

OPENNESS OF THE JUDICIAL POWER IN SERBIA AND IN THE REGION

Proposals for the improvement of a current state



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INTRODUCTION

In cooperation with partners from a regional network NGO “ActionSEE”, the Centre for Research, Transparency and Accountability (the CRTA) prepared the index of openness of institutions in which we analyse the level of transparency, openness and accountability of judicial authorities in the Western Balkans region.

The aim of our activities is to determine a real condition in this area and to make recommendations for its improvement through an objective measurement of regional judicial authorities’ openness. Also, the aim is to improve respecting principles of good governance, in which the openness occupies a significant place.

The judicial authorities’ openness has been measured by application of the basic indicators of success.¹ In spite of that, the situation in the region is bad as the judicial authorities have not yet adopted the openness policy as the key to institution creation. The courts in the region fulfil 48%, and prosecutors’ offices 40% of the indicators of success. Such results lead to a conclusion that an urgent action is needed in order to improve the openness. Once a basic level of openness is reached, requirements regarding the openness shall be increased in accordance with the openness standards.

The level of openness of judicial authorities was measured in the period from October to the end of December 2016, within the Regional Index of Openness of Institutions. The openness was measured through more than one hundred indicators of success divided into four areas: transparency, accessibility, integrity and efficiency.

Having in mind a very low level of the public’s confidence in judicial authorities in the region, a very strong political will to improve the openness is needed, expressed through a proactive approach to publishing of the information and through an improved work of services in charge of public relations.

Our recommendation is addressed to decision-makers, courts and prosecutor’s offices in the regional countries. It may also be useful for representatives of international organisations and colleagues from NGO sector dealing with these issues.

We are open to all suggestions, benevolent critics and discussions regarding our recommendation.

COURTS AND PROSECUTOR’S OFFICES IN THE REGIONS

The research showed that the openness of courts and prosecutor’s offices in the region is not at a satisfactory level. On average, courts fulfil 48% and prosecutor’s offices 40% of indicators of success.

Judiciary and prosecution must have an independent position in the system of powers and respect basic principles in their work, such as: impartiality, accountability, efficiency and transparency.

We have identified several critical points in the work of judicial authorities in the region to which all countries should pay particular attention in order to achieve international standards.

¹ Differences in legislative framework in the area of judiciary conditioned the use of the basic openness criteria that judicial authorities should fulfil in accordance with international standards and practices.

COURTS IN THE REGION

PRINCIPLE OF RANDOM CASE ASSIGNMENT

The random case assignment is the very essence of the judicial organisation, as it tackles some of the basic principles of fair trial: judicial independence and impartiality², organisational flexibility and efficiency. One third of the courts in the region do not respect the principle of random case assignment. If the courts do not correctly organise the case assignment, the public has the impression that judges are biased and led by personal interests in their work, which is a perfect ground for the development of corruption. This may have far-reaching implications for public confidence in the judicial system.

PUBLICITY OF TRIALS

The principle of publicity of trials, which is one of the basic conditions for a fair trial, is respected by more than 90% of courts in the region. However, this principle is largely limited by the fact that the people with disabilities are unable to access courtrooms in as much as a half of courts in the region. The restricted access to public is also due to a spatial problem, as in certain number of courts, courtrooms are not spacious enough to welcome the interested public without interfering with the course of the trial.

PUBLISHING OF INFORMATION AND DECISIONS³

The analysis showed that almost 30% of courts in the region do not have active webpages.⁴ More than one third of courts in the region do not publish reports on their work. A mere half of courts in the region publishes other information about the work; work plans and programmes, field of expertise, biographies of judges, announcements and information.

It is particularly worrisome that more than a half of courts in the region do not publish judicial decisions with reasoning.

The publishing of the information on the work is a guarantee of an efficient judiciary and access to justice. If implemented consistently, the transparency of the courts' work can help the fight against corruption, improve governance and promote accountability of judicial institutions.

FINANCIAL TRANSPARENCY

The budget transparency is the obligation of the public institutions to enable the public to get acquainted with the type and size of budget revenues and expenditures. The publishing of public procurement data and the disposition of financial resources is equally important.

The annual budget of courts in the region is available only in one third of the countries. The data on public procurements in courts regarding plans, decisions, agreements, and annexes to the agreements remain unavailable in more than three fourths of judicial institutions in the region. The judges' income and property cards are not published in the majority of the countries.

2 The Convention for the Protection of Human Rights and Fundamental Freedoms of the European Council of November 4th 1950. Available at: <https://goo.gl/uclfdF>. Accessed on: 01/06/2017.

3 Magna carta of Judges, Consultative Council of European Judges (CCJE), Strasbourg, 2010. Available at: <https://goo.gl/PCNBkW>. Accessed on: 01/06/2017.

4 The analysis of websites of courts in the region showed that there was a different structure of data publishing. Some countries have websites only for the highest judicial instances. There are examples of portals where there are sub-pages within the same webpage that hold the information about all judicial institutions separately. In some countries, webpages are created selectively, only for specific courts or prosecutor's offices.

PROSECUTOR'S OFFICES IN THE REGION

AVAILABILITY OF THE INFORMATION ABOUT THE WORK

One half of prosecutor's offices in the region do not have a website. It is a common practice that only the highest prosecutor's instance has got a webpage, but the page does not even comprise the list of other institutions. If we analyse the contents of the existing websites, a mere half of prosecutor's offices publish the basic information about the work, the fields of expertise, annual statements, work plans and programmes.

