with courts is actually low - as low as 14%. These mostly complain on the length of the proceedings (74%), unjust sentence (27%), corrupted judges (12%) and their poor treatment (8%): Nevertheless, scores for the overall situation in the judiciary are very low. People think that Croatia cannot be called a state with the rule of law (57%), they do not trust the courts (52%), are convinced of their poor function (43%) and corruptness of the judiciary (50%)[[52]](#footnote-53)” 52

The opinion that “health care is the most corrupted after the judiciary[[53]](#footnote-54)”53 is shared by 13% of those interviewed, which corresponds to the results of a previous random intervie[[54]](#footnote-55)w54. However, given the nature of the studies, it is neither percentage nor public view that interest us, but the fact that these data are the basis of the conclusion about a perfectly clear public perception of the judiciary being jeopardized by corruption.

Irrespective of their number and importance, I do not consider the cases *per se* as the likely “crucial evidence”. There is no crucial evidence in social sciences. I take the cases as an indication of the system deformities.

If all the information collected by corruption studies in transitional countries, reports about monitoring of Croatian courts, risk-assessment economic studies, studies of social values, and public opinion studies were erroneous, it would still be wrong to neglect corruption in the judiciary. Looking for evidence of corruption in the way the court does (“to present the evidence”) would show a lack of analytical sense (professional deformation in casuistry?). The attempts not to besmirch the profession show that there is an awareness of the importance of reputation, trust and legitimism of the judiciary. However, there is general preference to trust everybody rather than to rely on general opinion and to narcissistically, rather than critically, consider this public image the relevant value of a public opinion poll. Finally, how to explain that in most countries debates about corruption in the judiciary show its existence there, but no measures are taken, whereas supposedly in Croatian judiciary there is no corruption, thus no special measures are needed.

I believe that the judges, not a majority but almost all of them, are honourable and creditable. I do not think that they are the other way round. The bad news is that such explanations are invalid, even for false accusations and wrong images. There is no use in defending something with the statement “submit the evidence for each case individually” because restoring trust requires measures for its restoration, rather than verbal proofs. Business people know the price of reputation: one scandal (say, poisonous ice cream) may jeopardize the whole company. It is well known how dangerous it is when good reputation is destroyed, even in false accusations. Mere infamy, not even the proof, may be damaging. Restoring trust is a lengthy and tough task. The same applies to corruption in the judiciary. The effects of the spreading scandals and accusations are not only direct and do not apply just to the participants. To put it simply, false judgements and opinions do not mean that they should be neglected, or considered as the signs of animosity. They are linked with actual problems of the judiciary, backlogs, agonizing length of proceedings, uncertainty and expenditures. Public opinion cannot be neglected by accusing others, or poor laws, or low wages. In creating opinion and coming to judgement it is not of any interest to the public. Here too, quite distortedly, applies the principle that one cannot form the judgement about his/her own case - judgement about the judges must also be left to the public. The judiciary exists not for its own sake and does not stand for itself. In addition to being legal, judicial verdict must be legitimate too. Shared justice must be readily accepted for the sake of belief in justice. Justice must be seen for the sake of those to whom it is either denied or rendered. As long ago as 1943, at the end of his life, Lord Hewart formulated the rule: “A whole lot of cases show that justice should not only be done, but be seen as to be done”. If the judiciary is part of government, which it is, and the government is open to criticism (otherwise it is replaced), then the debates about corruption must consider initiatives for reforms, more efficient and expeditious work and restoration of reputation, rather than treat corruption as a taboo.

**2. Objective environmental conditions of the judiciary cannot be the excuse**

Everybody agrees that efficient and just trial proceedings represent the basis of a democratic government, and a legitimate and stable political system. The judiciary is crucial for the market economy.

To allow businesses to develop, contracts must be complied by (*pacta sunt servanda*), right realized without political and other calculations, called flexibility (*lex dura sed lex*), ownership rights defended and the atmosphere of **trust in institutions and legal system**, created. Entrepreneurship and economical development depend upon social trust, political legitimacy of the authorities, and its reliance on the law as the frame and basis for its functioning.

The quality of the judiciary creates the impression about efficiency of the order and rules of operation in it (business friendly environment).

