

## THE JUDICIAL LEADER AS AN AGENT OF CHANGE

Ioana Alexandra HULPUȘ<sup>1</sup>

Dan MIRICESCU<sup>2</sup>

**Abstract:** *A topical issue regarding the field of justice is the discrepancy between the role of the judiciary, to protect citizens' personal and national interest, to fulfill a true mission, and the way the judiciary as a public service is perceived. Starting from this reality the study tries to answer the challenge of identifying how the leadership can generate change, becoming a core component of good public governance.*

*Emphasizing the peculiarities of management and leadership in justice, the study argues the role of judiciary managers, who, as a special category of public managers, have the difficult task of leading the courts promoting successful methods and techniques of the private sector, but also obeying the limitations and requirements imposed by law and judicial organization features. In this context, the performance of organizations and the change of the judiciary based on quality criteria is decisively linked on how the heads of the courts will assume the leading role and how making use of their own example will motivate and inspire subordinates, being also the most important agents of change.*

**Keywords:** *judicial manager, leader, reform, president of the court, agent of change*

**JEL Classification:** *K 00*

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<sup>1</sup> „Lucian Blaga” University of Sibiu, e-mail: ioana@hulpus.ro

<sup>2</sup> “Lucian Blaga” University Sibiu, e-mail: dan.miricescu@ulbsibiu.ro

## ***1. Introduction***

In the actual context, characterized by profound transformations, public management should reconsider its role to face challenges such as globalization, decentralization, new technologies, and especially the need to integrate the requirements and expectations of citizens as clients of public services. Jurisdictions have noted as well that there is a huge difference between what is perceived today and how the judiciary should be seen in relation to the general interest protected by this institution.

The change of the public sector must be designed and built as an act of creation aimed at improving organizational structures and management flexibility provisions, by continuously forming the management team and the civil servants as well. This requires a large volume of work, learning new principles, management methods and practices, taking risks in their adaptation to the specific characteristics of each authority and of each change process. A competitive model of public management should focus on the values of transparency, efficiency, accountability and commitment to the public good. These values are common to European models for effective governance (Dragomir, 2016).

A solution to the major actual challenges facing the public sector in Romania could be the development of a certain type of leadership to shape itself best on administrative and judicial structures existing in Romania. Leadership is for the matter the basic component of a good public governance (Abaluță, 2013).

So, the literature in the field associates leadership skills with performance. Some authors believe that leadership is about finding solutions to complex social problems and challenges linking inextricably the performance of a leader to its ability to generate change, to formulate objectives and a „path” for its followers, reporting all this time to the dynamism and versatility of internal and external factors (Mumford et al, 2000).

This ability to solve complex problems ("social judgment skills ") was associated with the idea of efficiency, leaders being characterized by the capacity to generate solutions and identify rapidly alternative in the face of multiple challenges, unexpected (Goleman, 2006 p.7-28).

As expressed by other authors, summarizing the characteristics and essence of leadership, "leaders are those charismatic people with a high degree of availability for communication and also a great capacity for understanding economic and social problems" (Văcar, Miricescu, 2013).

In this context the study argues the role of the judicial leader to support the distribution, promotion and maintenance of new values that are needed to reform the judiciary on the grounds of efficiency, transparency, accessibility, increased celerity and not least an orientation towards the litigants, "the customer" of judicial services. From our point of view judicial leadership must include first and foremost the managers of the court as the most important leaders and agents of change, a guarantee of the continuous reforming process. Judicial leaders prove their effectiveness by their ability to persuade, inspire, and motivate the justice personnel to orient its efforts for the common good, the performance of justice.

## ***2. Categories of judicial managers***

Judicial managers are a special category of public managers, responsible for the coordination of courts using methods and techniques of the private sector, but also limited by the requirements of law, the characteristics of the judicial organization and the special status of magistrates. Thus, we underline that Law number 304/2004 establishes exhaustively the persons responsible for leading the judicial organizations, respectively the court president as the most important judicial manager, the vice president and the division presidents. The same law establishes exclusively the specific tasks for each category.

Judicial management has a lofty character or, as claimed by some specialists like Lidia Barac, is a more refined management, determined on one hand by the purpose of activities taking place in the courts, and on the other hand by the staff of judicial organizations. This requires a creative feature from the judiciary manager called to respond the challenge of identifying those ways, techniques, methods likely to ensure the achievement of organizational goals established strictly and sometimes limitary, by law. So, using his own creativity the manager needs to find the most appropriate methods and techniques in achieving organizational objectives and motivating staff, respecting the limitations imposed by law in spite of not having handy freedom and motivational tools that the private manager has. At the same time he must manage the process of change as a result of reforming the judiciary and control its inherent effects, resistance to change, uncertainty of staff specialization and the frequent legislative changes.

