

The Analysis of the State of Transparency and Openness of Judicial Authorities



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Table of Contents:

Introduction	4
Methodology.....	5
Proactive Transparency of Courts and Prosecutors’ Offices.....	6
Reactive Transparency.....	12
Commissioner’s Consideration on Partners Serbia Complaints	16
Cooperation between Judicial Authorities and Media	18
General Conclusions.....	24

Introduction

According to different surveys, Serbian citizens have had a very low level of trust in judicial authorities for years.¹ The only experience most citizens have had with the judicial system is their personal participation in court proceedings that are slow, and where justice and law frequently stand on the opposite sides. Moreover, media reports have the greatest influence on citizens' opinion about the judiciary. The trend of institutional silence has not bypassed judicial authorities, which has paved the way to the tabloidization of investigations and court proceedings and enabled public officials to condemn or exonerate defendants in their speeches, which has, in turn, created an impression of incompetence and incapability of judicial authorities in the general public. Greater judicial transparency is a prerequisite for greater citizens' trust in the judiciary, as well as for greater independence of judicial authorities. In order for the judiciary to get closer to citizens, its rapprochement with the society calls for the opening of the judiciary towards citizens and learning how to communicate with them. Of course, rather than exposing court proceedings to additional tabloidization, judiciary should be helped to get closer to citizens. It is well known that full transparency is not possible, primarily because of the need to protect the effectiveness of investigations and interests of the involved; however, a better understanding of the way in which the judiciary functions would help to increase citizens' trust. The role of the media is to contribute to this by reporting truthfully and professionally, although this is not all. In their stories and investigations, media, and primarily investigative reporters, frequently reveal different corruption and fraud cases, which should ideally facilitate the work of prosecutors. Media also play an important role when it comes to the improvement of judicial independence and protection of individuals within the judicial system. The public represents the only barrier from pressure by other branches of power, while media provide a platform through which the voice of the judiciary can be heard.

The analysis in front of you deals with the state of transparency of judicial authorities and cooperation between the media and the judiciary. The analysis identifies different shortcomings and lack of harmonization in the judicial authorities' practice in the field of transparency, as well as challenges in cooperation between judicial authorities and the media, with the aim of helping to improve communication between judicial authorities and the public. In our opinion, the analysis shows very well how to improve judicial transparency through legal regulation, especially since the adoption of a set of laws regulating the operation of judicial bodies is planned for the second half of 2022. In addition to this, the analysis should be at the service of experts in charge of developing strategic documents on communication between the judiciary on one side, and media and citizens on the other, especially in view of the fact that prosecutors' offices currently do not have an overarching strategy for communication with the public, and that the Communication Strategy of the High Court Council and the Courts will no longer be in effect in 2022.

¹ Report on the monitoring of the judiciary in 2021, The Lawyers' Committee For Human Rights (YUKOM),

<https://www.yucom.org.rs/izvestaj-o-pravosudu-gradani-najvise-poverenja-imaju-u-notare/>

2021 Research of the Demostat Agency: <https://www.danas.rs/vesti/politika/demostat/samo-15-odsto-gradjana-srbije-veruje-sudstvu/>

2020 Research of the Belgrade Center for Security Policy: <https://bezbednost.org/publikacija/poverenje-gradjana-srbije-u-bezbednosne-i-pravosudne-institucije-bezbednosni-barometar-na-zapadnom-balkanu/>

In addition to this, all judicial authorities should use the analysis in order to improve their transparency of operation, especially in view of the fact that some of the perceived shortcomings can be improved relatively easily since they primarily depend on the will of individual courts and prosecutors' offices. The analysis is also intended for all researchers and associations monitoring the operation of the judiciary, as well as representatives of the media and media associations.

Methodology

The analysis presents the results of a research on the transparency of courts and prosecutors' offices conducted between August 2021 and July 2022. The analysis is divided into three thematic units:

1. Proactive transparency and communication of judicial authorities through websites
2. Reactive transparency (judicial authorities' response to requests for access to information of public importance)
3. Cooperation between judicial authorities and media

The research sample was made up of 30% of basic courts (20 courts in total) and 30% of prosecutors' offices (18 prosecutors' offices in total), which were selected on the basis of their geographic position, level of development of the local community and their population. In addition to this, the sample also included all higher courts and higher prosecutors' offices in charge of prosecuting corruption cases. These are the Special Anti-Corruption Departments of the Higher Courts and Prosecutors' Offices in Niš, Novi Sad, Kraljevo and Belgrade, the Special Department for Organized Crime of the Higher Court in Belgrade, and the Prosecutor's Office for Organized Crime. The sample consisted of a total of 45 courts and prosecutors' offices.

The data was collected through the analysis of strategic judicial documents, legal framework on the transparency and operation of the judiciary, legal framework on the operation of the media, similar research and analyses conducted in the Republic of Serbia so far and other documents and policies on the transparency of institutions; by searching the websites of courts and prosecutors' offices; by sending requests for access to information of public importance; and through direct communication at consultative meetings and interviews with representatives of courts, prosecutors' offices, media and civil society organizations.

