



HUMAN RIGHTS ACTION  
AKCIJA ZA LJUDSKA PRAVA

## THE JUDICIAL COUNCIL

**Mr. Mladen Vukčević, president**

Podgorica, 10 July 2019

Item: Interview of the applicants responding to public advertisement no. 01-2491/19-30 from 7 May 2019, with the aim of choosing 10 candidates for the position of Basic Court Judges

Dear Mr. Vukčević,

The Human Rights Action (HRA) has been following the Judicial Council's session held on Monday, 8 July 2019, in which the participants of the public competition for the appointment of 10 candidates for the position of Montenegro Basic Court Judges were interviewed. We are unfortunately reporting that the Judicial Council continues to perform interviews in an irresponsible manner, which makes it impossible for the participants of the competition to be evaluated in accordance with the law.

To this end, the Judicial Council is fundamentally undermining judicial reform by hindering the impartiality and objectivity of a process that should assign the best candidates to judicial positions. We remind you of the arduous twenty-year period in which the state, international community and civil sector undertook the Herculean task to reform the single-party judicial apparatus into a modern European judiciary, which saw the inception of the Judicial Council in 2008. Today, unfortunately, on the basis of the latest arbitrarily led interviews aimed to determine 10 candidates for judicial positions, we must testify that the Judicial Council is the weakest link of the reform, jeopardizing the continued functioning of the Montenegrin Judicial System.

As you are aware, Article 49 of the Law of the Judicial Council and Judges dictates that the participants of the competition for judicial posts be evaluated based on an interview according to four criteria with a cumulative score of 20 points, while Article 58 of the Rules of Procedure of the Judicial Council prescribes a maximum of 5 points per criteria. The criteria are:

- Motivation to work in the court;

- Communicativeness;
- Decision making and conflict resolution skills;
- Understanding of the role of a judge in society.

However, of the 41 persons interviewed, 9 were not asked a single question. In other words, an “interview” (conversation) was essentially not conducted with them, meaning that it can only be concluded that it is impossible for these 9 candidates to receive any form of assessment based on the mentioned criteria. We emphasise that all 9 candidates received in excess of 60 points on the test, meaning that an interview had to be conducted with each of them (Article 49, page 1 of the Law), and thus were all invited for an interview. Furthermore, these 9 candidates were all responding to an advertisement of this sort for the first time, meaning that the Council has never interviewed them before. (Although we are of the opinion that previous interviews should certainly not be taken into consideration, some Judicial Council Representatives have levelled this argument in defence of the brevity of interviews during earlier discussions).

We believe that the public deserves your explanation of these oversights in the work of the Judicial Council. Especially because as the president of the Council, according to Article 57 (4) of the Rules of Procedure of the Judicial Council, you are personally responsible to conduct the interviews.

Your explanation is also warranted in clarifying why the interviews lasted 4 minutes on average, despite the Council having predicted in the 2016 Interview Guidelines that these would last up to 40 minutes, which is, in other words, an interview duration which would at least allow for a conversation on the basis of which the capability of the applicants could be objectively assessed in accordance with the legally determined criteria score ranging from 0 to 20.

Of the 41 interviewees, aside from the 9 who did not receive a single question, 11 had the opportunity to answer only 1 question, 7 were asked 2 or 3 questions, 1 person was asked 4 questions, and only 2 people received 5 questions each. All this despite the Judicial Council predicting in its Interview Guidelines that 18 types of questions would be asked per interview. The Rules of Procedure of the Judicial council prescribe in Article 57 (4 and 5) that: “The entirety of the interview must be aimed exclusively on the objective assessment of the criteria from Article 49 (2) of the Law on the Judicial Council and Judges. All the candidates responding to the same public competition must be asked the same questions.”

The vast majority of the questions asked were in relation to biographic information: “Which judicial department did you work in previously?”; “Why didn’t you, beneath your name in your biography, also write that you received a Masters degree?”; “What was the topic of your Masters dissertation?”; “Why did you spend 12 years studying at university?”; “Why did you

graduate from a university in Novi Pazar?”, etc. Of the 32 persons who got the chance to answer any sort of question, 9 received only biographical queries. While it is perhaps possible that based on a response to this type of question (meaning only one or two such questions) a candidate’s “communicativeness”<sup>1</sup> could be assessed, it is categorically impossible to judge in any way, and especially an objective one, their “motivation for work in the court”<sup>2</sup>, “decision making and conflict resolution skills”<sup>3</sup>, or their “understanding of the role of a judge in society”<sup>4</sup>, which each and every member of the Judicial Council should appreciate, especially in the context of an interview, if their conduct is to be in accordance with the law. We further emphasise that it was the Judicial Council itself that prescribed in its 2016 Interview Guidelines that “biographical questions” should be asked only in the introductory period of the interview, intended to last 10 minutes, which would then be followed by the main part, lasting 30 minutes, wherein the candidates would be asked all other questions on the basis of which they would be assessed in accordance to the legally prescribed criteria.

Not a single person who was interviewed was “presented with a case”, nor were they asked to solve “examples of judicial praxis or conflict situations in the profession” on the basis of which their “decision making and conflict resolution skills” were to be assessed, as per the Rules of Procedure of the Judicial Council (Article 58(5)) and the Interview Guidelines (4.3)<sup>5</sup>. Furthermore, nobody was asked questions regarding their “ability to consider the situational circumstances of others without prejudice, while surmounting their own emotions, as well as the ability to discern between the protection of the general interest and individual rights”, which were prescribed as a means of assessing the candidates’ “understanding of the role of a

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<sup>1</sup> “Communicativeness is assessed on the basis of:

Clear and precise expression of stances during the interview,  
The readiness to hear out the interlocutor and directly answer any questions posed,  
The ability to avoid or diffuse conflicts.” Article 58 (4), Rules of Procedure of the Judicial Council.

