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The Analysis of Implementation of Transparency Standards in Courts in the Republic of Serbia



**THE ANALYSIS OF
IMPLEMENTATION OF
TRANSPARENCY STANDARDS
IN COURTS IN THE REPUBLIC
OF SERBIA**



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Introduction

The right to free access to information of public importance is one of the most important mechanisms for controlling the work of public authority bodies. This right ensures their transparency, reduces the opportunity for corruption and protects public interests. The Constitution of the Republic of Serbia also says that public authority bodies have the obligation to ensure that their work is public and accessible to citizens. This area is more closely regulated by the Law on Free Access to Information of Public Importance (hereinafter referred to as: the Law).¹

Citizens can get information of public importance in two ways: proactively, where authorities take a proactive approach, and reactively, by requesting information from a particular authority. Proactive transparency means that a public authority body publishes information of public interest in, *inter alia*, information booklets, clear and easily readable websites that contain all information of importance for citizens or activity reports, in a timely manner and at its own initiative, before a particular person requests them. Such proactive publication of information contributes to the rule of law and enables the public to get information about regulations, decisions and other documents that affect it.² Reactive transparency, on the other hand, is based on each citizen's right to request information about the operation of bodies of authority from those bodies, which is formally done through requests for access to information of public importance (hereinafter referred to as: requests).

All the above-mentioned obligations of bodies of public authority regarding their operational transparency also apply to judicial authorities, including the courts. The courts must protect citizens' freedoms and rights and legal entities' statutory rights and interests, as well as secure constitutionality and legality.³ For that very reason, it is important that citizens

1 [Law on Free Access to Information of Public Importance](#) (Official Gazette of the RS, No. 120/2004, 54/2007, 104/2009 and 36/2010)

2 Helen Darbshire - [Proactive Transparency: The future of the right to information?](#) - World Bank Institute, str. 3

3 [Law on Organization of Courts](#), Article 1. (Official Gazette of the RS, No. 116/2008, 104/2009, 101/2010, 31/2011 - other law, 78/2011 - other law, 101/2011, 101/2013, 106/2015, 40/2015 - other law, 13/2016, 108/2016, 113/2017, 65/2018 - CC decision, 87/2018 and 88/2018 - CC decision), Article 1.

receive all information of public importance in a clear and timely manner, while the courts are required to give citizens access to this information through their operation. Since the general purpose of this research was to examine the level of proactive and reactive transparency of court operation, this analysis will present the findings of the research within which we examined to what extent the basic and higher courts implemented transparency standards.

The publication in front of you is primarily intended for the courts, in order to ensure that they continue improving their transparency. In addition to this, it is also intended for associations of citizens, journalists and other stakeholders who have shown interest in the work of courts. Other target audience includes the Commissioner for Information of Public Importance and Personal Data Protection, High Court Council and Ministry of Justice, in view of their competences in this field, as well as all other stakeholders.

The research was conducted within the Securing Judicial Transparency and Public Trust in Courts in the Republic of Serbia project, supported by the *United States Agency for International Development (USAID)*.

Methodological Framework for the Research

For the purpose of achieving the goals of the research, a sample of courts whose transparency level would be analyzed was determined in the beginning of the research process, which lasted between early February and mid-June 2020. The sample was made up of 30 courts – 20 basic and 10 higher courts. The analysis encompassed courts within the jurisdiction of all four appellate courts in the Republic of Serbia, situated in cities and municipalities of different sizes, smaller towns, and villages. The degree of development of the relevant regions and local government units was also taken into account, and so the analysis was conducted on courts both in the territories above and those below the average in the republic, in accordance with the Ordinance on the Determination of a Single List of Development of Regions and Local Self-Government Units for 2014.⁴

HIGHER COURTS ENCOMPASSED BY THE SAMPLE	BASIC COURTS COMPRISING THE SAMPLE	
Higher Court in Belgrade	First Basic Court in Belgrade	Basic Court in Bečej
Higher Court in Smederevo	Third Basic Court in Belgrade	Basic Court in Vrbas
Higher Court in Novi Sad	Basic Court in Valjevo	Basic Court in Jagodina
Higher Court in Zrenjanin	Basic Court in Vršac	Basic Court in Požega
Higher Court in Novi Pazar	Basic Court in Pančevo	Basic Court in Raška
Higher Court in Kruševac	Basic Court in Ub	Basic Court in Brus