Without an efficient judiciary and its potential sanctions of offences and misuses (secondary efficiency of the legal norm) there will be no abidance to the norms. In the opinion of many, the Croatian judiciary does not perform its function. Its inefficiency is clearly evidenced by the number of unresolved case[[55]](#footnote-56)s 55, unpredictability and lengthy delays in arrival at court decisions. According to official data, the number of unresolved court cases at courts is continuously increasin[[56]](#footnote-57)g 56. Nobody contradicts the criticality of situation: the courts are overburdened with cases and most commonly cannot provide legal protection within a reasonable tim[[57]](#footnote-58)e57. The costs of a disrupted legal system (direct[[58]](#footnote-59))58 and, even more, social (indirect) ones along with psychological and economic, are too high. “The courts do not manage to resolve the cases adequately and quickly and do not respect legal procedure of allocation of cases. Court autonomy is restricted, legal culture and public consciousness are low, the procedure itself is inefficient and slow, wages of the judges are inappropriate, staffing of courts is under the standard level, selection of the candidates for judges is inadequate, and so is their continuous education and further educatio[[59]](#footnote-60)n 59.

These are sound requirements for improvement and advancement of the judicial system. From an action point, these are restrictions to be removed and are the main objective.

Still, there is one element missing. The problem of the judiciary is not mere administration of justice. The missing element is continuous correction of appearing dysfunctions. If they remain uncorrected they become dangerous and escalate in intensity and size. One of them is corruption in the judiciary, either in its malignant and aggressive form, or simply in general impression about its existence. Nevertheless, if the debate is prevented, if existence of corruption is denied, and if an inappropriate problem is radicalised and politically instrumentalised, all other efforts to improve the judiciary fail. Objective environment of the judiciary is not the excuse, it is rather the incentive for measures to change the image of the judiciary and reduce the challenge, opportunity and need for corruption. “Introducing good new laws is simple, but making them effective is difficult; its is a big mistake to expect people to be perfect or think that laws will make them such, or consequently, a major skill of politicians is in their use of human weakness for the noble purpose of virtue” (Lord Bolingbroke).

Finally, when debating about and criticizing the judiciary we are opposing two rights: one is the right to freely express our views and opinion, no matter how unpleasant or shocking they are, and the other is restricting this right in order to prevent the influence on court autonomy and the right to just proceedings without any pressure. They must not be mixed up and their achieved balance must not be disturbed. I am saying this because of the high risk of being drawn to the opposite situation: from the state in which accusation of judicial corruption is understood as evil or malevolent, under the pressure of many cases we might be drawn into the opposite extreme where everybody negligibly accuses and, thus, exerts pressure upon the courts. It is not easy to balance the opposing rights, but negligible generalizations and pressures in specific cases must be avoided and actions (judgements) must be thoughtful. The proverb “Justice is slow but achievable” should be replaced by “Delayed law - denied law.”