<sup>2</sup> “Motivation to work in the court is assessed on the basis of:

The reasons for which the candidate has decided to apply to become a judge.” Article 58 (3), Rules of Procedure of the Judicial Council.

<sup>3</sup> “Decision making and conflict resolution skills are assessed on the basis of:

The case presented and the answer to the case presented.” Article 58 (5), Rules of Procedure of the Judicial Council.

<sup>4</sup> “Understanding of the role of a judge in society is assessed on the basis of:

The understanding of the rights and responsibilities of a judge within the judicial process and outside of the court.” Article 58 (6), Rules of Procedure of the Judicial Council.

<sup>5</sup> “4.3. Decision making and conflict resolution skills is assessed on the basis of questions which should be asked in relation to example from courtroom praxis, as well as examples of some conflict situations from the profession. Here, counterarguments should be offered to the candidates responses to the given examples.” Interview Guidelines, Judicial Council, final version, 2016, 2018: <https://sudovi.me/podaci/sscg/dokumenta/10238.pdf>.

judge in society” (4.4)<sup>6</sup>. Considering that not a single interviewee was asked these questions, would you please explain upon which basis the members of the Judicial Council graded the criteria regarding 41 candidates? Was it as a result of “sheer charisma”, or something else?

Not one interview was conducted in accordance to the “Introductory section” of the Guidelines, outlined in clause 3, either, as nobody was introduced to the members of the Judicial Council, nobody was informed that the interview was public, nor was anyone allowed a chance to briefly introduce themselves.

For the sake of comparison, the Prosecutorial Council conducts interviews differently. Their conversations with candidates last 20 minutes on average, and the introductory period regularly includes the introduction of all present parties, while in the main section, each participant is asked several questions, all thematically identical to those asked to other candidates, and everybody is asked the same number of questions. This type of praxis is demonstrative of the fact that it is possible for a Montenegrin council for the judiciary to abide by regulations.

Considering that the above mentioned stipulations of the Law on the Judicial Council and Judges (Article 49) and the Rules of Procedure of the Judicial Council (Articles 57, 58, 68, 76, 81) all dictate the proceedings of an interview, the criteria based upon which the interviews are assessed, and the Interview Guidelines, which the Judicial Council adopted itself, we conclude that in this instance, each and every one of the members of the Judicial Council took part in conduct which was unlawful, unconscientious and unprofessional, contrary to the Law, the Rules of Procedure, and the Guidelines, and that they participated in this conduct intentionally, despite the timely warnings of HRA, the first of which was published following the first interview that was in accordance with the new statute in 2017<sup>7</sup>, and the second in the form of a draft of the most recent report<sup>8</sup>, which we even publicly discussed with Judicial Council representatives in the conference on 1 July 2019 in Podgorica. We remind the Council that the same issues regarding the execution of interview were also challenged in a lawsuit disputing

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<sup>6</sup> “4.4 understanding of the role of a judge in society is assessed on the basis of general queries regarding the candidate’s ability to consider the situational circumstances of others without prejudice, while surmounting their own emotions, as well as the ability to discern between the protection of the general interest and individual rights.” Interview Guidelines, Judicial Council, *op.cit.*

<sup>7</sup> For details see “The Report on the application of the Strategy for Judicial Reform 2014-2018 in the period 2014-2016”, HRA and CeMI, 2017, p. 80 onward, available only in Montenegrin at: <http://www.hracion.org/2017/04/15/izvijestaj-o-primjeni-strategije-reforme-pravosuda-2014-2018-u-periodu-2014-2016/>

<sup>8</sup> For details see “The appointment and promotion of judges and prosecutors in Montenegro (2016-2019)”, HRA, 2019, available at: [http://www.hracion.org/wp-content/uploads/2019/07/introduction\\_Conclusion-and-recommendations\\_Final.pdf](http://www.hracion.org/wp-content/uploads/2019/07/introduction_Conclusion-and-recommendations_Final.pdf).


the appointment of candidates for the position of judge in July 2018, on which the Administrative Court has unfortunately not reached a ruling to date<sup>9</sup>.

We believe that in this way the Judicial Council has rendered illegal the act of appointing 10 candidates for judgeship in the basic courts of Montenegro, and that, in light of the facts stated, the Administrative court, in the event of this process of selection ever being disputed as the previous one was in 2018, should determine that the legally stipulated selection process was violated, posing grounds for termination of the decision on the appointment of candidates which was made on the basis of such a procedure.

We also believe that by participating in these interviews, all members of the Judicial Council conducted themselves unconscionably and unprofessionally, which is grounds for their dismissal according to Article 20 (1 and 2) of the Law on the Judicial Council and Judges, and we therefore expect resignations from positions within the Council or that a recommendation of dismissal be directed to the relevant authorities (the Conference of Judges and Parliament of Montenegro) such that they may declare whether the manner in which members of the Council approach the appointment of candidates for the position of judge is conscientious and professional. We expect for You to ensure that this act of accepting personal responsibility for the violation of regulations and faux-reforms be executed without delay, especially considering your amenable position as president of the “judicial government”, as you have described it yourself.

As for the participants of the competition for the appointment of 10 candidates for the position of Basic Court judges who were interviewed on 8 July 2019, we find that your only course of action is to issue them each an apology and interview them again, this time in accordance with the Rules of Procedure of the Judicial Council and the Interview Guidelines.

In support to our arguments from this letter, we supplement the transcript from the Judicial Council session of 8 July 2019 (available only in Montenegrin), courtesy of HRA Representative Ms. Martina Markolović.

  
Tea Gorjanc Prelević,  
HRA Executive director



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<sup>9</sup> Court case U. 4719/18 from 12 July 2018.