Court presidents should be leaders and not just managers, characterized by team spirit, ability to be penetrating, to defend their interests in an environment that requires such an attitude, but should also cooperate, a

necessary aspect in large organizations with full activity, as the courts are (Pivniceru, Luca, 2007).

Depending on the hierarchical stage, every president operates a separate entity but interdependent with other courts in the constituency. We are dealing with a whole, the evolution within normal parameters of each judicial organization being critical to the effective functioning of the entire system.

### ***3. President of court, manager or leader?***

Some authors make a clear difference between management and leadership and may object to associating leadership with a functional role or an organizational position. Their argument is that leadership is related more to personal power and management has more to do with positional power.

Zaleznik (1977), initiating a controversy, sustains that managers and leaders are basically different. According to his theory, leaders are creative and change-oriented, generate excitement among followers, focus on perspective and meaning and deal in ideas and substance.

In opposition, managers are role-oriented and process-oriented, mainly preoccupied with methods for getting things done.

The leadership theories differ very much. Other authors like Peter Drucker or Schermerhorn (as cited by Compton, 2012) view effective leadership as equivalent to effective management.

Jaques and Clement (1991) also do not find importance in differentiating leadership and management: “Good management includes good leadership as an integral part of its function, without which management per se cannot exist”.

We favour a third position that recognizes management and leadership as being different concepts though to a certain point complementary, representing essential stances that can be experienced by the same person.

The mission of justice calls for court presidents to be managers and leaders at the same time in order to accomplish such a difficult load.

To conclude, for court presidents as executive leaders to be effective in the context of justice activities, they need to have skills to assume both management and leadership roles.

Presidents of the courts need to have four major skill sets: cognitive skills, as a support for sorting the information gathered and to anticipate future situations, interpersonal skills, vital in evaluating and motivating staff and managing potential conflicts, communication skills which enable them to reduce communication barriers and training all staff in the work of the court by promoting participatory management, motivational skills related to the ability

of the manager to establish clear, realistic objectives and focus staff efforts to the achievement of them (Nicolescu, 2004).

In relation to the hierarchical level of operating, the managerial skills of the president of the court are:

*A. President – Manager of the court of law*

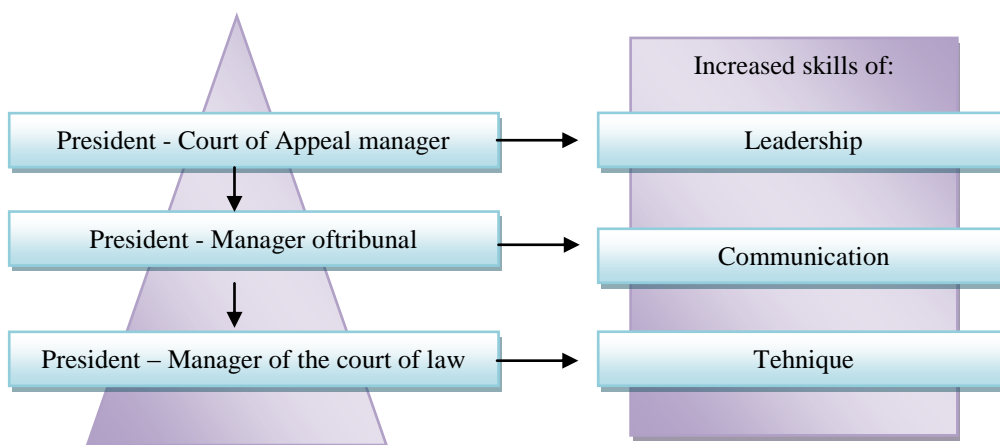
- Requires a solid grounding in both the purpose of the court and in the management;
- Lack of reluctance to deal with staff, bosses or colleagues about the problems arisen;
- Technical skills aimed at understanding specific tasks and very good knowledge of the activity undertaken in all auxiliary sectors and of the techniques and methods used in their field.