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1 P. Eigen in The Judiciary, Law Enforcement and Society in the Fight Against Corruption, Regional Conference of Central and East European Countries on Fighting Corruption, Bucarest 2000.39. [↑](#footnote-ref-2)
2. 2 Public opinion and political language under the term “corruption” refer to quite different social events: organized and economic crime, poor governing and related outcomes, human inconsistency and arrogance of authorities. There is no legal definition of corruption. However, conventionally it is giving and taking bribes (Articles 347 and 348 of the Criminal Law), illegal mediation (Article 343 of the Criminal Law), misuse of state powers (Art. 338 of the Criminal Law), misuse of position and powers (Art. 337 of the Criminal Law), disadvantageous contracts (Art 249 of the Criminal Law), disclosure of business secrets (Art. 351 of the Criminal Law), and disclosure and unauthorized provision of business secrets (Art. 295 of the Criminal Law). Each of the above definitions unveils a component of corruption phenomena and, irrespective of disputes over them, the social and political damage of corruption, and its existence in the Republic of Croatia, are evident. A National Anti-Corruption Program - Anticorruption Action Plan, Ministry of Justice, Public Administration and Local Self-Government, Zagreb, May 2, 2001. [↑](#footnote-ref-3)
3. 3 About the definition: M. Jager, On Definition of Corruption, in Corruption in Central and Eastern Europe at the Turn of Millenium, OSI, Ljubljana, 2000, 105-121; J. Kregar, Nastanak predatorskog kapitalizma i korupcija (Emergence of Predatory Capitalism and Corruption), Rifin, Zagreb, 1999, 91-94; J. Kregar, Pojava korupcije (Emergence of corruption), Hrvatski ljetopis za kazneno pravo, 4, 1, 1997, 23-43; D. Derenčinović, Mit (o) korupciji (A Corruption Myth), NOCCI, Zagreb, 2001, 33-43. [↑](#footnote-ref-4)
4. 4 For example see Judiciary Council Blue Book, [↑](#footnote-ref-5)
5. 5 For example see J. Kregar, Devolucija upravno-političkog sistema Gane: primjer ili perspektiva (Devolution of the Administrative-political System of Ghana: An Example or Perspective), Zbornik PFZ. 41, 2-3, 1991, 239-261. [↑](#footnote-ref-6)
6. 6 Example: J. Stuart Mill, On Liberty, Appelton, New York, 1947, 15-45, Za pravnu teoriju (For legal theory): R. Unger, Knowledge and Politics, Harvard University Press, Cambridge, 1975; P. Fitzpatrick, A. Hunt, Critical Legal Studies, Blackwell, Cambridge, 12990, 21-31; R. Posner, The Problems of Jurisprudence, Harvard University Press, 1990, 4-24.
Actually, the requirement for limiting debates about court verdicts and status in courts is pointless for legal theory. [↑](#footnote-ref-7)
7. 7 See the verdicts Sunday Times v. UK (A 30/1979; II A 217 1991); Lingens v. Austria (A 103/1986; Castells) v. Espagne (A 236/1992); De Haes & GIjels v. Belgique (1997) [↑](#footnote-ref-8)
8. 8 J. Pope, Confronting Corruption: The Elements of National Integrity System, TI, 2000, 65. [↑](#footnote-ref-9)
9. 9 Addressing the issue of corruption in the judiciary, however, also affects the groups of people who are against any change and whose interests are jeopardized by these debates. It is not that only direct participants in corruption are affected, but also those tainted by the lack of strict ethic norms. Their motive is selfishness rather than principle. [↑](#footnote-ref-10)
10. 10 Example: R. Marjan, Sudstvo i aktuelni problemi razvoja pravne države, Europske perspektive demokratske Hrvatske (The judiciary and current issues in the development of the state with the rule of law, European perspectives of democratic Croatia), Zagreb, 2001, 93-101. [↑](#footnote-ref-11)
11. 11 Debates about corruption in the judiciary were encouraged and interrupted on two occasions in a very inappropriate manner: S. Ivanišević, Minister, was contradicted in his statements about the problems in the judiciary (March 6, 2000) at the round table discussion and subsequently R. Ortinsky, State Attorney (June 26 2001). The style, background and contents of their statements were very different but the reactions to them were furious and organized. Heightened emotions prevented further debates. [↑](#footnote-ref-12)
12. 12 Discussion about the scope of corruption in the judiciary, from a methodological viewpoint, and to-date debates about corruption in the judiciary have been focused primarily on defending psychologically persuasive attitudes that judges are incorruptible and, secondly, on blurring the position of the interested groups. The main characteristic of discourse is a denial of systemic importance of corruption and defining this phenomenon as a matter of individual weakness. [↑](#footnote-ref-13)
