


**OPENNESS**  
**OF THE JUDICIAL**  
**POWER**  
**IN SERBIA AND**  
**IN THE REGION**  
**2017**



# ANALYSIS OF JUDICIARY OPENNESS IN SERBIA AND IN THE REGION IN 2017



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## Introduction

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

The proposal is a result of a comprehensive research, based on methodology, undertaken by the members of the network ActionSEE in all West Balkans countries. The aim of the research is to determine through objective measuring of the judiciary openness the real state in this area and to put forward recommendations for its improvement. The aim thereof is also to influence the enhancement of good governance and to help the institutions to efficiently implement them in their work. We are of the opinion that these are the objectives that we share with the very institutions comprised in this research.

The openness of the government is one of the principle postulates of the good and righteous governance and an important characteristic of each democratic society. It is a general, i.e. public value of developed societies and a significant instrument of the government work control by the institutions and citizens. Furthermore, it is also an important instrument for corruption prevention. Unfortunately, this is a topic that is seldom discussed in the region and concrete measures aiming to achieve openness standards are even more rarely undertaken.

The practical policy proposal with concomitant analyses is the second document of this kind. Last year, too, having analysed the research results, the members of the network prepared recommendations for the improvement of the judiciary openness. On the basis of the research undertaken in 2016, [policies were made providing an overview of the state of the judiciary institutions in Serbia and in the region](#), including the observed shortcomings and good practices in this area.

On the basis of these analyses, recommendations were made last year, as well as “[roadmaps](#)” for the improvement of specific areas covered by the research. After that, drawing on their work on the findings and results of last year's research, ActionSEE members have started to improve and adapt research methodology and its indicators, hoping that the new information collected shall contribute to better quality results of the project. The aim of using new and improved indicators is to add new dimensions to the research and a more efficient contribution to improving the openness of the institutions of the region. Backed up by our knowledge, concrete results in monitoring and analysing the regional openness that each of the members possesses, believing that the institutions of the judicial, led by simply presented and achievable steps aiming to improve the situation in these areas, guided by our work on its improvement, we decided to advocate a higher level of openness of government institutions in the region. Thus, this year's research has been enriched with indicators advocating a higher standard of proactive transparency.

## **Analysis of openness of courts and prosecutors' offices in the Western Balkans region**

On 2016, judicial bodies of the Western Balkan countries did not perform satisfactory results regarding openness. Most of basic indicators of performance were not met by regional courts and prosecution offices, scoring together in average 44% of institutional openness. One of the main findings of the measurements for the year 2016 was the lack of online web pages of these institutions, raising the concern of taken verdicts not being published to the citizens.

For this year measurement, members of the *ActionSEE* network undertook improvement and modification of the research methodology and its indicators on the basis of results and findings from the monitoring conducted in the previous year, hoping that the new information obtained would contribute to better project results. The main purpose of using new and improved indicators is adding new dimension to the research and more efficient approach to improvement of openness of institutions in the region.

Openness of judiciary in the region of Western Balkan for this year's measurement meets 36% of the indicators of performance. This result that shows a decreasing performance of judicial bodies is an alarm bell to the transparency, openness and accountability of the administrative activity of these institutions. The challenges of the ongoing reform all over the region on these bodies, as well as the low score on transparency, do not give the perception that concrete commitments are being taken to promote transparency, citizens' empowerment and anti-corruption actions. Open government is not a goal only for the executive and legislative powers, but also it is a need for judiciary, to understand what it can do to improve government, society and democracy (OGP, 2016)<sup>1</sup>.

We would like to point out that this year's research comprised and advocated a higher degree of openness of institutions in relation to last year, adding new indicators by which this openness is measured, and thus tightening the measurement criteria themselves. We believe that such a tightened approach to the research added up to the fact that the results show a decrease in openness of the judicial bodies. On the other hand, the results and analysed data show that the judiciary has not made any effort to develop openness since the publishing of the previous results, so new indicators are not of the crucial importance for a general decline in the openness.