The existing state of accessibility of the information does not contribute to public confidence in the work of the prosecution. The right to access to the information is restricted by the fact that only one half of institutions publish the contact person in charge of free access to the Information. The obligation to proactively publish the information has been accepted as an inevitable part of the openness and transparency of the institutions in the region. The proactive approach relates to the obligation of institutions to timely and at their own initiative make available to the citizens, media and public as much information as possible about their work⁵.

PUBLIC AND MEDIA RELATIONS

The closeness of prosecutors' institutions and an inadequate communication with the public orientates the manner of media reporting about their work. The most frequent issues that violate the international standards and reporting principles in criminal proceedings are the following⁶: unilateral media reporting, violation of privacy and of innocence assumption, "information leakage" from the prosecution and the police, publishing of confidential information during the investigation.⁷

Only one third of the regional countries have got precise instructions for the media about manners of reporting. This type of booklets for the media is important as it indicates the type of information that can be revealed to the public in which phases of a criminal proceeding without interfering with the course of proceedings and investigation. Two thirds of prosecutor's offices do not monitor the way that the media report on their work, which is particularly worrying.

PROSECUTOR'S OFFICES WORK CONTROL

Two thirds of the regional countries have got an established mechanism of control and monitoring of the work of prosecutor's offices by a higher instance. Nonetheless, the functioning of these mechanisms in practice is questionable. In one half of the countries, competent authorities do not exercise regular control over the work of prosecution in the region. Less than one half of the prosecution institutions in the region have submitted to the competent authority the report on the work for the last year.

Furthermore, persons who are not satisfied with the work of public prosecutors do not have the defined procedures for complaints in one half of the regional countries.

The Code of Ethics of Public Prosecutors exists in all countries, but only one fifth of the institutions publish it.

5 Darbshire, Helen, Proactive Transparency: The future of the right to information? A review of standards, challenges, and opportunities, Washington, 2010

6 Declaration on the provision of information through the media in relation to criminal proceedings (2003)- adopted by the Committee of Ministers on July 10th 2003 at the 848th meeting of the Ministers' Deputies; Recommendation Rec(2003)13 of the Committee of Ministers to member states on the provision of information through the media in relation to criminal proceedings-. Recommendation of the Committee of Ministers of the Council of Europe R (2000) 7 on the right of journalist not to disclose their sources – adopted by the Committee of Ministers on March 8th 2000; Convention of the Council of Europe for the Protection of Human Rights and Fundamental Freedoms, November 4th 1950.

7 Association of Public Prosecutors and Deputy Public Prosecutors of Serbia, Partners for Democratic Changes in Serbia Transparency, privacy and innocence assumption, prosecution – media – citizens, Belgrade, 2017. Available at: <https://goo.gl/u7q3kX>. Accessed on: 15/06/2017; Centre for Democratic Transition (CDT), Citizens Alliance (GA), How do media report on the Work of the Republic Prosecutor's Office? Analysis of the media reporting, 2016.

COURTS AND PROSECUTOR'S OFFICES IN SERBIA

Judicial power is unique for the entire territory of the Republic of Serbia. Judicial power is vested in courts of general and special jurisdiction. Courts of general jurisdiction are basic courts, high courts, appellate courts and the Supreme Court of Cassation.

Courts of special jurisdiction are commercial courts, the Commercial Appellate Court, minor offences courts, the High Minor Offences Court, and the Administrative Court. The sample comprised 41 courts of general and special jurisdiction.

The system of public prosecutor's offices today includes Republic Public Prosecutor's Office, four appellate public prosecutor's offices (in Belgrade, Novi Sad, Niš and Kragujevac) 26 higher public prosecutor's offices, 34 basic public prosecutor's offices and 2 prosecutor's offices with special jurisdiction (the Prosecutor's Office for Organised Crime and the Prosecutor's Office for War Crimes). The sample comprised 23 prosecutor's offices.

The High Judicial Council and the State Prosecutorial Council are independent institutions that guarantee and protect the judicial independence and integrity and watch over the judges' and prosecutors' accountability. The position of two independent Councils is governed by the Constitution of the Republic of Serbia. This court system has been established in accordance with recommendations of the Council of Europe and the European Union. Their creation in 2009 is the result and the integral part of the judiciary reform in Serbia, as well as an important step forward the accession of Serbia to the EU.

The judicial power transparency is at an unsatisfying level in Serbia. The results of the openness index indicate a great heterogeneity between different courts' practices when it comes to publishing the information. Certain courts have an up-to-date website with all necessary information enabling the citizens to perceive the work method and the organisation of the court, whilst on the other hand, a large number of courts do not have their webpages, or they are out-dated or lacking important information. This particular segment is bothersome given the development of the information society and the number of internet users in Serbia.

In the Guidelines for creation of web presentations of public administration bodies⁸, it is recommended that all public administration bodies should have a web presentation. The Instructions for the preparation of the Information Booklet about the Work of public bodies⁹ envisages that public bodies that have a website or use web presentation of some other authority, publish Information Booklets about the Work in the electronic form. Although the Guidelines for creation of web presentations are not binding, the publishing of Information Booklets is, and both documents indicate the existence of a well-developed practice and of the instructions for creation and maintenance of public institutions' websites.

When it comes to accessibility, in the majority of courts there are no sufficiently developed mechanisms for providing information to the members of vulnerable groups and minorities, whereas people with disabilities and with reduced mobility cannot access the majority of courtrooms. It is also indispensable to improve the existing procedure for submission of complaints on the work of judges and courts employees via website, as well as to enable citizens to access their cases via the court's website.