4 <https://ras.gov.rs/uploads/2019/01/uredba-o-utvrdivanju-jedinstvene-liste-razvijenosti-regiona-i-jedinica-l-2.pdf>

Higher Court in Požarevac	Basic Court in Mladenovac	Basic Court in Bujanovac
Higher Court in Prokuplje	Basic Court in Subotica	Basic Court in Pirot
Higher Court in Niš	Basic Court in Šabac	Basic Court in Lebane
Higher Court in Negotin	Basic Court in Kikinda	Basic Court in Kuršumljija

The research of **proactive transparency of courts** was conducted by analyzing the websites of 30 courts comprising the sample. Among other things, we analyzed whether the courts had websites, whether websites (only of certain courts) are available on national minority languages, whether courts regularly publish information booklets on operation and annual reports, whether judges' names and family names are available on the website, whether the courts regularly publish information of importance for citizens, whether the website includes data on the person authorized for personal data protection, etc.

On the other hand, in terms of reactive transparency, the courts comprising the sample were sent requests for free access to information of public importance. The questions in the requests were aimed at collecting the following information:

- ▶ How often does a court upload and update information of importance for citizens on its website?
- ▶ Is the website of the court adapted/optimized for the visually impaired and the blind?
- ▶ Does the court upload summaries of judgments on its website and what criteria does it use for selecting judgments that will be uploaded?

In addition to this, we requested final and non-final judgments and rulings both in non-contentious and in civil cases, as well as judgments in criminal cases, specifically those regarding criminal offenses referred to in Chapter 33 of the Criminal Code – Offenses Against Official Duty, or Criminal Offenses Against the Economy, referred to in Articles 227, 228 and 228a. In this way, Partners Serbia wanted to determine whether the courts would send all the requested decisions, whether they would respond within the statutory deadline, whether they would provide precise and accurate responses to the questions asked, whether they would explain any refusal to submit documents and whether they would ask about the reason for requesting the documents. Moreover, in connection with the reactive transparency of courts, we analyzed the Commissioner's annual reports in the parts referring to the courts' noncompliance with the Commissioner's decisions in cases to which the applicants had complained.

Results of the Research

Proactive Transparency

Within the research, which was conducted between February and July 2020, Partners Serbia analyzed the websites of 30 basic and higher courts from the sample. The websites were reviewed until June 11, 2020, and the findings presented in the text refer to the situation on the websites before that date.

At the beginning of the research, we found out that two of the 30 courts comprising the sample – the Basic Court in Raška and the Basic Court in Brus – do not have websites. After that, we searched the 28 websites using the above-mentioned criteria. The findings presented below refer to the websites of the 28 courts.

Is the key information about the operation of a court available at no more than three clicks away from the homepage?

Data searched on the basis of this criterion refer to: contact information of the court – address, telephone number and e-mail; working hours of the court; territorial jurisdiction of the court; useful forms and templates available on the website; and the prices of main services and court data (account number and other payment details). Another requirement was that this information be available at no more than three clicks away from the homepage.

Only 14 courts completely fulfilled the listed criteria. All of the 28 courts had their contact information and addresses on the websites. On the other hand, as many as 10 courts offered no information regarding their territorial jurisdiction at no more than three clicks away from the homepage, which was a particular cause for concern in view of the fact that, after the address and contacts, this is probably the most important piece of information for citizens who plan to initiate court proceedings.

In the analysis, Partners Serbia wanted to verify whether citizens can find information about the working hours of the court at no more than three

clicks away from the homepage. It was determined that this information was available on the websites of 25 courts. However, three courts failed to satisfy this criterion.

Within this standard, we also analyzed whether the court websites contain useful forms that citizens can download. These could be, for example, forms used for complaining to the operation of the court or for requesting a transcript, certain other forms, templates of a motion to initiate probate proceedings or of a request to inspect the case file, etc. Twenty-two courts fulfilled this criterion. We considered that this criterion was met if the court website contained at least one form. However, if a court had useful forms on the website, but they could not be downloaded, our interpretation was that they were not available.