Concrete and urgent steps should be taken to improve the performance of this power to rebuild the public trust into the judicial bodies. Our policy paper is addressed to decision-makers in courts and prosecutor's offices in the regional countries. It may be useful for representatives of international institutions and NGO colleagues, who tackle with these issues.

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<sup>1</sup> <https://www.opengovpartnership.org/stories/towards-open-judiciary-achieving-open-justice-through-citizen-participation-and-transparency>. Accessed on 27<sup>th</sup> of July, 2018.

The research shows that there is not an equal distribution of results per each country; significant performance differences appear among the Western Balkan countries.

Several findings on the work of judicial bodies in the region and all the countries of the ActionSEE network are being presented throughout this paper, to highlight the most important issues that need to be tackled as soon as possible by the governments of each country, within the framework of the open government standards.

## **Courts in the region**

The results of the conducted research show a decrease of the performance of courts in effectively fulfilling the indicators of openness. On average, regional courts scored **48%** of the fulfilled indicators in 2016 measurements, while in 2017, they reached only **41.6%** of the indicators.

Albania (45%) and Serbia (39%) scored a better courts result compared to the results reached in 2016 (Albania 33% and Serbia 36%). But Albania shows an extremely results decrease regarding the court council by reaching only 2% of the indicators, compared with the analysis of the 2016, with 45% of fulfilment. While all the countries of the region performance a decline in the level of openness, Montenegrin court council performs constantly with the previous measurements and the Bosnian one achieved better results compared to 2016, by 14% higher.

The degree to which regional courts are opened to the citizens, according to four basic principles, is as following: awareness with 50% of the indicators fulfilled, transparency 40%, accessibility 39% and integrity 37%. Except the principle of transparency, which performed 2% higher, the others scored negatively compared to 2016. The situation appears worse regarding regional court council, where the principles of the Regional Openness Index performed on average approximately 10% lower than the previous results.

### *Accessibility and communication with citizens*

Most of the courts in the region fail in providing the opportunity to the citizens to access their offices, using mechanisms that provide information for vulnerable groups about their rights and available adequate remedies on the websites, no guidelines or online mechanisms for raising concerns and making appeals, as well as low results reached in publishing the verdicts along with their respective rationales.

The access to the public information of the courts in the Western Balkans does not reach more than 30% of the fulfilment of indicators. Most of the courts in the region do not have a website and due to this, the citizens face difficulties in finding public information or access the progress of their cases. The column of the relevant FOI information on the courts' website is rarely found, because most of the courts, in practice, do not develop policies that deal with institutional openness.

Public proceeding score 39% of the openness. It is difficult for people with disabilities to access the courtrooms, even though there are legal acts according to which it is an obligation to all the public institutions to adapt the infrastructure of their buildings to facilitate the access of this marginalized group.

### *Conflict of Interest Prevention*

This sub domain of Integrity reaches approximately 20% of the fulfilled indicators. Integrity plans are tools to verify the willingness of the institutions to deal with unethical and corruption practices. Lack of these plans represents a serious concern regarding the judicial proceeding of the Western Balkans' courts. Additionally, most of the regional courts have responded to that they have not conducted any training or workshops on the topics of conflict of interest/preventing corruption/whistle blowing in case of irregularities. But it is also important to mention that the judicial bodies of the region are under reforms and they are facing with a lot of changes and challenges in the near future, so there are yet measurements and recommendations to be done toward these institutions for a continuous improvement of the judiciary in the Western Balkans.

### *Budget transparency*

Only 33% of the information on the budget and 23% of public procurements procedures is published on the websites of the courts of the region. Also, 41% of organizational information is transparent. Partially, this result is due to the lack of official websites or, in the cases that there is a web page, the information is not updated.

This performance impacts the perception of the public on the operations of the courts. Not clearly and opened types of revenues and expenditures of these institutions prevent the opportunity to generate increased flow of information between judicial bodies and society. Moreover, lack of transparency prompts the margins for discretionarily, corruption and arbitrariness in the behavior of the judicial system and interest groups<sup>2</sup>.