The Law on Judges stipulates the principle of random case assignment, so that the cases are assigned to judges through an impartial system that prevents judges from choosing cases on their own. Keeping statistical records and preparation of reports is stipulated by the Law on Courts and all courts have an obligation to submit reports on their work. The majority of courts submit Reports on the work to the competent authority on time.

⁸ Guidelines for creation of web presentations of public administration bodies, bodies of territorial autonomy and self-government units v 5.0, Republic of Serbia, Ministry of Public Administration and Local Self-Government, Directorate for E-Administration: http://www.deu.gov.rs/doc/Smernice_5_0.pdf

⁹ Instructions for creating and publishing information about the work of the state body, the Republic of Serbia, the Commissioner for Information of Public Importance and Personal Data Protection

COURTS OF GENERAL AND SPECIAL JURISDICTION

Courts of general jurisdiction are basic courts, high courts, appellate courts and the Supreme Court of Cassation, which is the highest court in the country. Courts of special jurisdiction are commercial courts, the Commercial Appellate Court, minor offences courts, the High Minor Offences Court, and the Administrative Court.

The **transparency** of courts of general and special jurisdiction has been assessed in relation to the publishing of organisational information. However, courts in Serbia fulfil only 33% of indicators in this area which indicates an insufficient transparency in the work of courts of general and special jurisdiction.

The results demonstrate different practices in the publishing of organisational information depending on the court's level, and whether separate courts have their websites or not. In that sense, the Appellate Court in Belgrade realises the best result in the observed sample, as it fulfils 96% of indicators. The Appellate Court in Belgrade publishes annual reports about its work, the annual work schedule, organogram, programme archives, as well as the current programme for solving of old cases and the information on the notice board as prescribed by the law such as: the information about the court's jurisdiction, the schedule of public hearings and trials in criminal proceedings, as well as contacts and competences of each judge. Besides, on the Appellate Court's website, there are information about the court's employees: first names and surnames, contacts and positions. All information on the portal are regularly updated.

The lowest result is scored by minor offences courts in Prijepolje and Sremska Mitrovica and by basic courts in Kosovska Mitrovica, Mionica and Novi Pazar, which do not fulfil any of indicators. Basic information about the work of the said five courts, such as contacts and working hours, are published on the Portal of Serbian Courts, where each court has got its profile, but the available contents on their work vary. On the other hand, the majority of the observed courts have an internet page. Nonetheless, nearly 70% of courts that have a webpage have not updated the contents for more than 15 days, so that the pertinence of the available information is questionable. In the case of information that are updated once or several times a year, such as annual reports or annual work plans, uneven practice has been observed. In most cases, the courts either do not publish these documents, or they publish them only for the previous or the current year.

The **accessibility** of courts of general and special jurisdiction has been measured in relation to the *approach to justice* and the *publicity of court proceedings*. The courts in Serbia realise the score of 34% of the accessibility indicators, but there are great differences between the results and practices of separate courts comprised in this research.

In the majority of courts, there are no mechanisms that provide information to the members of vulnerable groups and minorities about their rights (SOS phone number, brochures), whereas people with disabilities and with reduced mobility cannot access the majority of courtrooms. Although there is a defined procedure for the use of minority languages and writings, the application of the existing procedure in practice is still limited. In the majority of courts there is a defined procedure for complaints on the work of judges and the court employees on the website.

Although the court proceedings are public (with few exceptions), the court decisions (verdicts) are published only by the Appellate Court in Belgrade and the Supreme Court of Cassation. The minutes from full hearings are not published.

There is a special office for public relations or communication with the media only in four courts. Citizens can obtain information about lists of documents in courts' possession via the Information booklet. The majority of courts do not have a person in charge of information of public importance and there are no trainings whatsoever for employees nor tuitions about their obligations regarding the implementation of the Law on Free Access to Information of Public Importance.

Citizens have a limited possibility to access their cases via websites. As a matter of fact, less than one half of the courts comprised in this research enable the access to cases via their websites. Only the Appellate Court

in Belgrade and the Supreme Court of Cassation have got an electronic database of court verdicts on their websites.

The integrity of courts of general and special jurisdiction has been measured in relation to the existence and publishing of the Code of Ethics for judges, and also of the Code of Ethics for courts employees.

Pursuant to article 3 of the Law on Judges, the **Code of Ethics** is issued by the High Judicial Council, an independent and autonomous body constituted in 2009 aiming to ensure and guarantee the independence and autonomy of courts and judges. The Law prescribes the obligation for all judges to adhere at all times to the Code of Ethics. The same Law prescribes that, in line with the Code of Ethics, the High Judicial Council decides about activities that are contrary to the dignity and independence of a judge or harmful to the reputation of the court. Violation of provisions of the Code of Ethics is a disciplinary offence and a basis for disciplinary actions initiation.

The courts in Serbia do not have an obligation to adopt separate codes of ethics. The Code of Ethics issued by the High Judicial Council is abiding for all courts and judges.

The position, rights and liabilities of judicial employees are regulated by the Law on Court Organisation, the Law on Civil Servants and State Employees, the Law on Wages of Civil Servants and State Employees and the Rules of the Court. Pursuant to the Law on Court Organisation, each court adopts the **Rulebook on internal organisation and job classification**. It is an act issued by the court president in accordance with the human resources plan that is adopted upon the Minister of Justice prior consent. However, in this document there are no defined standards of professional ethics that court employees are held to respect. Another important document in the work of courts is the **Court Rules of Procedure** that prescribe the court internal organisation and operation in the Republic of Serbia. Nevertheless, the Court Rules of Procedure do not define the conduct of court employees that upholds the court's reputation and personal dignity. They rather deal with dress code for judges, court employees, parties and other participants in court proceedings and all others who conduct their work in a court.