*B. President - Manager of tribunal:*

- Developed communication skills;
- Negotiation skills and techniques;
- Evaluator of the crisis, followed by the identification of optimal solutions to extinguish the conflict;

*C. President - Court of Appeal manager*

- Visionaries and strategists;
- Team spirit;
- Developing plans made under anticipated planning, thus protecting the interests of the other courts. (Pivniceru, Luca, 2007)



*Figure 1. Court President skills by hierarchical step  
(Adapted from Zlate M.)*

Obviously, the specificity of each hierarchical step demands particular developed activities, skills and tasks. Accordingly, at the court level it is observed the need for technical skills, in the tribunal level enhanced skills in communication are necessary and at the court of appeal level, the complexity of characteristics requires more than any other hierarchical level the president of the court's ability to be not only a manager but also a leader.

Irrespective of the hierarchical level, the role of the president remains equally important. It is he who influences the individual performance organization the judge's work and striving for professional development. He must prove a great flexibility and adjustment and mainly to analyze the individual performance of judges overcoming formal standards and benchmarks. A just evaluation of subordinates must consider all factors of the work environment: resources available, the distribution of tasks, relations within the institution, peers and staff.

The reality however is that judges feel burdened with work and lack of support from management (Rădulescu, 2011).

There are serious discrepancies between how president perceives his role and the expectations of judges, especially related to their organizational problems which may lead to an inadequate work environment, thus playing a decisive role in lowering individual performances.

Leadership is the energy behind every court system and court accomplishment. Fortunately, and contrary to what many believe, leadership is not a mysterious act of grace. Effective leadership is observable and, to a significant extent, learnable. Academic debate about the difference between leadership and management has resulted in consensus that a difference exists, but it is not a matter of better or worse. Both are systems of action. In the memorable words of Warren Bennis (1989), "Managers do things right. Leaders do the right things."

Effective courts have an obvious need for both management and leadership. Management means complexity while leadership means creativity, change and development.

On the duality manager-leader, Țiclău et al. (2010) pronounces eloquently analyzing public sector. According to the author, the defining characteristic of the manager lies in his power over the others. Power assumes the right and ability to influence the behavior of others. When it comes to the right to impose a certain conduct to other people, we consider the authority as the formal side of power. Instead, the ability to determine the behavior of

others, the informal side of power is based on its ability to influence. Comparing the formal and informal power, the result is that they are independent; if both aspects (the authority and ability to influence) are to be found within the same person, this is a genuine leader. These arguments are even more present in the judiciary where motivations of the leader must be linked to projects leading to organizational development and promote justice to the highest stage of competence, personal reasons to dominate being not allowed.

Manager versus Leader. Professor John P. Kotter US (Harvard Business School) in his paper "What Leaders Really Do" (1992) suggests a very simple and at the same time, particularly strong in essence proposal, based on the duality of powers exercised by a person located in the role (position) of a manager, respectively a leader. The duality management / leadership is described by the interaction with two distinct contexts: the complexity and the change. According to this model, a person acts as manager when a characteristic landmark of its work is the management of complexity, and respectively as a leader when his effort focuses on promoting and implementing the change.

#### ***4. Judiciary leaders as agents of change***

Leadership plays an important role in implementing the reform because it involves two of the most important aspects of the reformation: changing and people. Leadership occurs only in human relationships. Effective leaders inspire people. Changing public institutions represents changing the mentality and behavior of employees, which means that institutions passing through reform impetuously need leadership.

##### **4.1. The methodology used**

The objective of this study is to develop understanding of the particularities and role of court managers, identifying the presences of leadership and arguing the importance of the court leaders as agents of change.

The complexity of the issue under investigation determined the need to use a scientific methodology that incorporates a wide range of methods, techniques, tools and procedures (study of general and specialized bibliography in order to develop research and knowledge of the studied issues, using the method of scientific and empirical observation of leadership presences in the

Romanian judiciary). In this context, in addition to a literature review in order to identify general attributes of successful leader and adapting them in justice, the approach has resorted to a qualitative method, a direct data collection by making a semi-structured interview among justice personnel. Our choice is justified by the fact that "qualitative methods of research are used either to explore a universe less known, a problem vaguely defined, or to understand a phenomenon, to analyze it in depth to capture all the subtleties." (Evrard et.al, 1993) "If research aimed at deep understanding of a phenomenon, qualitative methods are used to achieve independent investigations. In this case the qualitative methods are used to investigate complex phenomena." (Cătoiu 2009, p.210)

#### **4.2. The qualitative investigation**

Summarizing the theoretical issues we tried to study the core of the problem and we intended to identify the presences of leadership in justice and the manner in which judicial leaders become agents of change. Ten people were selected to participate at the interview, five judges and five clerks, the main criterion for selection being the interest in the subject, the willingness to participate in the discussion. At the same time we tried to choose participants from different courts in terms of degree and size (based on the annual number of cases).