The websites of six courts did not contain information on the prices of main services and court data (e.g., account number, model, and reference number) at no more than three clicks away.

The transparency requirement was just formally met if the basic information on court operation existed in less visible places, i.e. at more than three clicks away from the homepage. This method of presenting information can discourage citizens from continuing to search the website, because they will need to take more time and to guess where the information can be found.

Are the names and family names of judges available on the website of the court?

Partners Serbia also analyzed whether the names of judges can be found on the websites of the courts. If the names were not available on the website itself, but in a separate document, e.g. the annual roster, our interpretation was that this information was available to citizens. It was also noted that some of the courts' websites contain separate menus with lists of judges, but the lists cannot be accessed, and so, according to our interpretation, such courts' websites did not meet the criterion. In that regard, the Higher Court in Niš was the only court from the sample that did not have this information.

Are the judges' CVs available on court websites?

It was interesting to note that judges' CVs are not available on any of the websites in the selected sample. From the aspect of transparency, it is important that courts notify the public about the qualifications of judges who, as judicial office holders, adjudicate in the name of the people, particularly because they had previously fulfilled the requirements for selection to this public office, which, without a doubt, meant that the informati-

on on their selection was information of public importance. An example of best practice in that regard is the way in which the Supreme Court of Cassation has published the CVs of its judges. Most participants in consultative meetings with court representatives agreed that the public should have access to judges' CVs and no opposition to such practice was noted.

Is information on the person authorized to respond to requests for free access to information of public importance available on the website (the person's name, family name and contact information)?

Within the analysis, we tried to find an answer to the question whether the courts let citizens access information on authorized persons in charge of responding to requests for free access to information of public importance. Twenty-five of all analyzed courts that have websites have the requested information, while the other three did not have information about the person authorized to respond to requests.

As for courts which had the requested data, only one-third of them had the names, family names and contact information of these persons on their webpages, while the remaining two-thirds have the requested information in the information booklets and annual rosters (both types of documents were available on their websites).

Statistical Overview of the Above-Mentioned Information:

25 COURTS HAVE INFORMATION ON THE AUTHORIZED PERSON FOR ACTING ON REQUESTS FOR FREE ACCESS TO INFORMATION OF PUBLIC IMPORTANCE, out of which:		
8 COURTS HAVE THIS INFORMATION ON THE WEBSITE	7 COURTS HAVE THIS INFORMATION IN THE ANNUAL ROSTER	10 COURTS HAVE THIS INFORMATION IN THE INFORMATION BOOKLET

We conducted an additional search of the websites, including a search of annual rosters and information booklets, in order to determine whether the courts have this information at all and whether somebody work as the person authorized to respond to requests, fulfilling the statutory obligation referred to in the Law on Free Access to Information of Public Importance (Art. 38 paragraph 1).

Two courts from the sample had these data in their information booklets, but they were incomplete because, according to them, the authorized persons for responding to requests were the court clerk and the head of the



court. This designation was an additional impediment to accessing information because, due to imprecise data, once the applicant found out the title of the authorized person for responding to requests, the name and family name of this person who held another office (clerk or head of the court, etc..), had to be found somewhere else on the website.

Courts that have information about the person authorized to respond to requests for free access on their websites, facilitate the drafting of requests to applicants. Applicants could thus contact the authorized person timely, prior to sending the request. In this way, the authorized person could provide the applicant with some constructive advice on how to formulate the request precisely in order to get the information the applicant really needed.

Do courts regularly publish information booklets on their operation and annual reports?

One of the parameters of proactive transparency which this analysis dealt with was the accessibility of information booklets on operation and annual reports of basic and higher courts in the Republic of Serbia⁵. Out of the total number of analyzed courts (30 basic and higher courts), this criterion was reviewed in the case of 29 courts. As we said at the beginning, two courts in the sample (the basic courts in Raška and Brus) do not have websites. However, we took into account the fact that the information booklet on the operation of the Basic Court in Brus had been published on the website of the Higher Court in Kruševac, and that it could, therefore, be analyzed in order to determine whether it satisfied the criteria.

