



Republic of Serbia

High Judicial Council

HIGH JUDICIAL COUNCIL

R E P O R T

**ON THE WORK OF JUDGES IN CHARGE WITH CASES OF UNDUE INFLUENCE
ON THE WORK OF JUDGES AND THE JUDICIARY**

FOR THE YEAR 2021

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1. Introduction

The High Judicial Council is the guarantor of the judicial independence, which is a prerequisite for fulfilment of the right to a fair trial, pursuant to the Article 36 of the *Constitution of the Republic of Serbia* and the Article 6 of the *European Convention on Human Rights*. When protecting the independence of an individual judge, the position of the judiciary as a whole is being protected at the same time and, ultimately, the rule of law and the separation of powers principle in a democratic state. The purpose of independence is to guarantee the basic right of every person to have their case decided by a judge exclusively based on the law, facts and judge's discretion. For this reason, judges have to have full freedom to decide independently, without any limitations, influences, pressures or interferences, regardless of source or motives thereof.

When a judge is contested or attacked in the media for the purpose of exercising undue influence on their work, or this is done through the media by political or other social actors, it is necessary that the High Judicial Council can promptly and effectively respond to such challenges or attacks on behalf of judges, having in mind the need of a judge to be reserved for the purpose of preserving the dignity of their function.

For the said purpose, on its session held on 15 April 2021, the High Judicial Council adopted amendments and additions to the *Rulebook on the Council's Work*, in its part that regulates the manner of working and decision-making of the Council in cases of undue influence of judges and the judiciary (Article 27a to 27f of the Rulebook). The adopted amendments created the normative preconditions, not only for the Council to act promptly and provide protection in cases of undue influence on an individual judge, but to also monitor these phenomena continuously, report on them to the public regularly and take action on their suppression.

2. Legal framework

Amendments and additions to the *Rulebook on the Work of High Judicial Council* of 15 April 2021 regulate nomination and work of a judge competent to act in cases of undue influence on judges, enable submission of judges' requests for protection from all types of undue influence, envisage a possibility for a judge in charge of acting in cases of undue influence, alongside the President of the Council, to ex officio initiate procedure for protection from undue influence. The Rulebook regulates the methods of conduct and a legal path to achieve protection.

The Council decides on existence of undue influence on a judge or the judiciary at a session pursuant to a conducted procedure by the judge competent to act in cases of undue influence, as provided by the Articles 27a to 27f of the Rulebook.

Pursuant to the Article 27f of the Rulebook, if a Council at its session determines the existence of undue influence on a judge or on the judiciary, it may publish a statement, convene a media conference or address:

- The head of the state authority which employs the civil servant who exercised undue influence;
- Competent Bar Chamber in case undue influence was exercised by an attorney at law;
- Press Council, media association as well as the editor in chief of the media whose journalist exercised undue influence;
- Chamber of Commerce whose member exercised undue influence;
- Heads of other authorities, organizations, establishments, institutions and associations.

The Council is authorised to recommend measures for prevention of future undue influence.

3. Reporting purpose

Article 27a paragraph 2 point 10 of the *Rulebook on the Work of the High Judicial Council* provides that the competent judge submits to the Council an annual report on undue influence on judges and the judiciary, no later than 1 March of the current year for the previous year, as well as upon the Council's request. As a part of this annual report about its work, the public is informed about cases of undue influence on the work of judges and the judiciary. This way, normative preconditions for regular reporting to the public on the extent of undue influence on the work of judges and the judiciary as a whole have been met.

Publication of the regular annual report on undue influence has a purpose to inform the public about these phenomena which, by endangering autonomy, impartiality and reputation of individual judges and the judiciary as a whole, violate the basic premises of a democratic society, the rule of law and principles of the separation of powers. Acquainting the public and raising awareness on the negative influence of the undue influence contributes to achieving social and political consensus about the need for public condemnation and prevention of such behaviour.

The purpose of reporting is also to acquaint the other two branches of power with cases of undue political influence in order to encourage them to adopt effective measures for prevention of any future such behaviour. Therefore, it is necessary for other two branches of power to undertake publicly visible activities and measures so that this type of behaviour is condemned and prevented.

In informing the public on undue influence, the support of all media, which strive to have a socially responsible editorial policy, is necessary for the purpose of improving the values of democratic society as provided by the Article 2 of the Law on Public Informing and Media.

4. Overview of handled cases of undue influence on the work of judges and the judiciary

Five judges addressed the High Judicial Council with a request for protection from undue influence by 31 December 2021, while one proceeding was initiated ex officio.

In three proceedings, the Council determined undue influence on the judges' work in ongoing judicial procedures, in which the verdict had not been reached.

Undue influence was exercised by representatives of the local self-authority via social portals, by parties in proceedings and their close relatives via social portals and media with the frequency that covers the national reach.

Upon determining the existence of undue influence, the Council published statements, addressed the editor in chief of the media with national coverage and directors of portals via which the undue influence was exercised.

In one case, the judge's proposal for protection against undue influence was rejected, since all the activities that represent violation of personal rights of the judge in question, and which have elements of a criminal offence, were committed after adoption and publication of the verdict.

Proceedings remain pending in two cases.

5. Observed obstacles for effective handling of cases of undue influence on judges and the judiciary

During the Council's work on cases, the matter of defining undue influence on the work of judges and the judiciary arose, alongside the matter of a procedural moment until which these actions may be committed.

A definition from the *Explanatory Memorandum to the Recommendation Rec(2000)19 by the Committee of Ministers of the Council of Europe* served as a starting point and guidance by determining that undue influence, inter alia, is cases' meddling not provided by law, and which originates from any competent authority or person, whether from the executive, legislative, economy, or physical persons or individuals.

Starting with this Recommendation, the Council concluded that undue influence is any activity contrary to the law which affects the judge to reach a decision in a case in which they adjudicate independently from the conducted evidence procedure, determined factual situation and their discretion. After adoption and publication of the verdict, the actions aimed to disqualify a judge in the public and belittle them, do not fall into undue influence, but into violation of personal rights with elements of a criminal offence.

Different manifestations of undue influence, at different levels of intensity, manifestation, create serious hardships in formulating an encompassing definition of undue influence making it hard to enumerate all methods in which undue influence on judges and the judiciary can be expressed. The influence may be **explicit and direct**, and it may be **covert** in a form of "well-intentioned advice" or recommendations.

6. Instead of conclusion

During the past period, the Council issued statements in which it condemned undue influence on the work of judges and the judiciary. Unfortunately, these statements did not have significant effect since the Council does not dispose of force mechanisms which would prevent further undue influence, so that the role of the Council is reduced to pointing out to manifestations and to the extent of exercised undue influence.

The Council expects that the other two branches of power will reduce undue influence, pursuant to adoption of the National Assembly of Republic of Serbia's *Code of Behaviour for Members of Parliament Regarding Limitations to the Permitted Commenting of Judicial Decisions and Actions* ("Official Gazette of Republic of Serbia" number 71/17), while the Government of Serbia, upon proposal of Ministry of Justice, adopted *Code of Behaviour of the Government Members on Limitations of Permitted Commenting of Judicial Decisions and Actions* ("Official Gazette of Republic of Serbia" number 6/16).

I am extending my gratitude to the Council of Europe Office in Belgrade, to gentlemen Branko Nikolić and Danko Runić for expert and technical support in the first year of the term of office.

**The judge acting in cases of
undue influence on the work of judges and the judiciary**
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