Even though the Code of Ethics exists and is binding for all courts and judges in the republic, it is only available on the High Judiciary Council Portal. A small number of courts of different levels, which have got their portals, do not publish this document. Therefore, **the level of openness of the courts in Serbia in the area of their integrity is very low and fulfils only 5% of indicators**. This is also due to the fact that there is no code of ethics in Serbia that would regulate moral and professional principles in the work of the court employees.

In the area of **efficiency** courts of general and special jurisdiction realise 61% of indicators. The monitoring of the courts' work has been assessed in this field.

The cases are assigned to judges through an impartial system that prevents judges from choosing their cases (so-called judge shopping). The Law on Judges stipulates a random case assignment according to a schedule that is independent of personality of parties and circumstances of the legal matter. Cases are entrusted to a judge on the basis of the court schedule of tasks, pursuant to the Court Rules of Procedure, according to the order determined in advance for each calendar year, exclusively on the basis of the designation and the number of the case file.

Keeping statistics and drafting reports is a task of the court administration in accordance with provisions of the Law on Court Organisation. The Court Rules of Procedure prescribe the internal organisation and the work of courts and particularly keeping statistics and drafting reports. The Instructions for drafting reports on the work of courts was issued by the judicial administration exercised by the High Judicial Council. Within its Annual Report on the Work, the court publishes statistics about the number of received, solved and unsolved cases, as well as statutory time. These data are published within the court in its entirety and individually for each judge.

The courts are held to submit reports on their work to the competent authority. According to the Court Rules of Procedure, quarterly, six-monthly and annual reports on the work of the court are prepared. Six-monthly and annual reports on the work of the court are submitted to the High Judicial Council, to the Supreme Court

of Cassation and directly to the higher court and the Ministry responsible for the judiciary. 69% of courts submit reports on their work to the competent authority in a timely manner.

THE HIGH JUDICIAL COUNCIL

The **transparency** of the work of the High Judicial Council has been assessed through the published information about the budget, public procurement implementation and organisational information publishing. The transparency of the High Judicial Council amounts to 63% in these three sub-areas. The budget of the High Judicial Council and the report on its execution are available in the Information Booklet about the work for three previous years. The budgetary items partially follow the instructions of the Council of Europe¹⁰ and are organised in a way to show funds allocated to wages, equipment purchase and maintenance, but not in a way to demonstrate judges' trainings or potential investments in new buildings. The information about calls for bids are available on the Council's website, but the annual public procurement plan and programme and concluded public procurement agreements remain unavailable.

The **accessibility** of the High Judicial Council has been assessed through the approach to justice that this institution ensures to citizens. In this field, the High Judicial Council fulfils 58% of indicators.

The High Judicial Council is obliged to act in accordance with the Law on Free Access to Information of Public Importance. In its Information Booklet about the Work, there are detailed information regarding the use of mechanisms of access to the information about the work of this institution, as well as the contact of the person in charge for the access to information of public importance. The Information Booklet contains also a list of data in the Council's possession that are available to public pursuant to the Law on Free Access to Information of Public Importance, with the exception of cases where this right is limited by the Law itself. On the internet Portal of the High Judicial Council, there are decisions and other acts published that this institution passes on concerning the organisation of its work and the communication.

In the Information Booklet there is a list of rules regarding the publicity of work of this institution, whereas the publicity itself is guaranteed by the Law on the High Judicial Council and the Rules of Procedure of the High Judicial Council. The sessions of the High Judicial Council are public, except in cases where the closed session "are required by the interests of preserving national or official secrets, the interests of public order, the reasons of morality or privacy"¹¹. Interested parties and accredited media representatives are allowed to attend sessions. The High Judicial Council communication strategy is determined by the rules of internal and external communications that set standards for their further improvement. The counsellor for public relations of the High Judicial Council coordinates a quotidian cooperation with journalists and media representatives, prepares conferences, announcements for the public and materials for media representatives. In its organisational structure, the Council does not have a communication department.

However, the accessibility of this institution is shattered by the lack of mechanisms that enables the public to file complaints about the work of judges and employees of the High Judicial Council.

The **integrity** of the High Judicial Council is ensured through the independence of its work and the Code of Ethics. The independence of its work is guaranteed by the Constitution of the Republic of Serbia, according to which "the High Judicial Council is an independent and autonomous body which provides for and guarantees independence and autonomy of courts and judges."¹² Its independence is further confirmed by the Law on High Judicial Council that determines that funds for the work of the Council are secured from the Republic of Serbia budget upon proposal of the Council. Nonetheless, the violation of its independence is reflected in

10 European Commission for the efficiency of justice (CEPEJ), CEPEJ Guidelines: http://www.coe.int/t/dghl/cooperation/cepej/textes/Guidelines_en.pdf

11 Information Booklet about the Work of the High Judicial Council, <http://vss.sud.rs/sites/default/files/attachments/INFORMATOR%200%20RADU%20VSSa%2020%20%20jun%202016%20.pdf>, accessed on June 5th 2017.