As many as 21 of the 29 courts did not have one or both documents on their websites. Specifically, 19 courts do not have publicly available annual activity reports on their websites, and two courts have neither the information booklets on operation nor the annual activity reports. Just eight courts completely satisfied the criterion, having made both documents available on their websites.

Although the majority of courts did not publish annual activity reports, eight did, and the analysis of their contents determined that these were statistical reports in the spreadsheet format which were frequently difficult to read because of their size. An interesting piece of information is that the Higher Court in Novi Sad had published narrative annual activity reports for 2014 and 2015 but discontinued the practice in 2016. This was the only court (out of the analyzed courts) which provided the annual activity report in the narrative format on its website.

Although the general impression is that all documents are readily available on the websites, a cause for concern is the fact that as many as 65% of

5 Data refer to documents from 2019 and/or 2020.

analyzed websites contain only the information booklets on work, but not the annual activity reports,⁶ as well as that two courts do not have either of the two documents.

Does the information booklet contain all elements provided by regulations?

During the research, we also analyzed whether the published information booklets on operation contain all mandatory elements referred to in the Guidelines for the Drafting and Publication of Information Booklets on the Operation of State Authorities, developed by the Commissioner. In the research, we did not analyze the contents of the information booklets, but only determined whether the information booklets contained all the necessary elements.

A total of 27 courts published information booklets. Just 12 of them contained all mandatory elements, while as many as 15 courts drafted and published incomplete information booklets.

Incomplete information booklets usually lacked one or two mandatory elements, which was the case with 10 out of 15 courts that did not fulfil this criterion. The information booklet on the operation of one court do not contain four out of 21 mandatory elements, and as many as four courts had more serious omissions in their information booklets, which lacked seven or more mandatory elements.

The information booklets of the four courts from the sample (the basic courts in Vrbas, Subotica and Kikinda, and the Higher Court in Niš) that failed to include as much as one-third of the mandatory elements referred to in the Rulebook, represent examples of major shortcomings in the contents of information booklets on operation.

Accessibility of information on the authorized person for personal data protection

The analysis showed that the websites of 19 out of 28 courts in the sample contain data regarding the names and family names of the authorized persons in some of the sections of the websites, while 9 others did not have this information on the website.

However, this should be taken with reservations. Just six of the 19 courts have this information directly available on their websites. Ten courts have this information in the format of a clickable link opening a document (most frequently a court decision) in which the information is really contained. In addition to this, three courts had this information only within

6 Although a very small number of courts have these data, they refer to 2018 or earlier years and, as such, do not belong to this analysis.

their information booklets or annual rosters, which meant that, though it existed, this information is not easily accessible to potential applicants.

Do courts publish information of importance for citizens and how often do they update their websites?

Analyzing court transparency, the research team examined the extent to which courts make information on their work available on their websites, and the extent to which the information published by the courts is useful/informative for citizens, media and public in general.

For the purpose of determining regularity, i.e. updating speed, another requirement was whether the courts have published at least one piece of information, i.e. news item, in the past three months. This period was calculated from the date of search of the relevant website. The analysis showed that websites most frequently contain sections or subsections titled NEWS, INFORMATION, STATEMENTS, etc., and that some courts published news or statements on their homepages.

In the observed period, i.e. in the three-month period before the date of the first search of the court website, eight courts did not publish anything in the above-mentioned sections of the websites, or on the homepage of the court.

The second group was made up of courts that did not provide the date when a particular piece of news or information was posted on the website, making it impossible to really determine whether they had published information about their operation in the observed period. This was the practice of eight courts from the sample.

The last group included all courts that had posted one or several news items or pieces of information on their websites in the observed period. It is good that this was the case with nearly one-half of the sample, i.e. 12 courts. It is important to note that courts published different types of information, but that certain trends could be observed:

- ▶ Information on the completion of proceedings, judgments rendered in what could be described as high-profile cases, information on detention, etc.;⁷
- ▶ Information on the appointment of temporary attorneys in relevant court proceedings;

7 This type of information is published by the Higher Court in the NEWS section of the website, e.g.: <https://www.bg.vi.sud.rs/vest/2195/doneta-i-javno-objavljena-presuda-u-krivicnom-postupku-koji-se-vodi-protiv-optuzenog-aleksandra-zdravkovica-i-dr-pokusaj-ubistva-beka.php>

- ▶ Notices of sale of debtors' property;
- ▶ Information on internal job vacancies;
- ▶ Information on the change of seat of the court and/or other contact information of the court;
- ▶ Information on contracts signed with third parties (e.g. signing of a contract with the Post of Serbia PE);
- ▶ Information on received awards;
- ▶ Different types of internal court decisions (most frequently on engaging employees on additional activities⁸).