### **Prosecution in the region**

Prosecution as a general term includes the prosecution council, public prosecution and state prosecution. The results for this year's measurement research show a significant decrease of the performance of the prosecution in the region. In 2016 measurement prosecution in the region scored **40%** of set indicators while on 2017 they scored 27% of set indicators of openness.

The state of Montenegro with 65% of set indicators, Bosnia and Hercegovina and Kosovo with 44% are in the top three of most opened prosecution in the region. Comparing to last year's measurement only Kosovo has increased its openness in set indictors whereas from 40% of set indicators the score has

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<sup>2</sup> Herrero A., Lopez G., 2010, *Access to Information and Transparency in the Judiciary: A guide to good practices from Latin America*, World Bank Institute.

increased to 44%. Except Kosovo all other states have slightly dropped on their performance which is worrying element in the region. While a lot of work has to be done mostly especially on the prevention of the conflict of interest and the reporting of the work.

The degrees to which regional prosecution offices are opened to the citizens, according to four basic principles, are as following: accessibility with 25% of set indicators, awareness with 39%, integrity with 38% and transparency with 26%. Transparency and accessibility have had a slight decrease comparing to last year's measurement.

#### *Accessibility of information related to work*

Prosecution Offices in the region score low in regard to accessibility and communication with citizens with a score of only 23% of set indicators. Thus, it comes to the conclusions that public prosecution offices in the region general are not providing opportunities to interesting parties to have access to information that should be opened to the public. Most of public prosecution offices do not offer any type of mechanism for direct communication with the prosecutors. Moreover, prosecutions in the region on their websites do not offer adequate information in their website, or a part to raise concerns.

The justice system as a whole failed to create an online system which will track online a indictments and how is moving forward, even that in some countries have established this online system still it fails to be functional.

A proactive approach should take place, which refers to the obligation of institutions to make available to citizens, media and public information about work in a timely and self-initiative manner. A right on access to information is limited by the fact that only a half of institutions publishes contact information of a person responsible for free access to information.

#### *Relations with media and public*

A way of media reporting also defines the closure of prosecutorial institutions and inadequate communication with public. Most of the public prosecution offices (around two thirds) in the region have not adopted any guidelines on cooperation with media about the way of reporting. Such a guideline is more than necessary in order to avoid jeopardizing the course of the proceeding and investigation.

The most common problems, violating international standards and principles of reporting in criminal proceedings, are the following: one-sided media reporting, violation of privacy and presumption of innocence, "information leakage" from prosecutor's office and police, publishing of confidential information in the phase of investigation.



### *Control of work of public prosecution offices*

Two thirds of regional countries have established mechanism of control and monitoring of work of public prosecution offices by higher instance. Moreover, another important mechanism adopted among public prosecution offices is the one of the allocation of cases, which more than 80% of public prosecution offices have adopted and is a necessity the remaining to ones to adopt it as well. However, the functioning of these two mechanisms in practice is still questionable. This due to most of the public prosecution offices have not published or made it public the reports of disciplinary measures, complaints towards prosecutors or reports of the past year to the supervisor authority. The non-documentation and their publishing online make it impossible for interested parties to know if the mechanisms are working and actually having an impact.

### **Analysis of openness of courts and prosecutors' offices in Serbia in 2017**

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 (66), high courts (25), appellate courts (4) and the Supreme Court of Cassation. Courts of special jurisdiction are commercial courts (16), the Commercial Appellate Court, minor offences courts (44), the High Minor Offences Court, and the Administrative Court. The sample comprised 41 courts of general and special jurisdiction.

The network of public prosecutor's offices today includes Republic Public Prosecutor's Office, 4 appellate public prosecutor's offices (in Belgrade, Novi Sad, Niš and Kragujevac) 25 higher public prosecutor's offices, 58 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 22 prosecutor's offices and the Republic Public Prosecutor's Office.