13. 13 It is not an individual or any specific number of individuals that suggest this approach, but rather systemic effect of corruption in the judiciary. [↑](#footnote-ref-14)
14. 14 Principled differentiation of the scope of social institutions after “hard” or “soft” methods is not acceptable. [↑](#footnote-ref-15)
15. 15 “Nominalistic rule has the same meaning as the reduced assumption that, in reality, anything else except individual concrete cases would fit any knowledge formulated by general terms “, L. Kolakovski, Filozofija pozitivizma (Philosophy of Positivism), Prosveta, Beograd, 1972, 33. [↑](#footnote-ref-16)
16. 16 G. Mikl Horke (Soziologie, R. Ordenbourg Verlag, Wien, 1997, 277) [↑](#footnote-ref-17)
17. 17 Rationalism it is not even the support of empirical studies; on the contrary, they are being abandoned - the statistics of criminal acts is a really poor background of knowledge. Mere measures of statistical analyses often hide an esoteric, almost occult, trust in the power of numbers. [↑](#footnote-ref-18)
18. 18 L. Wittgenstein. Tractatus Logico-philosophicus, Veselin Masleša, Sarajevo, 1960, 189 [↑](#footnote-ref-19)
19. 19 L. Kolakovski, filozofija pozitivizma (Philosophy of Positivism), Prosveta, Beograd, 1972, 264. [↑](#footnote-ref-20)
20. 20 A more detailed explanation in J. Kregar, Nastanak predatorskog kapitalizma i korupcija (Emergence of Predatory Capitalism and Corruption), 94-131; J. Kregar, Deformation of Organizational Principles: Corruption in Post Socialist Societies; Duc Trang, Corruption and Democracy, COLPI, Budapest, 1994, 47-61; J. Kregar, The Evil of Corruption, Corruption in central and Eastern Europe at the Turn of Millenium, OSI, Ljubljana, 2000, 137-149. [↑](#footnote-ref-21)
21. 21 National Anticorruption Program - Anticorruption Action Plan, Ministry of Justice, Public Administration and Local Self-Government, Zagreb, May 2001, 11. [↑](#footnote-ref-22)
22. 22 “The majority of criminologists, however, believe that criminology deals with violation of all norms and the social reactions to these acts. There are good reasons for this attitude. The most important one is that the relation between tradition and law is continuously changed and varies from country to country. The things treated until recently as abominable or morally unacceptable, may become illegal by a change of law... (continuum from deviant to criminal). This can be presented by a triangle comprising the broadest definition of a deviant and a very narrow definition of an absolute evil. Somewhere in between these two extremes behaviour is defined as criminal. However, criminology is interested in understanding the process of the violation of the norms at its very early step”. F. Adler, G. Mueller, W. S. Laufer, Criminology, McGraw Hill, New York, 1991, 15. [↑](#footnote-ref-23)
23. 23 According to the statement of the president of the Judges Association: “I am too honest to be bribed by lunch” - which shows the entire lack of understanding of the nature of court impartiality. [↑](#footnote-ref-24)
24. 24 K. Ford, Internet Development Forum, World Bank Anticorruption Strategies, 1999. [↑](#footnote-ref-25)
25. 25 D. Derenčinović, A Corruption Myth, NOOCI, Zagreb, 2001, 232 [↑](#footnote-ref-26)
26. 26 D. Derenčinović, A Corruption Myth, NOOCI, Zagreb, 2001, 230 [↑](#footnote-ref-27)
27. 27 D. Derenčinović. A Corruption Myth, NOOCI, Zagreb, 2001, 230 [↑](#footnote-ref-28)
28. 28 It is frequently said that major obstacle in the control of corruption in Croatia are its roots in the negative tradition or in the defects of the socialist system. Despite the arguments in support to this statement, it is in the peoples' philosophy to link public position with benefits, identify the state with the source of fear and uncertainty, mix solidarity with obligations, have a client-oriented approach to work, feel that rights are above obligations, etc. This argument should not be used with regard to its formal soundness, but to mobilize for the fight against corruption. Interpretation on corruption as an inherited phenomenon, should not lead to the conclusion that it must not be fought against or that abandoning the habits removes corruption. Relativizing corruption, its justification for the purpose of necessary by-pass of bureaucratic backlogs in the system, or the explanation that corruption is a permanent feature of human nature, have an inhibitory effect too, and are both false and harmful. The main victims of corruption are the poor who are also affected by its relativisation and the philosophy of its inevitability. *National Anticorruption Program-Anticorruption Action Plan,* *Ministry of Justice, Public Administration and Local Self-Government, Zagreb, May 2001, 2.* [↑](#footnote-ref-29)