Some courts' websites do not have the news section on the homepage; instead, one has to search the website and go to the news section through other sections and subsections.

In order to present court practice in the field of proactive transparency as credibly as possible, Partners Serbia posed the following question to the courts in requests for free access to information of public importance: „Do you publish summaries of judgments on the website of your court? Which criteria do you use when selecting summaries of judgement which you will publish?” It can be concluded on the basis of the courts' answers that none of the courts from the sample post summaries of judgments on their websites. Although courts do not have a legal obligation to publish summaries of judgments, and the case law is not a formal source of law in the domestic legal system, the publication of parts of judgments or basic information about judgments in cases that may be of importance for the widest public (with a stress on high-profile cases) may help to increase the transparency of court work and citizens' trust in the courts. Such practice would help to reduce possible corruption in the operation of courts. A best practice example in this regard are the statements published by the Higher Court in Belgrade.

Accessibility of information on court operation during the state of emergency and COVID- 19 pandemic

With the exception of the Higher Court in Prokuplje, all of the 28 courts with websites from the sample, published news and information on the COVID-19 pandemic. The news usually referred to the operation of the court during the state of emergency, rules that the parties and other visitors had to obey when entering and staying at court premises, operation after the lifting of the state of emergency, etc.

8 This primarily refers to the appointment of an employee as person authorized for the protection of personal data, http://www.ne.vi.sud.rs/obavestjenja_cir.html

Are websites adapted for the blind and the visually impaired?

In order to ensure access to important information about the work of courts to all categories of citizens, Partners Serbia wanted to verify whether the court websites are adapted for blind and the visually impaired. This question was also contained in the requests for access to information of public importance. Analyzing the answers to the requests, it was determined that only the Higher Court in Novi Pazar claimed that the website is adapted for the blind and the visually impaired. The Higher Court in Kruševac described its website as “partly optimized”. On the basis of answers of 23 courts, researchers concluded that these courts believe that their websites were inaccessible, while three courts failed to answer the question.

Have courts in multilingual areas developed websites in minority languages?

In areas with large national minority populations – Novi Sad, Bečej, Zrenjanin, Subotica (populated by a large number of ethnic Hungarians) and Bujanovac (where ethnic Albanians are present), court websites are not available in minority languages. This means that these areas have significant national minority populations that might find themselves in the courtroom at some point, and that it is, therefore, necessary to ensure that these persons have access to information about court operation as well as about their rights and obligations regarding the competences of the court in a language they understand.

For example, the websites of the municipalities of Bujanovac and Bečej, as well as the websites of the towns of Subotica and Zrenjanin are available in the languages of minorities that live in these areas and represent best practice examples which the above-mentioned courts should copy in order to ensure access to information when the webpages of courts from these towns are searched.

Are there ODF contents/documents on the website?

Documents in the open document format (ODF) are available to users without restrictions and their implementation is free. The open document format makes it possible to compare the contents of multiple documents with the same type of information, which represents a special advantage for all those who wish to thoroughly investigate the actions of authorities and differences among them. However, one cannot say that the ODF implementation has taken root in Serbia, and so, we note that no ODF documents were found during the analysis of court websites from the sample. Most of the published documents are still in the .pdf or .doc formats.

Do courts have social media accounts (Facebook, TW, Instagram)?

None of the Facebook pages of courts from the sample for which links have been provided represent their official pages. Instead of news or information of importance for citizens, most links contain other people's posts in which the court was tagged. Some court representatives who participated in the consultations said that they are unaware that these pages even exist. Some court representatives said that the courts do not intend to use social media for communication with the public and that the maintenance of more formal channels of communication is more desirable, because courts could have a greater chance of controlling the published content. In that regard, we believe that an important step would be to open a discussion on this issue so that the courts could take a position towards communication through social media with all their inherent advantages and shortcomings.