Before the discussion on the skills of the judicial leader, the participants received a note in which they were clarified the concept of leadership and its characteristics. Also through preceding questions it was determined to what extent the participants believed that leadership was used in the court they belonged to. Responses revealed that 80% of respondents thought that leadership is present in the judicial organization where they work, 10% responded negatively, while 10% said they did not know this aspect.



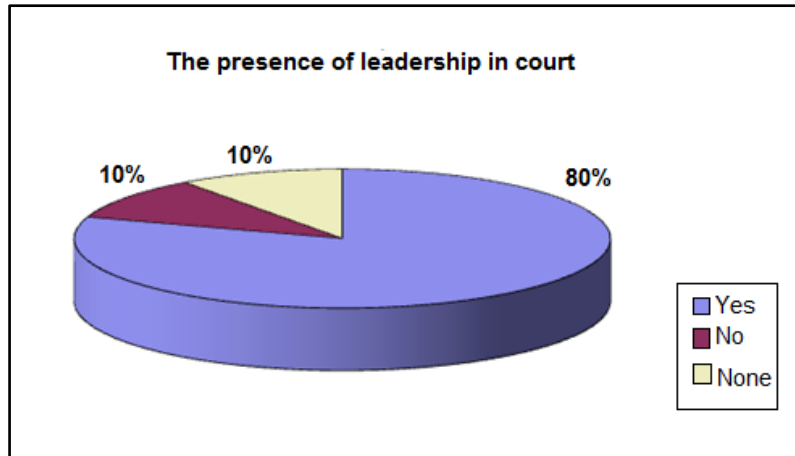


Figure 2. The way the participants experienced the leadership presence in court (own source)

The next question was trying to determine who the leaders of the courts were. Respondents considered that the president of the court, the division presidents, the vice presidents, generally magistrates having managerial positions were also the court leaders.

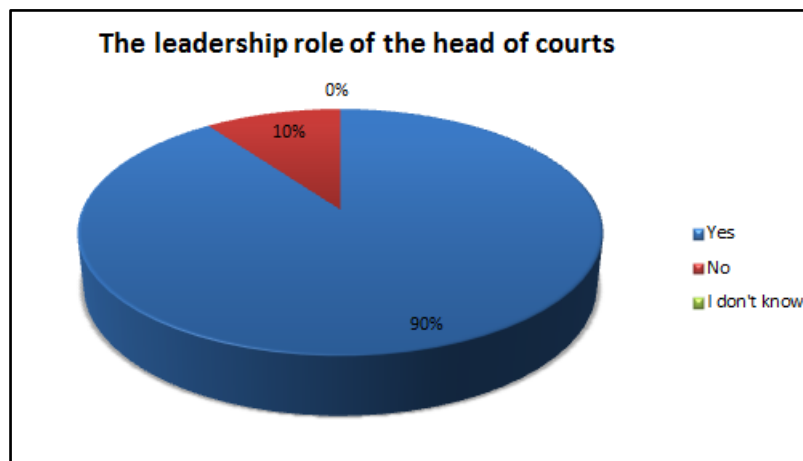


Figure 3. The leadership role of the head of courts (own source)

In the first stage, the interview established for all the persons interviewed that assuming the leadership role is an important "debt" for all the leading members of courts, being closely linked to the idea of reform, change and, last but not least, a matter of improvement. Subsequent efforts have tried to establish to what extent people felt it necessary this duality manager-leader reported to each categories of judicial managers. So, we retained in accordance to Law 304/2004 that the main judicial managers were: the court presidents, the vice-presidents and the division manager.