29. 29 Another paradox is the thesis about judiciary in that it cannot be other than the society, which makes its environment. This statement implies the study of society with the inclusion of prime social context in which the judiciary functions. The methodological outcome of this premise is the conclusion that the phenomenon of corruption in the judiciary must be the competence of those involved in the study of society as a whole (according to the field of science: sociologists, macroeconomists, political scientists and anthropologists). Such implication is usually tacit, which might be even better, at least in the society where the discourse of public debate suffers improvisations of negligent public officers and politicians, allowed to comment on any social issue, and who in debates about corruption find mere opportunity for personal promotion. [↑](#footnote-ref-30)
30. 30 N. Luhmann, Das Recht der Gesellschaft, Suhrkamp, Frankfurt, 1995, 505. [↑](#footnote-ref-31)
31. 31 N. Luhmann, Ausdifferenzierung des Rechts, Suhrkamp, 1981, 35-53. [↑](#footnote-ref-32)
32. 32 F. Toennies, Gemeinschaft und Gesellschaft u B. V. Nikels J. Wei, Gesellschaft, Hofman & Campe, Hamburg, 1975. [↑](#footnote-ref-33)
33. 33 M. Weber, Essays in Sociology, Gallaxy Books, New York, 1958, 219. [↑](#footnote-ref-34)
34. 34 Paraphrased J. Habermas, The Theory of Communicative Action, Heinemann, London, 1981, 259, 260. [↑](#footnote-ref-35)
35. 35 According to G. Grbić, The Role of Media in Unveiling Corruption, Ljubljana, June 26, 2001 [↑](#footnote-ref-36)
36. 36 Scandalization by corruption shows relativity of social accusation. Corruption that is tolerated and is not recorded becomes, by scandalization, morally accusing. The process must be understood as real change of social values”. Scandals are contextually linked events that can be understood only on a social plane and in a normative background of the specific social sphere in which they occur”, S. Neckel, Das Stellhözhen der Macht, Leviathan, Vol. 14, 1986, 4, 581-605 [↑](#footnote-ref-37)
37. 37 V. Tanzzi, Corruption Round the World: Causes, Consequences, Scope and Cures, IMF Staff papers, vol. 45, 4, 1998, 559-595. [↑](#footnote-ref-38)
38. 38 The category of deviation and criminality is changeable in time. For corruption to become a punishable and socially disapproved act it must be recognized as deviant J. Kregar, Emergence of Predatory Capitalism and Corruption, Zagreb, 1999, 163-165 [↑](#footnote-ref-39)
39. 39 The Index of Economic Freedoms. Nations in Transition, February 2001 (disc) [↑](#footnote-ref-40)
40. 40 The Index of Economic Freedoms. Nations in Transition, 1998: the report explicitly describes cases of links between the authorities (and courts) and the criminal environment, court protection of the criminals stealing cars (Maglov), disputable and slow prosecution of corruption (Directorate for Commodity Reserves). It quotes the statements of the General Attorney showing court benevolence towards a penal act of corruption. [↑](#footnote-ref-41)
41. 41 “The courts have shown not to be prepared for instituting criminal proceedings against high-ranking officials of the Croatian Army, Ministry of Defence and the police…” IHF Annual Report 1998, www.ihf.hr-org [↑](#footnote-ref-42)
42. 42 “The judiciary remained a problem (for war crimes…). The courts continued to be subject to occasional political influence at the local level and suffered from bureaucratic inefficiency, insufficient funding, and a severe backlog of cases. US Department of State, Human Rights report for 2001 - Croatia, see iUSIP Special Report: Croatia after Tuđman; Amnesty International Annual Report 2000 - Croatia; Human Rights Watch Report 2001 – Croatia. UN Office for Drug Control and Crime Prevention (CICP), CIPE (Centre for International Private Enterprise); UNDP Human Development Report - Croatia 1999, etc. [↑](#footnote-ref-43)
43. 43 Anticorruption in Transition: confronting the challenge of state capture, Washington, 2000, i. e. PRWP; www.worldbank.org/wbi/gac. [↑](#footnote-ref-44)
44. 44 Here is Croatia (along with Slovenia and Latvia) the best scored country (of 20 transitional)! [↑](#footnote-ref-45)
45. 45 Here is Croatia (with Azerbaijan, Ukraine and Russia) among the worse scored countries! [↑](#footnote-ref-46)
46. 46 PRWP; . [↑](#footnote-ref-47)