The High Judicial Council and the State Prosecutorial Council have been established by the Constitution of the Republic of Serbia and are independent institutions that guarantee and protect the judicial independence and autonomy of judges, i.e. the integrity of public prosecutors and their deputies. Both Councils were constituted in 2009, and their creation 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 transparency** of judicial authorities in Serbia is at an unsatisfying level. The results of the openness index in this field, if we observe the judicial as a whole, is 30%. The results of the research indicate a great heterogeneity between different courts' practices when it comes to publishing the information. Although certain courts have an up-to-date website with all necessary information enabling the citizens to perceive their work methods and the organisation, there is still a large number of courts that do not have their webpages, or they are out-dated or lacking important information, which is an alarming datum 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 bodies<sup>3</sup> it is recommended that all public administration bodies should have a web presentation. Although this document is not binding, it indicates the existence of a well-developed practice and of the instructions for creation and maintenance of public institutions' websites.

On the other hand, all authorities have the obligation to prepare and publish the Information Booklet about the Work and are held to observe the Instructions for the preparation of the information booklets about the work of public authorities<sup>4</sup>.

In the area of **integrity**, judicial authorities fulfilled the same percentage of indicators as in the area of transparency 30%.

The analysis of **accessibility** of judicial authorities has demonstrated that people with disabilities and with reduced mobility cannot access the majority of courtrooms, and that there are no sufficiently developed mechanisms for providing information to the members of vulnerable groups and minorities about their rights. The existing procedure for submission of complaints on the work of judges and courts employees via website should be improved, as well as introduce the possibility enabling citizens to access their cases via the court's website. In the area of accessibility, judicial authorities included in the sample met 32% of indicators.

## Courts of general and special jurisdiction

Courts of general jurisdiction are basic courts, high and 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. A total of 41 courts were included in the sample.

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 37% of indicators in this area. Certain courts do not have a website. The research showed that even those that do, publish the organizational information in a heterogeneous manner. The Supreme Court of Cassation realises the best result in the observed sample, as it fulfils 77% of set indicators. The highest court in the country has an updated and easily searchable website where visitors can get familiarised with this court's structure and competences. Names of all judges are published in the Information Booklet about the Work, but their contacts are unavailable. Data about basic wages of courts' presidents and judges are also available in the Information Booklet. On the other hand, information about the courts' employees do not comprise the

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<sup>3</sup> 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](http://www.deu.gov.rs/doc/Smernice_5_0.pdf)

<sup>4</sup> 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

list, but only the number of employees, as well as the method of calculation and the amount of basic wages in accordance with the title the person has. The electronic bulletin board cannot be accessed via this court's website. The Supreme Court of Cassation publishes annual reports on the work, but not the annual work plan.

The lowest result is scored by minor offences courts in Leskovac and Užice, which do not fulfil any of indicators. Basic information about the work of these two courts, such as contacts and working hours, are published on the Portal of Serbian Courts, where each court has got its profile, but in the majority of cases, it contains only basic information about the court. Although the majority of the observed courts have an internet page, only 30% of them update the contents thereof in time periods shorter than 15 days, which questions the reliability of the available information.

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 over 80% of the observed 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 about 60% 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. None of the observed courts publishes the instructions for lodging complaints on the work of judges and the court employees on the website.

The court proceedings are public (with few exceptions), the court decisions (verdicts) are published only by 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 seven observed courts (17%). Citizens can obtain information about lists of documents in courts' possession via the Information booklet. 43% of courts published contacts of a person in charge of information of public importance. During 2016/17, 6 courts undertook a training programme for employees in order to familiarise the employees with their obligations regarding the implementation of the Law on Free Access to Information of Public Importance.

The citizens can access the data about the course of their case via the Portal of Serbian Courts by entering the name of the court and the number of the case they are interested in. However, the link to the Portal of Serbian Courts is not set up on certain courts' websites. The courts in Serbia still do not publish their verdicts, while out of all the observed courts, only the Supreme Court of Cassation has an electronic data base of verdicts with reasoning on its website.

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. Besides that, the research examined how many courts implemented measures aimed at *conflict of interests*

*prevention* through publishing of integrity plans and undertaking of trainings for employees working in this field.

