


OPENNESS
OF THE JUDICIAL
POWER
IN SERBIA AND
IN THE REGION
2018



ANALYSIS OF JUDICIARY OPENNESS IN SERBIA AND IN THE REGION IN 2018



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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.

This practical policy proposal is the third in which we give an overview of the state of openness of institutions and recommendations for improvement. After the first survey, which was done in 2016, we started to improve and adapt the research methodology and its indicators, basing our work on monitoring findings and results. This year's research was conducted on the basis of indicators that give an accurate picture of how judicial institutions have worked to improve their openness over the past year.

The results show that the level of openness of judicial institutions is almost the same as in the previous year. Courts in the region on average meet 41.5% of the openness criteria, and prosecutors' offices 31.26%. As we have pointed out earlier - the challenges of the ongoing reforms of these bodies across the region, as well as the low transparency score, do not indicate that concrete efforts are being made to promote openness and transparency. Openness is not only a goal of the executive and legislative branches of government, but also of the needs of the judiciary, to gain insight into ways in which the rule of law and democracy can be promoted.¹

Concrete and urgent steps need to be taken to improve the openness of the judiciary in the region, thereby contributing to building public confidence in the judiciary.

¹ Open Government Partnership, <https://www.opengovpartnership.org/stories/towards-open-judiciary-achieving-open-justice-through-citizen-participation-and-transparency>.

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

This year's research confirmed that we still do not have a satisfactory level of judicial openness. Courts and prosecutors' offices in the region on average meet less than half of the openness indicators. It is not encouraging that this result is almost the same as last year. On the contrary, it indicates that the issue of openness is still not on the list of priorities of these institutions.

Most of our findings and recommendations from last year remain unchanged.

Citizens face numerous difficulties in finding public information held by the courts. A large number of courts in the region do not have their own websites, while a considerable number of them have a limited set of data on their websites. As a further restriction on access to information, many courts do not disclose the contact of the person charged with handling requests for free access to information, although this is a legal obligation.

About half of the courts in the region did not provide us with the answers to the questionnaire we had sent them in order to explore more thoroughly their level of openness. This in itself is an indicator of the openness of an institution and its commitment to working with civil society organizations on these issues.

As a rule, court proceedings in the region are open to the public. However, accessibility to courtrooms for people with reduced mobility is still a problem, despite laws that oblige public institutions to adapt the infrastructure of their facilities.

The random allocation of cases is essential to the independence and impartiality of the judiciary. In this section, we recognized the need for concrete steps and interventions that should lead to the full establishment of this principle. In this measurement, too, we have noted problems with the publication of reasoned court judgments.

Neither do the prosecutor's offices provide sufficient opportunities to access information that should be made publicly available. It is worrying that there are still a significant number of prosecutors' offices in the region that have not created their websites. The results of our research show the low level of organizational transparency of those prosecutor's offices that have their own websites.

A significant number of prosecutors' offices do not publish basic information about their work, such as employee lists, contacts, programs and reports, etc. Often, information on disciplinary proceedings against prosecutors and their outcomes is not available.

As we have pointed out last year, a large number of prosecutors' offices have not yet adopted any kind of guidelines or guidelines on cooperation with the media and the manner of reporting, although it is more than necessary to prevent the flow of proceedings and investigations.

Analysis of openness of courts and prosecutors' offices in Serbia in 2018

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, despite the fact that research team has recorded slight progress in comparison to 2017. The results of the openness index in this field, increased from 30% to 33%. 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 bodies² 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.

² 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

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 authorities³.

Sampled judiciary institutions have fulfilled only 20% of indicators in the area of accessibility, which is the lower result than in 2017. This shows that these institutions do not publish information proactively, nor that they conduct capacity building for their staff when it comes to free access to information of public importance. The analysis of accessibility of judicial authorities also demonstrates 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.

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 did not make any progress in 2018 in comparison to the previous year, as they fulfil only 37% of indicators in this area. The majority of courts (53%) do not have a website. The basic information on their work (contact and working hours) could be found at the Portal of Courts of Serbia, where each court has its own profile. Among courts that have their website, only 24% of them updates online content at least once in 15 days, which brings into question the relevance of published information. The low results in the area of transparency could also be explained with the fact that 75% of assessed courts do not have strategies for improving their openness and transparency.

The Supreme Court of Cassation realises the best result in the observed sample, as it fulfils 78% of set indicators, which is almost the same as in 2017 (77%). 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 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.

³ 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

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 19% of the accessibility indicators, which is for 15% lower than in 2017. However, recorded are great differences between the results and practices of separate courts comprised in this research.