12 Constitution of the Republic of Serbia, http://paragraf.rs/propisi/ustav_republike_srbije.html, accessed on June 5th 2017.

the manner the members of the Council are elected. The composition of the High Judicial Council includes three members by position (the President of the Supreme Court of Cassation, the Minister competent for the judiciary and a Chairperson of the competent Committee of the National Assembly) and 8 elected members elected by the National Assembly upon proposal of authorised nominators, in accordance with the Law. Nominators can be the **Council**, when it comes to electing members from the ranks of judges, the **Serbian Bar Association**, when it comes to electing members from the ranks of attorneys, as well as the **joint session of Deans of law faculties**, when it comes to electing members from the ranks of Faculty of Law professors. This manner of electing the members of the High Judicial Council leaves an impression that the National Assembly has an extensive control over the process and is the object of critique and recommendations of the Council of Europe through the European Commission for Democracy through Law (Venice Commission). As stated in the Opinion of the Venice Commission on the Draft Amendments to the Law on the High Judicial Council from October 2014, the election of members of the Council by the National Assembly seemed to be a recipe for the politicisation of the judiciary, endangered the independence of the Council and undermined the principle of separation of powers.¹³ However, the recommendation to amend such practice in a manner that judges nominate and elect their representatives in the Council and to regulate more precisely the election of other members from the ranks of attorneys and professors has not been entered in the Law on Amendments to the Law on the High Judicial Council. Given the fact that the election of members of the Council and the role of the National Assembly in that process are defined in the very Constitution of the Republic of Serbia, the amendments of such practice should commence by the amendments to the Constitution announced for the end of the year.

When electing judges to permanent judicial positions and nominating candidates for court presidents, the High Judicial Council is guided by the rules. The rules governing the Council's actions are comprised in the Rules of Procedure on criteria and standards for the evaluation of the qualification, competence and worthiness of candidates for the permanent judicial position in the second or higher court and on criteria for the nomination of candidates for court presidents. This document was adopted in September 2016, on the basis of the Law on Amendments to the Law on Judges that came into force on September 1st 2016. However, the manner in which the election of judges is conducted is a matter of controversy and debate challenging the application of the criteria of dignity, qualification and competence in the election of judges since the beginning of the judicial reform in 2009 and is the object of a critique of the Council of Europe and of the European Union.¹⁴ Such a situation is often threatened by blockades in the work of the courts, as it happened in 2016 when a call for the selection of 58 new judges was cancelled.¹⁵ All this leads to the fact that the credibility and independence of the Council, whose role is to ensure the independence and accountability of judges, are increasingly diminishing and questioned.

The High Judicial Council adopted the Code of Ethics that applies to all courts and judges in the country, whereas the violation of its provisions is a basis for disciplinary actions initiation in accordance with the Law. Pursuant to the Law on Judges (article 93), the High Judicial Council creates disciplinary bodies from the ranks of judges, i.e. appoints the Disciplinary Prosecutor and Deputy Disciplinary Prosecutors and establishes the Disciplinary Commission. In addition to disciplinary bodies, the High Judicial Council establishes other permanent working bodies: the Commission for the evaluation of the performance of judges and court presidents and the Electoral Commission. The **Code of Ethics of the High Judicial Council** was adopted in March 2016 at the Council's session. However, the existence of the Code of Ethics needs to be complemented by a training that would reinforce the integrity of judges. On the basis of a research performed by the Council of Europe in 2015, the only training is a one-day module carried out by the Judicial Academy. This training, yet again, is not a part of a permanent judges' and prosecutors' trainings, but is only an optional, ad hoc course, carried out in cooperation with international organisations, when the opportunity arises.¹⁶ Nevertheless, the Code of Ethics,

13 Opinion of the Venice Commission on the Draft Amendments to the Law on the High Judicial Council, October, 2014, [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2014\)028-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2014)028-e)

14 GRECO Report on the fourth evaluation rounds in Serbia about corruption prevention in respect of members of parliament, judges and prosecutors, <https://rm.coe.int/16806ca35d>

15 Read more: OEBS Observers' report on the elections for members of the High Judicial Council from the ranks of judges and for members of the State Prosecutorial Council from the ranks of prosecutors, May 2016, <http://www.osce.org/sr/odihr/242351?download=true>; The Politika, "Selection of Judges Cancelled" <http://www.politika.rs/sr/clanak/367909/Ponisten-konkurs-za-sudije>, last access on 19/06/2017.

16 Council of Europe, Training of judges and prosecutors of the Republic of Serbia in the field of ethics and prevention and

a valid and compulsory training do not guarantee the integrity. The integrity can be fully achieved only by functional mechanisms that guarantee and protect the honour, reputation and independence of the judicial power.

The **efficiency** High Judicial Council amounts to a total of 74%. The monitoring of the work of the High Judicial Council has been assessed in this area.

There are defined obligations and deadlines for submission of reports to the High Judicial Council. However, the High Judicial Council does not consider all reports on the courts' performance. According to the Court Rules of Procedure, quarterly, six-monthly and annual reports about the work of the court are prepared. Six-monthly and annual reports about the work of the court are submitted to the High Judicial Council. There is a legal act that defines the contents and the form of such reports. On the basis of the Law on the Court Organisation, the High Judicial Council set forth the Instructions for drafting of reports on the work of courts and the Instructions for drafting of reports on the work of judges. The report on the work of courts was presented through a unique overview of statistical data according to a unique programme for all courts as a whole, for all matters and for all acting judges, bearing in mind all data about the number of received, solved and unsolved cases, the total number of appeals and decision on appeals. The report comprises also the data about handling the influx of cases, updatedness and percentages of solved cases, as well as the data about acting on old cases. Nonetheless, in their reports, the courts do not state problems they encounter in their work.