In accordance with the Law on Judges, all judges are obligated to adhere at all times to the **Code of Ethics** issued by the High Judicial Council. 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 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, but 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. **The low level of openness of the courts in Serbia in the area of the existence and publishing of the Code of Ethics (35% of fulfilled indicators)** is particularly 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.

When it comes to *conflict of interest prevention*, it was examined whether the courts published integrity plans and whether training for employees are conducted in this area and it was determined that courts in Serbia fulfilled only 15% of set indicators.

**The Anti-Corruption Agency Law** foresees the obligation for all state authorities and organisations to pass on the integrity plan that should contain measures aimed at preventing and eliminating the possibility of emergence and development of corruption. Detailed instructions for preparation and methods of implementing the integrity plans as well as their deadlines for their submission to the Anti-Corruption Agency are included in the **Guidelines for Preparation and Implementation of the Integrity Plans**. However, besides the obligation to draft the integrity plans, the law does not explicitly lay down the obligation to publish them. The analysis of the collected data shows that **only one court from the sample proactively published the integrity plan** on its website. Additionally, the majority of courts did not conduct any trainings for employees in the field of prevention of conflict of interest, corruption and whistle blowing.

In the area of **efficiency** courts of general and special jurisdiction realise 74% 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. 56% of courts submit reports on their work to the competent authority in a timely manner.

## **The High Judicial Council**

The **integrity** of the High Judicial Council is assessed through the analysis of *independence of its work*, through adoption, implementation and publishing of the *Code of Ethics*, and whether this authority undertakes certain measures aimed at *conflict of interest prevention*.

The High Judicial Council was established by the Constitution of the Republic of Serbia as an independent and autonomous body which provides for and guarantees independence and autonomy of courts and judges. 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 potential violation of its proclaimed independence is reflected in the manner the members of the Council are elected. As a matter of fact, The Council has 11 members – 3 by position (the Minister competent for the judiciary, the Chairperson of the competent Committee of the National Assembly and the President of the Supreme Court of Cassation) and 8 elected members (6 judges, 1 attorney, 1 professor of the Faculty of Law) elected by the National Assembly upon proposal of authorised nominators. Authorised nominators are 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 has been the object of critique and recommendations of the Council of Europe through the European Commission for Democracy through Law (Venice Commission) since the adoption of the Constitution in 2006.<sup>5</sup> In 2018, the Ministry of Justice prepared a Draft Amendment on the Constitution of the Republic of Serbia aimed at the area of judiciary and to the reform of the High Judicial Council and submitted it to the Venice Commission for assessment. The Commission adopted the standpoint that the Draft had not entirely ensured the independence of this authority. Having obtained the opinion of the Venice Commission, the Ministry of Justice prepared a work version of the draft amendments and announced a public hearing in order to harmonise the final text<sup>6</sup>. As for the competent public, the last published text of the amendment does not ensure the independence of the High Judicial Council<sup>7</sup>.

Competences of the High Judicial Council include nominating and deposing of judges, proposing to the National Assembly a selection of judges the election of judges during the first election to the office, to propose to the National Assembly the election of the president of the Supreme Court of Cassation and the President of the courts. When selecting judges for permanent judicial functions and proposing candidates for presidents of courts, the Council is guided by the rules 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, adopted in September 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. Such situation often blocks the work of the courts. For the record, in 2016 a call for the selection of 58 new judges was cancelled. 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.

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<sup>5</sup> European Commission for Democracy through Law (Venice Commission). Opinion about the Constitution of the Republic of Serbia dated March 2007

[https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2007\)004-srb](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2007)004-srb)

<sup>6</sup> The work version of the draft amendments published on September 11<sup>th</sup> 2018 foresaw that the High Judicial Council has 10 members - five judges elected by judges and five prominent jurists elected by the National Assembly upon proposal of the competent assembly committee. The Assembly would elect members of the High Judicial Council by a three-fifths majority of the total number of deputies. In case that all members are not elected in this way, the remaining members would be elected from the proposed candidates by a commission composed of the Speaker of the National Assembly, the Protector of Citizens, the President of the Constitutional Court, the President of the Supreme Court and the highest ranking Public Prosecutor.