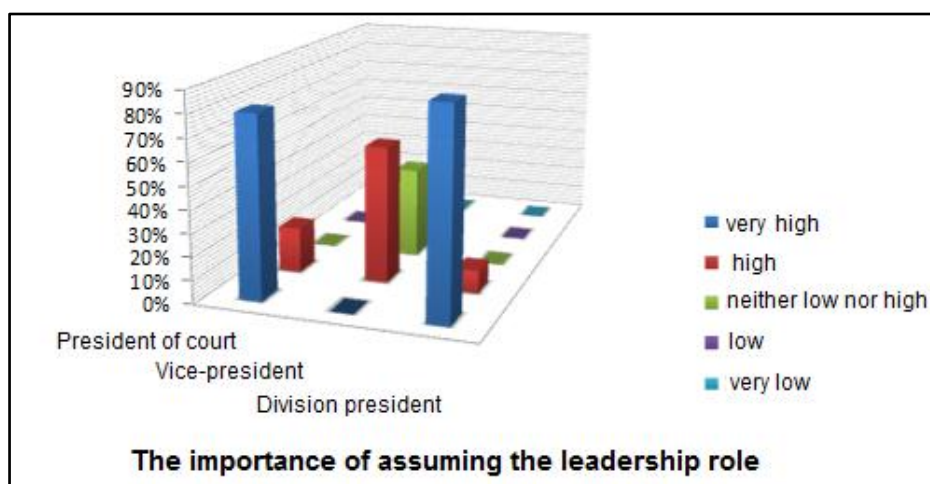


Figure 4. The importance of assuming the leadership role reported to each category of judicial managers (own source)

Unquestionably, as we have argued in the light of the theoretical analyzes, the president of the court as top manager plays a crucial role. Also the people surveyed revealed the need for the president to inspire people by his own example, to create a proper climate which encourages performance, attributes related more with leadership than management.

The graphical interpretation of the answers revealed some very interesting aspects, respectively that the persons interviewed have not seen a true leader in the person of the vice-president; instead they stressed the importance of the section presidents in assuming this role. This can be explained on one hand by the rather administrative role of vice-president, and

secondly by the proximity and interaction of judges with the divisions presidents.

Trying to clarify this aspect it was established the following question: to what extent other people, judges or clerks without leading position may be recognized as leaders? 80% of the respondents thought that judges without leadership position can assume the leading role, provided by the experience proved and especially for exceptional professional merit. Moreover, it was considered that neither the magistrates having managerial positions can be recognized as leaders in the absence of these qualities. We find this remark justified considering the staff of justice, distinguished by a highly training, from magistrates to clerks, a status that confers independence in decisions, tenure, trust, security and increased responsibility. In front of this staff the only way to exercise a power of influence is by winning their respect.

This argument emphasizes the previous choice of the respondents who saw the need for the division president to assume the role of leader instead of the vice-presidents. As we revealed, the interaction of staff with the same specialization, discussing legal or organizational issues gives an opportunity to the division presiding to excel through their professional training, gain the respect of subordinates, to contribute to the improvement of the judiciary and not least to create a climate of trust and mutual respect.

Discussing the role of a leader and the way he can influence, the following ideas were detained:

- The power to persuade people to contribute to the objectives is exercised by the leader through encouragement and his own example.
- To inspire loyalty and respect leaders must be good listeners, mentors and not being afraid to empower others rather than trying to control everything that happens in the court headed.
- The leader must identify the objectives to be achieved and to communicate properly, always ensuring that all personnel understand what to do and contributes to the proposed changes.
- Getting the best results must occur as a result of team work in a friendly environment, despite the strictness of the domain.
- Instilling a sense of belonging by identifying common objectives and common standards or labor efficiency courts and subsequent improvement of the image of justice itself.
- Leaders must encourage people emphasizing the importance of the respect for work well done.

The most important contribution of the president of the court in his state of leadership is the investment in human capital as the most important resource of the organization, the only one able to generate new energy and give value to all other resources. The president (Belbin, 1981, as cited by Chirică, 1996) is "the person who chairs the team and coordinates its efforts. He must be disciplined, focused and balanced, a good evaluator of people and activities, a man who is effectively through his ability to notice the availability of individuals and seize the opportunities to exploit them", and all these features are reflected in the performance of court.

### ***Conclusions***

Actual directions of quality in the judicial system require well-trained managers both professional and managerial, efficient, competent, impartial, transparent, responsible, all insufficient skills in the absence of leadership abilities. High professional training is cancelled if the manager is arrogant, does not have the ability to listen and be responsive to the expectations of subordinate staff, practically assuming a leading role. A working environment favorable to personal growth and continuous improvement of staff must become a priority for the managers of courts, a true indicator of their performance.

The multitude of requirements that this specific field claims, compels the judicial managers and especially the court president as the top of the managerial ladder to assume the role of a leader, motivating and guiding staff, and always identifying effective ways of improving and developing them in this aspect. As revealed in the practical part of the study, magistrates with leading role become true leaders through professionalism and the recognition of their merits by the people they work with. Romanian judicial system needs people who command respect by example, through professionalism, integrity and ability to give confidence to the system. When the system has capable managers able to apply leadership skills and inspire subordinates, the change is possible and legal organizations are going forward. When these people do not exist, managers being confined to simple administration and coordination of judicial institutions, we talk about reforming and leadership with no practical effect, which in the end is disastrous for the entire system.

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