STATE PROSECUTORIAL COUNCIL

The **transparency** of the State Prosecutorial Council scored a total of 55%. In the area of transparency of the State Prosecutorial Council, the availability of organisational information, of information about the budget and about public procurements has been assessed.

The State Prosecutorial Council has got its website, but it is not regularly updated. Basic organisational information about the State Prosecutorial Council are comprised in the Information Booklet about the work and on the Council's website. Names, contacts and positions, as well as wages are also available on the website.

The Council prepares the annual work plan which is programme-oriented. However, it is not published on the website. On the other hand, the Annual Report on the Work of the State Prosecutorial Council is available on the website. Moreover, there are strategic documents on the website such as the Communication strategy of the Prosecution.

The State Prosecutorial Council publishes the information about the process and criteria for the election of prosecutors, which are defined by the Rules of Procedure on criteria and standards for the evaluation of the qualification, competence and worthiness of candidates for bearers of public prosecutor's function.

The budget of the State Prosecutorial Council, i.e. the data about the revenues and expenditures are available only in the Information Booklet about the Work, whereas there is a special section on the Council's website "financial reports" where there are information about the budgetary execution. The prosecution budget does not include the annual budget destined to legal aid or the budget foreseen for the training and education of prosecutors. There is a separate part of the website dedicated to information about the undertaken public procurements, accompanied with agreements on contracted jobs. However, the public procurement plan is not available to the public.

The **accessibility** of the State Prosecutorial Council scores a total of 48%. In the area of accessibility of the State Prosecutorial Council, the access to information has been assessed.

A list of data in the possession of the State Prosecutorial Council is available on the Council's website. The contact of the person in charge of acting on demands for the access to information of public importance appears only in the Information Booklet about the Work of the Council. There are no trainings for employees nor tuitions about their obligations regarding the implementation of the Law on Free Access to Information of Public Importance.

There are no procedures for filing complaints on the work of the State Prosecutorial Council.

The State Prosecutorial Council has adopted a communication strategy aiming to make available adequate information to the media representatives in order to keep the public informed about the work of the State Prosecutorial Council. According to strategies, the guidelines have been prepared in order to determine the access of the media to information about the work of the prosecution, as well as the instructions for reporting about the work of the prosecution. The sessions of the State Prosecutorial Council are opened to public, however, according to the Council's report, the presence of the public was not recorded in the observed period.

The **integrity** of the State Prosecutorial Council is ensured through the independence of its work and the Code of Ethics. The integrity of the State Prosecutorial Council scores 60%.

The State Prosecutorial Council is an independent body which provides for and guarantees independence and autonomy of public prosecutors and deputy public prosecutors in accordance with the Constitution. Within its competence, the State Prosecutorial Council cooperates with the High Judicial Council, state and other authorities and organisations, prosecutorial councils of other states and international organisations. The State Prosecutorial Council has got its own budget. In accordance with the law, the State Prosecutorial Council elects public prosecutor deputies for permanent office within the same or the different public prosecutor's office, decides on the election of public prosecutor deputies who have permanent office for a position in the second or higher public prosecutor's office. Furthermore, the State Prosecutorial Council establishes the list of candidates for the election of the Republic Public Prosecutor and Public Prosecutors and submits it to the Government, and nominates to the National Assembly candidates for the first election of the Deputy Public Prosecutor.

There is the Code of Ethics for the members of the State Prosecutorial Council which is published on the Council's website. The members of the State Prosecutorial Council are not obliged to attend trainings in the field of ethics. A disciplinary system for complaints against the members of the State Prosecutorial Council has been established, as well as procedures for filing of complaints for alleged unethical conduct. There are recorded cases of initiated disciplinary actions for non-compliance with provisions of the Code of Ethics. On that occasion, the following violations of the Code of Ethics were committed: the principle of accountability and care for professional duties, the principle of professionalism and the principle of impartiality. In 2015 there were 8 initiated disciplinary actions.

The State Prosecutorial Council does not conduct research about the citizens' confidence in the prosecution. Moreover, there are no data whatsoever about the research that the State Prosecutorial Council undertakes regarding the work of the prosecution available to the public.

The **efficiency** of the State Prosecutorial Council scores a total of 57%.

The State Prosecutorial Council submits annual reports on its work to the National Assembly. However, there are no regulations that define the contents and the form of such reports. The report comprises a chronological overview of annual activities of the Council and data about ordinary and extraordinary reactions of the Council to the existence of the political influence on the work of the Public Prosecution. Nevertheless, the report on the work of State Prosecutorial Council does not comprise reported problems in the work of the Council. The Council considers and adopts the annual report on the work on March 1st of the current year at the latest, and submits it to the National Assembly until March 15th of the current year at the latest. The annual report on the work is published on the Council's website.

Data gathered from the disciplinary bodies of the State Prosecutorial Council regarding the number of actions, type of violation, number and type of decisions passed are published on the website of the Council as well as in the Information Booklet about the Work of the State Prosecutorial Council.

REPUBLIC PUBLIC PROSECUTOR'S OFFICE

The Republic Public Prosecutor's Office is the highest prosecution office in the Republic of Serbia and its position is stipulated by the Constitution and by the Law on Public Prosecution, whereas its work is more closely defined by the Regulation on Administration of Public Prosecutor's Offices.