<https://www.mpravde.gov.rs/obavestenje/20887/radni-tekst-ustavnih-amandmana-u-oblasti-pravosudja-uskladjjen-sa-preporukama-venecijanske-komisije.php>

<sup>7</sup> The Judges' of Serbia Association's release regarding Draft amendments to the Constitution of the Republic of Serbia dated September 12<sup>th</sup> 2018 <http://www.sudije.rs/index.php/sr/aktuelnosti/ustav/432-saopstenje-o-nacrtu-amandmana-na-ustav-rs.html>

The High Judicial Council adopted the Code of Ethics in 2010 that applies to all courts and judges in the country. The violation of its provisions is a basis for disciplinary actions initiation in accordance with the Law. The same law stipulates that 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. Besides the Code of Ethics that is binding for all judges, in 2016 the Council adopted the Code of Ethics for 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 met 65% of indicators 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 four previous years. The budgetary items are organised in a way as 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 Booklet about the Work of the High Judicial Council comprises the information about calls for public procurements for the last four years. 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 27% 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, which is published on the internet page, 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 Council does not proactively publish on its website the information already revealed to citizens having demanded an information of public importance, which considerably influenced the fact that in the area of accessibility the Council scored worse than in the previous year. 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". Interested parties and accredited media representatives are allowed to attend public sessions. The High Judicial Council communication strategy sets forth 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.

The accessibility of this institution is shattered by the lack of the instructions on the website that enable the public to file complaints about the work of judges and employees of the High Judicial Council, as well as by the lack of mechanisms for filing electronic complaints via the website.

The **efficiency** High Judicial Council amounts to a total of 51%. The *oversight of the work of the High Judicial Council* and the *oversight that the Council conducts over the courts* have 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.

## **The State Prosecutorial Council**

The research showed that **transparency** of the State Prosecutorial Council scored a total of 50%. 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.

Basic organisational information about the State Prosecutorial Council are comprised in the Information Booklet about the work and on the Council's website that is searchable and regularly updated.

Names of the members of the Council are available on the website, but certain members' résumés, including the one of the Council's president have not been published. The information about basic wages of the members of the Council and of employees in this body are available in the Information Booklet about the Work.

The Annual Report on the Work of the State Prosecutorial Council is available on the website, unlike its annual work plan. There are also 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 *information about the budget* of the State Prosecutorial Council, i.e. the data about the revenues and expenditures are available in the Information Booklet about the Work. Besides, 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*. In this section, there are also the public procurement plan and the decisions on allocation of agreements on contracted public procurements.

The **accessibility** of the State Prosecutorial Council scores a total of 31%. In the area of accessibility of the State Prosecutorial Council, the *access to information* has been assessed.

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. During 2016/17, there were no trainings for employees nor tuitions about their obligations regarding the implementation of the Law on Free Access to Information of Public Importance. The State Prosecutorial Council did not publish at its own initiative documents, i.e. information made available to entities that had demanded them through the mechanism of free access to information of public importance. The total score of the Council was further negatively affected by the fact that 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 63%.

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. The State Prosecutorial Council has got its own budget. Within its competence, 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.

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 68% and it was assessed through the *oversight role of the Council*, as well as through the *oversight over the Council's work*.

The State Prosecutorial Council submits annual reports on its work to the National Assembly until March 15<sup>th</sup> for the current year, at the latest. The annual report on the work is published on the Council's website. However, there are no regulations that define the contents and the form of such reports. The annual 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.

Data gathered from the practice of 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.

## **The Republic Public Prosecutor's Office**

The position of the Republic Public Prosecutor's Office as the highest prosecution office in the Republic of Serbia, is stipulated by the Constitution and by the Law on Public Prosecution. The work of this body 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 56% of set indicators. The achieved result was negatively affected by the fact that during 2016/17, there had been no training for employees in the field of free access to information of public importance. Additionally, the Republic Public Prosecutor's Office does not proactively publish responses to received demands for free access to information of public

importance. Moreover, the highest ranking prosecution in Serbia does not publish the instructions for the work with media on the topic of their reporting about its work.