47. 47 HRPE65466 (tender still opened, March 29, 2001) Worldbank.org/croatia [↑](#footnote-ref-48)
48. 48 ICVS 200 - Gallup Organization, Princetown [↑](#footnote-ref-49)
49. 49 European Bank for Reconstruction and Development. Transition Report, London, 1999. [↑](#footnote-ref-50)
50. 50 www.transparency.org [↑](#footnote-ref-51)
51. 51 R. Matić, Vrijednosne odrednice u suvremenom hrvatskom društvu (Value determinants in the modern Croatian society), thesis, Faculty of Arts, Zagreb, 2001: D. Derenčinović, Kaznenopravni sadržaji u suprotstavljanju korupciji (Anticorruption Punitive Measures) thesis, Faculty of Law, Zagreb, 2000. [↑](#footnote-ref-52)
52. 52 M. Jajčinović, Poll about the judiciary, Večernji list, June 29, 2001. [↑](#footnote-ref-53)
53. 53 Z. Crnčec, Health care and the judiciary the most corrupted, Novi list, August 20, 2001. [↑](#footnote-ref-54)
54. 54 Slobodna Dalmacija, Novembre 23, 2000 [↑](#footnote-ref-55)
55. 55 Official report of the Ministry of Justice says that the number of unsolved cases is the major issue of the Croatian judiciary. See: Status in the judiciary of the Republic of Croatia - analysis and proposed measures, November 1998. [↑](#footnote-ref-56)
56. 56 Total number of new cases is in continuous increase, from 1,171,273 (1996) to 1,292,838 (1997) and to some 1,220,000 (1999). More important is the number of **unsolved** cases. Annual growth is around 20% (110,742) – from 586,668 (1996) to 697,410 (1997) and to currently about 800,000. By statistic court norms this implies 23,247 judges/month or the task for 100 judges who should be working over 20 years on the outstanding cases, without processing any new case; the entire regular the judiciary, without consideration of the actual number of judges but taking into account the anticipated number of judges, should be working over 15 months. With such calculations, resolving outstanding cases, without processing new ones and without taking into account possible appeals and various procedural measures, would take two years. Even more indicative study results of the Ministry of Justice collected in November 1998 showed the most critical situation to be at major and biggest courts (Municipal and Commercial courts in Zagreb, Split and Rijeka). The statistic there reveals a rather difficult situation. The Municipal Court in Zagreb could process the outstanding cases over five years without taking any new case. The same court (the biggest of 99 municipal courts) has over 10,000 cases that have been unsolved for over 10 years. Similar is the statistic of the higher and Supreme Court. The number of received cases at Supreme Court in the period from 1994-1997 had been in constant fall, whereas the number of unresolved cases increased. This statistical calculation is not quite correct given because it does not take into account the type and form of disputes. [↑](#footnote-ref-57)
57. 57 Alan Uzelac, The Role and Position of Judges in Croatia 1990-1999. [↑](#footnote-ref-58)
58. 58 Let us make an approximate calculation of the overall costs. We all know that quality cannot be expressed in figures and that justice cannot ask about the price. But let’s try to do it, without any ambition to be very precise. Firstly, we have to calculate the cost of the disputes. If every dispute involves two parties on average and if the average price of a dispute is 5,000 kunas, then the cost of disputable claims is 6,000,000,000 kunas. The average fee per such case is 200 kunas and, minimal tariff for representation would be about 400 kunas. Minimal court expenditures for the parties are 1000 kunas, making an approximate total of 1,000,000,000 kunas. These are unrealistically low amounts. Nevertheless the approximate total amount is 8,000,000,000 kunas, which is actually frozen by unsolved cases. This is about 8% of the GNP (8,13156), about 2% of the total state consumption or more than half of the annual investments. If lawyers attended all the proceedings, then each of them would do a 723,981-kuna case with minimal profit of 578,000 kunas.

This statistic is not precise and accurate but it shows the scope of the problem. We took into account minimal amounts, which are unrealistic in case of business proceedings. Costs of the proceedings commonly exceed the stated amounts. [↑](#footnote-ref-59)
59. 59 Faces of Corruption in Slovakia: Corruption in Judiciary, wwww.transparency.sk/study\_faces\_of\_corruption, 16/18.2001. The similarity is apparent and interesting. It seems to me that not many readers will note that the statement refers to Slovakia rather than Croatia. [↑](#footnote-ref-60)