Reactive transparency

Reactive transparency is based on each citizen's right to request from bodies of authority information about their operation by sending requests for access to information of public importance. All 30 requests for free access to information of public importance were sent to the courts from the sample on February 21, 2020. A total of 28 of the 30 courts submitted their answers, and four of them responded outside the set 15-day deadline.

Twenty-one of the 30 courts provided accurate and precise information, i.e. responded fully to the request, answering the questions, and submitting the requested documents.

Two courts – the Basic Courts in Ub and Brus – failed to respond.

The remaining seven courts did submit their responses to the requests sent by Partners Serbia, but their responses were incomplete, i.e. they either failed to send their answers or to submit the requested documents.

Out of the 28 courts that responded to the request, only the Basic Court in Pirot asked why the documents had been requested and remained the only court that did not submit any documents. This practice certainly has no grounds in the Law because, according to the very same Law, the public has a justified interest to know.

Twenty-one courts submitted all the requested documents. If a court said that it had no proceedings for some criminal offenses, but submitted all other documents, our interpretation was that it had presented complete documents.

In view of this, 7 courts (out of the 28 that had sent their answers to our requests) did not submit all the requested documents, which showed that there is still a significant number of courts that fulfilled their transparency obligation inadequately.

One of the participants in the consultative meetings held with court representatives, coincidentally a representative of a court which had not been included in the research sample, believe that non-final judgments should not be submitted because, in her opinion, they could be altered and their publication could jeopardize the defendant's presumption of innocence. Representatives of several courts that participated in the consultations held the opposing viewpoint – they believed that, since trials were certainly public, non-final judgments should be redacted and then submitted, and that it should only be clarified while submitting the judgment that this was a non-final judgment that had been appealed.

During the consultative meetings, one of the participants said that parties to court proceedings filed requests for free access to information at an increasing rate. In her opinion, such requests should be rejected since these persons already had other legal mechanisms for getting the necessary information at their disposal. However, a representative of the Commissioner's office stressed that parties to the proceedings are not excluded as potential information-seekers, that in those situations they have to be treated like all other applicants and that, in this case, the court should comply with legal provisions that regulate restrictions on free access to information if it believed that a particular piece of information should not be submitted.

Also, one of the participants in the consultative meeting believe that requests in which applicants asked for too much information and documentation, i.e. did not specify the request appropriately, should be interpreted as the abuse of rights. In her opinion, the parties should not use this method to request records from hearings either, because they could use other legal mechanisms to get this information.

Within the project, Partners Serbia developed a guide 'How to Get Information about the Work of Courts – Guidelines for Information Seekers'⁹, which provides citizens with advice and guidelines for getting the information they need from courts as easily as possible. Applicants are given advice on how to draft their request correctly and formulate questions, i.e. requests, precisely, in order to make it easier for the court to respond and in order to obtain the information they truly need.

The actions which entities that have obligations under the Law take in order to comply with the Commissioner's decisions ordering them to supply reque-

9 <https://www.partners-serbia.org/kako-do-informacija-o-radu-sudova> Partners Serbia, October 2020.

sted information represent another important aspect of implementation of the standard of transparency and legal framework on access to information of public importance. Let us recall that the Commissioner's decisions are „binding, final and enforceable“ (Article 28 of the Law on Free Access to Information of Public Importance). Despite this, every year there are hundreds of cases in which the Commissioner orders that information be provided, but the authorities that are required to do this under the Law refuse to comply. The Commissioner publishes a list of such cases annually, and this year this has been an integral part of the 2019 Annual Report.¹⁰ Based on the Commissioner's reports, it can be observed that the Ministry of Interior has had the largest number of such cases over the past few years. For the purpose of this analysis, we have to point out that courts also appear among the bodies of authority that have failed to comply with the Commissioner's decisions for years.