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. 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 28% of set indicators.

The Republic Public Prosecutor's Office has got its own internet portal, but it is difficult to search it. As far as 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. It is possible to access strategies and reports on the work for four previous years via the website. Nonetheless, it is impossible to find the Annual plan and programme of the work of the Republic Public Prosecutor's Office. The Republic Public Prosecutor's Office *budget* is presented in the Information Booklet, as well as data regarding its execution for the previous year. The plan and programme of *public procurements* is published in the Information Booklet, however, the information about calls for bids, results of bidding processes and concluded agreements remain unavailable to the public.

The **integrity** of the Republic Public Prosecutor's Office has been observed through the *Code of Ethics, oversight over the work and the existence of presumptions for conflict of interest prevention*. The Code of Ethics is binding for the Republic Public Prosecutor and his deputies, and for all basic and high prosecutor's offices. The Code of Ethics for Public Prosecutors and Deputy Public Prosecutors was adopted 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 Republic Public Prosecutor's Office did not publish on its website the Integrity Plan. It did not conduct training for employees in the field of conflict of interest prevention.

In the area of **efficiency** of the Republic Public Prosecutor's Office, the oversight over the work of the Republic Public Prosecutor's Office has been assessed. During the conduct of the research, it was impossible to access the Annual report about the work of the Republic Public Prosecutor's Office, and this is why all observed indicators remain unfulfilled.

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.

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 from the prosecution.

## Basic and Higher Public Prosecutors' 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 is **extremely low, and reaches a mere 12%** of set indicators. 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 Valjevo and Pančevo), 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. Public prosecutors' offices fulfil only 18% of accessibility indicators. The degree of openness in the area of accessibility was measured on the basis of *access to information of public importance*. 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. The constraint imposed for notifying the public is to preserve the interests of proceedings and to protect the privacy of participants in proceedings. Public prosecutor's offices are bind by the Law on Free Access to Information of Public Importance. During 2016/17, only 3 observed prosecutors' offices conducted trainings for their employees on the topic of acting according requests for free access to information of public importance. Additionally, there are no public prosecutors' offices that publish on their websites proactive responses to requests for free access to information of public importance.

Less than one half of prosecutors' offices has got a bulletin board. The majority of prosecutors' offices has not got the Guidelines for cooperation with media. However, 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."<sup>8</sup>

The **integrity** of the work of public prosecutor's offices in Serbia has been observed through the existence of the *Code of Ethics* and *the existence of presumptions for conflict of interest prevention*. 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. The Code of Ethics, that comprises basic principles on which the work of these institutions is founded and their reputation and integrity built, is not available at any of the prosecutor's offices websites.

In the field of *conflict of interest prevention*, 5% of prosecutors' offices fulfil the observed indicators, which results from the fact that only two prosecutors' offices conducted trainings for their employees on the

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<sup>8</sup> Information Booklet about the Work of the Republic Public Prosecutor's Office, [http://www.rjt.gov.rs/assets/Informatoro\\_RJT100518.pdf](http://www.rjt.gov.rs/assets/Informatoro_RJT100518.pdf) last time accessed on September 18<sup>th</sup> 2018.

topic of conflict of interest prevention. None of the observed prosecutors has published the Integrity Plan on its website.

In order to strengthen the independence of prosecutors and to reduce political influence on the bearers of the public prosecutor's office, amendments were made to the Rules of Procedure of the State Prosecutors Council in 2017, which enabled the Deputy President of the Council to act in the prescribed cases as a Commissioner for the Independence of Prosecutors. By a decision passed on by the State Prosecutorial Office on April 7<sup>th</sup> 2017<sup>9</sup>, it was stipulated that the Deputy President of the Council, in his capacity of the Commissioner for the Independence of Prosecutors, can undertake certain preventive measures in order to strengthen independence and intuitional integrity of the public prosecution and to protect and reinforce autonomy and professional integrity of the bearers of the public prosecutor's office. The Commissioner for the Independence of Prosecutors can, inter alia, point to acts that jeopardise the independence and integrity of prosecutors and to inform the State Prosecutorial Council and the public about the existence of a political and other unauthorised influence on the work of the public prosecutors' office. The Commissioner acts upon the initiative of the bearers of the public prosecutor's office if certain cases of indicating acts that endanger independence and integrity within the public prosecutors' office, while in cases that arise outside the public prosecutors' office it can act even without an initiative.