The **accessibility** of the Republic Public Prosecutor's Office has been assessed in relation to the access to information of public importance and this body fulfils 64% of indicators. This result has been achieved on the basis of the established legal framework, i.e. of the Law on Access to Information of Public Importance, which obliges the Republic Public Prosecutor's Office to draft the Information Booklet about the Work. Citizens' presence in the daily activities of the Republic Public Prosecutor's Office is made possible to the extent that it does not interfere with the work of this body, while the Information Booklet about the Work provides instructions for persons with disabilities to access prosecutor's offices. Moreover, in the annual plan and programme of the work, there are detailed information about how and when the citizens can request the reception at the Republic Public Prosecutor or to inquire about cases. Sessions of the Collegium of the Republic Public Prosecutor's Office are closed to the public, whilst the Prosecution is held to inform the public about the crime rate and about other occurrences of public importance, in accordance with the Law on Public Prosecution and the Regulation on Administration of Public Prosecutor's Offices. When notifying the public, the Republic Public Prosecutor's Office takes into account the protection of the privacy of participants in proceedings. In order to enhance the confidence between the citizens and this institution by increasing its transparency and accessibility and in order to improve its communication, the Republic Public Prosecutor's Office adopted in 2015 the **Communication Strategy of the Prosecution**. Furthermore, in its organisational structure, the Republic Public Prosecutor's Office has got a Department for Public Relations, that prepares announcements for the public, organises press conferences and accomplishes other tasks concerning the communication with the media. However, the lack of accessibility to the work of the Republic Public Prosecutor's Office is reflected in the fact that this institution does not use the languages of national minorities in communication, and that there are no mechanisms that would enable citizens to submit complaints about the work of prosecutors and employees of the Republic Public Prosecutor's Offices.

The **transparency** of the work of the Republic Public Prosecutor's Office has been assessed in relation to the published and available information about the budget, to organisational information and to information about the public procurement implementation. The Republic Public Prosecutor's Office fulfils 66% of indicators in these three areas.

On the Republic Public Prosecutor's Office Portal, there are strategies and reports on the work for three previous years. Nonetheless, it is impossible to find the Annual plan and programme of the work of the Republic Public Prosecutor's Office, although in the Information Booklet about the Work, the citizens are invited to visit the website in order to find the Annual Plan and Programme. As far as other organisational information are concerned, at the internet presentation, there are the organogram of the Republic Public Prosecutor's Office, contacts of employees in this institution, as well as a biography of the Republic Public Prosecutor, and only names of his deputies. The information about wages are presented in the Information Booklet. The Republic Public Prosecutor's Office budget is presented in the Information Booklet, as well as data regarding its execution, but only for the previous year and for all three that were included in this research. The budget of this institution is presented in a tabular manner, with clear and intelligibly indicated items for purposeful spending of funds. As far as public procurements and the plan and programme of their implementation are concerned, there are information in the Information Booklet. However, the information about calls for bids and results of

bidding processes remain unavailable to the public.

The **integrity** of the Republic Public Prosecutor's Office has been observed through the Code of Ethics. In the performance of their office, the public prosecutor and deputy public prosecutors in basic and high prosecutor's offices must adhere to the Code of Ethics issued by the State Prosecutorial Council. Nonetheless, it is impossible to find information about this document on the internet presentation of the Republic Public Prosecutor's Office.

The **efficiency** of the Republic Public Prosecutor's Office scores a total of almost 84%. The monitoring of the work of the Republic Public Prosecutor's Office has been assessed in this area.

The Republic Public Prosecutor's Office submitted the report on its work for last year and it has been published on the website. The Annual report on the work of the Republic Public Prosecutor's Office indicators of the prosecution's performance, such as the number of received, rejected and processed criminal charges that are reported according to the number of persons charged, number of cases solved, and number of judgments. Nevertheless, the Annual report does not include data about disciplinary actions and complaints filed against prosecutors.

The mechanism for case assignment has been established and is regulated by the Regulation on Administration of Public Prosecutor's Offices issued by the Minister competent for the judiciary following the opinion of the Republic Public Prosecutor. The cases are allocated by the Republic Public Prosecutor. As a rule, the cases are allocated to case processors by order of case reception, by assigning the case to the first subsequent processor from the list of processors made in alphabetical order. The Republic Public Prosecutor may waive the method of case assignment where this is justified by the degree of burden of individual processors, the specialisation of the processor in a particular area or, if justified by other reasons. Records on the case assignment are kept.

There is a mechanism of oversight over lower public prosecutor's offices (basic, higher and appellate) by the Republic Public Prosecutor's Office. The Public Prosecution is held to submit, upon request of a superior prosecution, periodical and special reports, data, analyses and bulletins about certain occurrences and issues. The Collegium of the Republic Public Prosecutor's Office considers the Report on the Work of the public prosecution for the previous year, takes into account the plan and programme of the work and the annual report on the work.

The Public Prosecution is held to prepare the Report on the Work in the previous year until February 1st of the current year at the latest and to submit it directly to the higher public prosecutor's office. The Republic Public Prosecutor determines which data shall be entered in the Report on the Work of the public prosecution. The report of an immediately superior higher prosecutor's office contains also reports of lower public prosecutor's offices. The Reports about the Work are to be considered at the Collegium, i.e. at the prosecutor's offices departments before their submission to the immediately superior higher prosecutor's offices.

The Ministry competent for the judiciary exercises an oversight over the application of the Regulation on Administration of Public Prosecutor's Offices. While exercising the oversight, the Ministry competent for the judiciary may request reports and data.

BASIC AND HIGHER PUBLIC PROSECUTOR'S OFFICES

The **transparency** of the work of basic and higher prosecutor's offices in Serbia has been observed in relation to publishing of organisational information. Observed at the sample level, the transparency of the work of public prosecutor's offices **practically does not exist**. This is due to the fact that basic and higher prosecutor's

offices in Serbia do not have or do not update their websites (for example: the Higher Public Prosecutor's Offices in Niš and Kraljevo), that would make these information available to the public.