Noncompliance with the Commissioner's decisions is a misdemeanor.¹¹ For the purpose of ensuring public trust in the operation of courts, we would like to point out that courts must improve their practice and always comply with the decisions of the Commissioner, as the body which is hierarchically superior to them in the field of access to information of public importance.

We would also like to point out that authorities within the judicial branch have at their disposal a set of measures they can undertake to ensure that courts operate in this way. They include supervision of the operation of a lower court administration by a directly superior court, internal mechanisms for reviewing the operation of a court, for example, at general sessions of all judges, as well as the competence of the High Court Council to discuss the work of the chief judge of a court and to undertake measures within its competence.¹²

10 The annual report of the Commissioner as well as a presentation of cases in which the Commissioner's decisions were not enforced are available at:

<https://www.poverenik.rs/sr/%D0%B8%D0%B7%D0%B2%D0%B5%D1%88%D1%82%D0%B0%D1%98%D0%B8-%D0%BF%D0%BE%D0%B2%D0%B5%D1%80%D0%B5%D0%BD%D0%B8%D0%BA%D0%B0.html>

11 Law on Free Access to Information of Public Importance (Official Gazette of the RS, No. 120/2004, 54/2007, 104/2009 and 36/2010), Article 46 paragraph 1 item 14, in connection with Article 28 paragraph 1. For more information about the practice of the Administrative Inspectorate in supervision and filing of requests for initiating misdemeanor proceedings, as well as the practice of misdemeanor courts in the access to information of public importance, see: Law on Free Access to Information of Public Importance (Official Gazette of the RS, No. 120/2004, 54/2007, 104/2009 and 36/2010).

12 Some mechanisms for enhancing the responsibility of courts in this field are presented in the following Research: [\(Ne\)odgovornost institucija za skrivanje informacija](#), (Lack of) Institutional Responsibility for Concealing Information), by: Rade Đurić and Ivan Radojević, Publisher: Partners Serbia, 2019, pp. 43-44.

Conclusions with Recommendations to Courts in the Republic of Serbia

The presented research results show that the basic and higher courts comprising the sample implement transparency standards up to a point, but that there is still room for improving their practice.

The sample made up of 30 higher and basic courts has included two courts that do not have websites. This significantly reduces the accessibility of information about court operation, and we would, therefore, like to note that the development of websites for all courts in the Republic of Serbia is a necessity.

The fact that 10 courts from the sample do not have information about their territorial jurisdiction at no more than three clicks away from the homepage on their websites is a cause for concern. Likewise, we could not find useful forms and templates, or information about the prices of services and payment instructions at no more than three clicks away from the homepage on the websites of six courts from the sample. If important information concerning court operation is difficult to spot on a court's website, citizens' communication with the court can be impeded, and they cannot sufficiently understand the way in which they can protect their rights or fulfil their obligations towards the court.

The names of judges are available on the websites of 27 courts from the sample, which should be welcomed. However, a cause for concern is that judges' CVs cannot be found on any of the websites, which weakens the controlling role of the public and deprives the public stakeholders of information regarding the career development of judicial office holders. In that regard, all courts should add appropriate sections to their websites and publish the judges' CVs, like the Supreme Court of Cassation has already done on its website.

Information on the person authorized to respond to requests for access to information of public importance exists on the websites of 25 courts from the sample, which shows that courts have a high level of awareness of the need to ensure public access to this type of information. However, this information is not easily searchable on the websites of a large number of courts from the sample, so we can note that the courts should make this type of information visible, for example by including it in the Contacts section.

The websites of just seven courts from the sample contain the updated information booklets and annual activity reports, while the majority of courts have just one of the two documents on their websites. Information booklets contain all mandatory elements in just slightly more than 40 % of the analyzed information booklets of the courts from the sample. More than 50% of the courts have failed to include all mandatory elements in their information booklets; most frequently one or two of them were omitted, although we have observed courts where at least seven mandatory elements are missing. Finally, two courts have not uploaded their information booklets on operation at all. This shows that a significant number of courts from the sample should improve their transparency by fulfilling their legal obligations regarding the publication and quality of their information booklets.