The **efficiency** of the Public Prosecutor's Offices has been assessed through *oversight over the work of the Public Prosecutor's Offices*.

In 2016, it was assessed whether public prosecutors' offices submitted reports on their work to the competent authority, whereby in 2017, it was observed whether they did it within the stipulated deadline. As a large number of public prosecutors' offices submit their reports with a de delay, their score in 2017 was lower than in 2016 and amounts to 41%. 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, so that the report of an immediately superior higher prosecutor's office contains also reports of lower public prosecutor's offices. The Annual report does not include data about disciplinary actions and complaints filed against prosecutors.

## **Research methodology**

Openness is a key requirement of democracy because it enables citizens to obtain the information and knowledge needed for equal participation in political life, efficient decision-making and holding institutions accountable for policies they implement.

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<sup>9</sup> The decision of the State Prosecutorial Council dated April 7<sup>th</sup> 2017 <http://www.dvt.it.rs/wp-content/uploads/2017/09/Odluka-DVT-A-br.-39317-od-7.4.2017.pdf>

Institutions around the world are undertaking concrete actions in order to increase their transparency and accountability towards citizens. With a view to determine the extent to which the citizens of the Western Balkans receive timely and understandable information from their institutions, the Regional Openness Index of parliaments has been developed.

The Regional Openness Index measures the degree to which the institutions of the Western Balkan countries are open to citizens and society, based on four principles: (1) transparency (2) accessibility (3) integrity and (4) efficiency.

The principle of **transparency** implies that organisational information, budget and public procurement procedures be publicly available and published. **Accessibility** refers to the provision of and abiding by procedures for free access to information and to the enhancement of the information accessibility through the mechanism of public hearings and strengthening of interaction with citizens. **Integrity** includes mechanisms for the prevention of corruption, the implementation of the Codes of Ethics and the regulation of lobbying. The last principle, **efficiency**, concerns the monitoring and evaluation of policies implemented by institutions.

Following international standards, recommendations<sup>10</sup> and examples of good practice, these principles are further elaborated through specific quantitative and qualitative indicators that are assessed on the basis of availability of information on official internet sites of institutions, the quality of the legal framework for individual issues, other sources of public information and questionnaires forwarded to institutions.

After the completed monitoring, a control phase followed which showed a standard error of +/- 3%. The measurement was carried out from December 2017 to end of February 2018. Based on the results of the research, we developed a presented set of recommendations and guidelines for institutions.

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ActionSEE is a network of organisation of the entire society that works together in order to promote and ensure transparency and accountability of institutions in the entire south-east Europe, to enhance the potential for citizen activism and participation, to promote and protect human rights on the internet as well as to build capacities for the use of new technologies.

The [CRTA](#) is an organisation of young people with broad experience in civic activism, journalism and politics. In our efforts to advocate the implementation of the concept of responsible behaviour in a

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<sup>10</sup> Standards and recommendations of numerous international institutions have been analysed, namely: Access Info Europe, EU, OECD, OGP, SIGMA, World Bank, etc.

society, we develop different mechanisms for monitoring and evaluating the degree of accountability of holders of authority, we research and educate citizens and politicians about the concept of accountability and we advocate the concept of responsible behaviour to be implemented in practice and legislation as the basic value of a developed democratic society. We demand from decision-makers to report their actions to the citizens, and this is why we draw the line and sum up their work both at a national and at a local level. We wish that as many citizens as possible join us!

Through our portals [Truth-O-Meter](#) and [Open Parliament](#), the CRTA informs the citizens, encourages critical thinking, improves openness and accountability of institutions, and bring the decision-making process closer to citizens.