The **accessibility** of the work of public prosecutor's offices is at a somewhat higher level than their transparency but it still does not score well enough, as it fulfils only 29% of indicators. A certain progress in terms of accessibility, measured on the basis of access to information of public importance, is a consequence of the existing legal framework. The Law on Public Prosecution and the Regulation on Administration of Public Prosecutor's Offices stipulate that the public prosecutor's offices notify the public about the state of criminality and other occurrences, as well as about the public prosecutors' actions whenever there is a need that the public is informed about it, in accordance with the interest of proceedings, taking into account the protection of the privacy of participants in proceedings. Moreover, public prosecutor's offices are obliged by the Law on Free Access to Information of Public Importance. However, as the majority of public prosecutor's offices in Serbia do not have their website, it is not possible to determine whether they draft the Information Booklets about the Work, as they are unavailable in the majority of cases (with the exception of the Basic Public Prosecutor's office in Niš and the Higher Public Prosecutor's office in Kraljevo, that are the only ones in the observed sample to have their websites; and a few Information Booklets about the work of several public prosecutor's offices available on the Republic Public Prosecutor's Office Portal). For the same reason, it is not possible to determine whether the public prosecutor's offices have among their employees persons responsible for acting upon requests of citizens to access the information. On the basis of the questionnaire, it was determined that 15 public prosecutor's offices out of 22 that were included in this research, had a notice board in the premises of the prosecutor's offices where announcements, statements and notifications about the reception of parties and other persons, and other information about the work of the public prosecutor's, as stipulated by the Regulation on Administration of Public Prosecutor's Offices (article 77a). Furthermore, according to the **Communication Strategy of the Prosecutor's Offices** issued by the Department for public relations of the Republic Public Prosecutor's Office and the State Prosecutorial Council, a decentralisation of the communication system and the informing of the public has been carried out, in a way that each prosecutor's office has appointed "one person authorised to appear in public, made its protocols for communication with the public and the media, and within the prosecution itself."¹⁷ However, it was impossible to reach individual communication plans and other information as there are no websites and it was not possible to inspect individual Information Booklets about the work.

The **integrity** of the work of public prosecutor's offices in Serbia has been observed through the existence of the Code of Ethics. Basic and higher prosecutor's offices are obligated by the Code of Ethics for public prosecutors and deputy public prosecutors of the Republic of Serbia, adopted by the State Prosecutorial Council. However, given the fact that public prosecutor's offices' websites are very rare and that the Code of Ethics is unavailable, the public has a restricted insight to the basic principles on which the work of these institutions is founded and their reputation and integrity built.

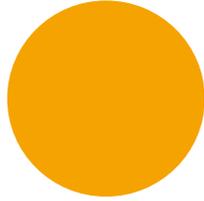
The **efficiency** of the Public Prosecutor's Offices scores a total of almost 84%. The monitoring of the work of the Public Prosecutor's Offices has been assessed in this area.

The majority of public prosecutor's offices submitted their reports about the work for the previous year to the competent authority. The Public Prosecutor's Offices are held to prepare the Report on the Work in the previous year until February 1st of the current year at the latest and to submit it directly to the higher public prosecutor's office. The Republic Public Prosecutor determines which data shall be entered in the Report on the Work of the public prosecution, so that the report of an immediately superior higher prosecutor's office contains also reports of lower public prosecutor's offices. The Reports about the Work are to be considered at the Collegium, i.e. at the prosecutor's offices departments before their submission to the immediately superior higher prosecutor's offices. On the basis of the Law on Public Prosecution, reporting has been defined by the Regulation on Administration in the Public Prosecution that prescribe: the relationship of public prosecution to other state authorities, citizens and the public, the manner of keeping records, manner of allocation of cases, case management, procedure with archive materials and other issues of relevance to the work of public prosecutions. The Regulation on Administration of Public Prosecutor's Offices is issued by the Minister com-

¹⁷ Information Booklet about the Work of the Republic Public Prosecutor's Office, http://www.rjt.gov.rs/upload/Document/File_ci/2016-03/Informator_O_Radu_RJT_Ispravljen.pdf, last access on June 12th 2017.

petent for the judiciary following the opinion of the Republic Public Prosecutor. While exercising the oversight, the Ministry competent for the judiciary may request reports and data.

The Annual report does not include data about disciplinary actions and complaints filed against prosecutors.



ACTION SEE (Accountability, Technology and Institutional Openness Network in the South East Europe region) is a network of civil society organizations that jointly work on promoting and ensuring government accountability and transparency in the region of South-East Europe, raising the potential for civic activism and civic participation, promoting and protecting human rights and freedoms on the internet and building capacities and interest within civil society organizations and individuals in the region in using technology in democracy promotion work.

CRTA is an independent, non-partisan civil society organizations that advocates for accountability and transparency and improves the skills of citizens and the media to actively participate in the decision making process monitoring. In order to empower citizens, other NGOs and the media to hold public officials to account, CRTA use information and communication technology for exchanging data obtained by monitoring the work of public institutions, investigative and “data” journalism, researches and surveys.

CRTA, also, develops ICT tools that enable citizens to do their own research and publish information as well as developing publicly available mechanisms for holding politicians and institutions to account. CRTA and its partners use the information, tools and mechanisms to encourage the public reaction to the abuse of public office and to exert pressure on institutions to improve existing procedures with regard to the concept of accountable behavior.

WWW.CRTA.RS