In only 12% of the observed courts there are 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 80% 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. Only two courts publish 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 regularly 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. Almost half of observed courts published contacts of a person in charge of information of public importance. During 2017/18, only 2 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 **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 2018, courts fulfilled only 15% of indicators of integrity.

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.

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 18% 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 **seven courts (17%) from the sample proactively published the integrity plan** on its website, which is higher than in 2017. Additionally, 80% 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 only 27% 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. Only 12% 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 met 58% of indicators in these three sub-areas, which is lower than in 2017 when the result was 62%.

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.

Authorities of the HJC in proposing and executing the courts' budget are limited. Even though there is legally defined transition of this authority to HJC, the deadline is being prolonged every year. The latest amendments to the Law on Organisation of Courts have set the new deadline to 1st of January 2020.

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 records progress from 27% of indicators in 2017, to 37% in 2018.

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 52%. 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 **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 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.

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.

The position of judges and the High Judicial Council in the light of the announced constitutional reforms in the area of judiciary

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 2006.⁴ 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 text⁵. As for the competent public, the last published text of the amendment does not ensure the independence of the High Judicial Council⁶.

⁴ 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)

⁵ The work version of the draft amendments published on September 11th 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>

⁶ The Judges' of Serbia Association's release regarding Draft amendments to the Constitution of the Republic of Serbia dated September 12th 2018 <http://www.sudije.rs/index.php/sr/aktuelnosti/ustav/432-saopstenje-o-nacrtu-amandmana-na-ustav-rs.html>

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, even though a progress is recorded in comparison to 2017, reaching only 20%** of set indicators.

This is due to the fact that basic and higher prosecutor's offices in Serbia still do not have or do not update their websites, that would make these information available to the public. Nine prosecutor's offices did not meet any of the posed indicators in the area of transparency. On the other hand, Basic Prosecutor's Office in Subotica and Higher Prosecutor's Office in Vranje made available the largest amount of information about their work in 2018 – 64% and 62% respectively.

The **accessibility** of the work of public prosecutor's offices is at a somewhat higher level than their transparency. Public prosecutors' offices fulfil only 17% of accessibility indicators. 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 2017/18, 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, which is the same result as in the year before. Additionally, there are no public prosecutors' offices that publish on their websites proactive responses to requests for free access to information of public importance. Only 6 prosecutors' offices publish guidelines 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."⁷

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

⁷ Information Booklet about the Work of the Republic Public Prosecutor's Office, http://www.rjt.gov.rs/assets/Informatoro_RJT100518.pdf last time accessed on September 18th 2018.

comprises basic principles on which the work of these institutions are 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*, 18% of prosecutors' offices fulfil the observed indicators, which results from the fact that only two prosecutors' offices published their Integrity Plans, while six conducted trainings for their employees on the topic of conflict of interest prevention.

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 7th 2017⁸, 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 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 **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 39% of set indicators, which is 11% higher than in 2017.

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

⁸ The decision of the State Prosecutorial Council dated April 7th 2017 <http://www.dvt.it.rs/wp-content/uploads/2017/09/Odluka-DVT-A-br.-39317-od-7.4.2017.pdf>

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 **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 37% of set indicators. This institution in 2018 published contacts of the person in charge for free access to information of public importance and has the special part of its website dedicated to this citizen right.

However, this result was negatively affected by the fact that during 2017/18, there had been no training for employees in the field of free success to information of public importance nor on open data. 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 is Serbia does not publish the instructions for the work with media on the topic of their reporting about its work, nor it publishes the online information board.

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 **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.

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 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 again 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.

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.

The State Prosecutorial Council

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 research showed that **transparency** of the State Prosecutorial Council scored a total of 65% of indicators which is 15% higher than in 2017. In the area of organisational information, this institution scores 67% of indicators. 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 or interim reports. There are also strategic documents on the website such as the Communication strategy of the Prosecution for the period 2015-2020.

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. In this area, institution fulfils 71% of posed indicators. 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*, which contributes to 41% of the 2018 result in this area. 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 20% of indicators, which is for 11% lower than in 2017. 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 2017/18, 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 last available report on the conduct of the disciplinary prosecutor is for 2017.

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 **efficiency** of the State Prosecutorial Council 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 15th for the current year, at the latest. The annual report on the work is published on the Council's website. 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 **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 only 28%.

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.

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.

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, recommendations⁹ 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 2018 to end of April 2019. Based on the results of the research, we developed a presented set of recommendations and guidelines for institutions.

⁹ Standards and recommendations of numerous international institutions have been analysed, namely: Access Info Europe, EU, OECD, OGP, SIGMA, World Bank, etc.

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 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.