The contents of the court websites are still not uniform, which means that the categories (types of information) contained therein are not sufficiently harmonized. When we observe and compare the websites of all courts from the sample, the impression is that there is no standard regarding the type of information regarded as important for the public and the type of information that should be shared with the public on the website. Thus, some courts use the News, Statements, Important Statements and Topical Issues sections for providing information about vacancies, while other courts use the same or similar sections for information about high-profile cases held at the court, about awards received by the court, about the publication of the information booklet on court operation, or about the rendering of a particular judgment in a case handled by the court. Such diverse practice should become more uniform in order to ensure that the visitors of all Serbian court websites know in advance what kind of information they can expect to find on a website. Another practice that has been observed is that, when publishing news and statements, some courts from the sample do not state their dates, and, as a result, visitors are deprived of a valuable piece of information that shows how topical the post is. It has been observed that some courts post documents in the sections intended for informing citizens, while others invest additional efforts to inform citizens by stating the most important information in the news format and offering accompanying documents that can be used for

getting a more thorough view on the content of the post. All this shows that further efforts should be made to modernize court websites. In this context, in order to improve the contents and features of their websites, courts are advised to use as a resource the Ordinance of the Republic of Serbia Government on more detailed requirements for the development and maintenance of websites, a platform for judicial authorities drafted by the Ministry of Justice¹³, as well as the best practice examples presented in this analysis; all of this should be done in order to ensure greater transparency of courts, both in terms of types of information posted on their websites as well as in terms of the ways in which this is done.

Court websites are not accessible to the blind and the visually impaired, which means that this group of Serbian citizens, and potential participants in court proceedings, remains insufficiently informed about the competences and operation of the courts as well as about the case law. The accessibility of websites to the blind and the visually impaired should be improved in cooperation with their representatives in order to ensure the implementation of the best standards in this field, in accordance with the users' needs.

There is also room for website improvement regarding the development of multilingual contents at courts with territorial jurisdiction over the areas where, in addition to Serbian, other languages are in the official use or are widespread in the local community – all this in order to ensure better information for minority language speakers.

As regards reactive transparency, we are glad to see that 28 out of the 30 courts have fulfilled their obligation and responded to our requests for access to information of public importance. Nevertheless, the fact that two courts did not do it shows that these courts should develop internal mechanisms for the implementation of one of the primary obligations referred to in the Law.

Two-thirds of the courts from the sample responded to the requests fully, providing accurate and complete information. This is certainly encouraging and shows that the implementation of the Law on Free Access to Information of Public Importance, in the part that governs responses to requests for access, has largely taken root.

As for the courts that acted differently, we have observed that one of them refused to send a requested decision because the appellate proceedings were underway. This practice is noncompliant with the practice established by the Commissioner, according to which court decisions must be

13 <https://www.rolps.org/vesti/jedinstvena-platforma-za-internet-prezentacije-pravosudnih-organa>

accessible to the public regardless of the stage in which the case is. This means that we can note that, in this respect, additional efforts should be made to ensure compliance with the Commissioner's practice at all courts in Serbia.

Certain courts sent appellate court decisions instead of their own. Another observed practice was that certain courts sent documents instead of responding to questions. All this shows that courts should continue improving their work regarding the obligations referred to in the Law on Free Access to Information of Public Importance, and we hope that the findings presented in this analysis may be useful in the coming period.

Finally, we would like to note another cause for concern, and this is that the number of unenforced decisions of the Commissioner has not reduced for years, although they are binding, final and enforceable. The unenforced decisions include those that refer to complaints against courts in the Republic of Serbia. All Serbian courts have to comply with the Commissioner's decisions, observing their statutory obligations and protecting their credibility in the community.

The final recommendation to courts, which results from most of the research findings presented in this publication, is that courts should be proactive and publish as much information about their operation as possible. This will increase the satisfaction of citizens who use them, result in a lower number of requests for free access to information of public importance which citizens send to courts, and thus also in a lower number of complaints to the Commissioner against courts.

Recommendations to the High Court Council and the Ministry of Justice

On the basis of the presented research findings, recommendations for the High Court Council and the Ministry of Justice, respectively, have been made within the project. The recommendations have been made in the format of a practical policy proposal, in view of the two institutions' competences in the area of transparency of court operation in the Republic of Serbia. The recommendations were sent in August and September 2020.



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