Proactive Transparency of Courts and Prosecutors' Offices

Proactive transparency is the timely publication of information of public importance by the public authority itself, at its own initiative, before this is requested by a specific person, through user-friendly websites that contain information of importance to citizens, directories and activity reports; and through news conferences and other events where bodies of public authority present information about their work or promote available services, etc. The Law on Free Access to Information of Public Importance² also regulates the public authorities' obligation of proactive transparency, i.e., proactive publication of information about their activities. This obligation also applies to courts and prosecutors' offices. Under Article 39 of the Law on Free Access to Information of Public Importance, public authorities have the obligation to publish directories. The directory should contain all important information about the work of the relevant authority: a description of its powers, duties and in-house organization, data on its budget and means of labor, data on the types of services, expenditures and revenues, public procurement procedures, etc. In addition to its drafting, the obligations regarding the directory also include the posting of the document on the website of the public authority, and regular updating of its data. Guidelines for proactive communication with citizens are also contained in the strategic documents of individual institutions, where the courts have their own 2018-2022 Communication Strategy³, which detects shortcomings and challenges in courts' communication with the public and contains recommendations and guidelines for improving communication. At the time when this analysis was drafted, there was no overarching strategy describing more closely the communication between the prosecutors' offices and the public in the broadest sense, although individual prosecutors' offices had their own communication strategies.

Problems and challenges in communication of the courts, identified in the 2018 Communication Strategy developed by the High Court Council, represent a good basis for reviewing the transparency of courts and the judiciary in general as well as the judiciary's communication with the public. All of the identified problems are listed below:

1. ***The Council and the courts do not have a strategic approach to communication and its implementation:*** *the Council and the courts in Serbia do not communicate in a planned, proactive manner that conveys a consistent message. This reduces transparency and lowers the possibility of improving the public image of the Council/courts. A strategic approach to communication exists in theory, but not in practice. In addition to this, the lack of a special commission in charge of implementing the Communication Strategy is noticeable.*
2. ***The existing judicial communication system is unsustainable with regard to achieving (desired) communication results:*** *The key reasons for the unplanned and reactive communication are the absence of a sustainable communication system, insufficient understanding of communication and public relations as a strategic function by the president/members of the Council, i.e. chief*

² Law on Free Access to Information of Public Importance (Official Gazette of the RS, No. 120/2004, 54/2007, 104/2009, 36/2010 and 105/2021)

https://www.paragraf.rs/propisi/zakon_o_slobodnom_pristupu_informacijama_od_javnog_znacaja.html

³ 2018-2022 Communication Strategy of the High Court Council and the courts:

<https://vss.sud.rs/sites/default/files/attachments/%.pdf>

judges and judges, and the education system in this field, which, despite all efforts, does not contribute to the sustainability of communication systems.

3. ***The Council and the courts do not engage in planned and proactive communication towards/with the media, as one of the most important target audiences of the Council/courts that has undeniable importance in shaping the public image of the judiciary: although the media are not the main factor that affects citizens' distrust of the judiciary, they indisputably have importance in shaping the public image of the judiciary. The Council/Courts do not communicate in a planned and proactive manner, do not "listen" to media needs, and their appearance in the media is almost non-existent. In addition to this, through so-called high-profile cases, media largely shape the image of the courts, whereas courts have insufficient capacity to recognize such cases and engage in proactive communication. Finally, the legal framework that determines what may be communicated to the media should be specified/improved.***
4. ***Internal communication and communication with users of court services exists with regard to procedure but is insufficiently developed when it comes to communication itself: The methodology of internal communication and court communication with service users is mostly defined by the procedure, its nature is largely administrative, and it does not deal with the communication needs of either service users or court employees.***
5. ***The courts' online communication is passive: The courts' presence on the internet is mostly passive, and not in the service of the proactive promotion of courts and their achievements among the target audience, especially the media and citizens.***⁴

In August 2022, Partners Serbia sent a request for access to information of public importance to the High Court Council, asking them to give us information on the implementation of the Communication Strategy. [The HCC](#) response did not show what had been done strategically to improve the court transparency and communication with the media. They mentioned three activities with regard to courts: organization of trainings for court spokespersons, development of a guide for court spokespersons, and a workshop aimed at improving relations between courts and public prosecutors' offices, on one side, and journalists who specialize in the judiciary, on the other. The majority of the activities in the response refer to the improvement of the HCC capacity for communication with the media and the public, which were all implemented through different international projects. On the basis of the answers, one can conclude that there is no strategic, planned approach to the implementation of the Strategy. Likewise, it is difficult to make a precise assessment of the fulfillment of the objectives of the Strategy, which will be in effect until the end of 2022. For example, one of the objectives of the Strategy was to set up a network of court spokespersons, *which should be the driver and the protagonist of the development of courts' relations with the public*⁵. On the basis of online information and HCC response, one can conclude that this objective of the Strategy has not been achieved yet.

Partners Serbia sent a request to the State Prosecutorial Council (SPC) regarding communication activities, asking: if a new communication strategy for prosecutors' offices was being planned; and if an evaluation or a report of any kind was made concerning the implementation of the latest strategy, in view of the fact

⁴ 2018-2022 Communication Strategy of the High Court Council and the Courts, page 3:

<https://vss.sud.rs/sites/default/files/attachments/%.pdf>

⁵ Ibid, p. 20.

that the SPC website contained no information about the existing or planned strategies or activities in this field.

[In its response](#), the SPC said that the latest communication strategy of the prosecution had been in effect until 2020, as well as that the SPC had not made a report on the implementation of the previous strategy. The SPC also said that a new communication strategy was being drafted, but that the process had been delayed as a result of the Covid pandemic and selection of new SPC members. One can rightfully wonder about the indicators used as the basis for the new strategy if the previous strategy has not been evaluated.

Although the HCC and the SPC have responded to the Partners Serbia requests, it remains unclear what is being done strategically to improve transparency and communication between prosecutors' offices and courts on one side, and media on the other.⁶

That the HCC and SPC do not place transparency high on the list of priorities is corroborated by research conducted by the CEPRIS organization, which has not been allowed to attend the HCC and SPC sessions despite the statutory principle of publicity of work of these institutions.⁷

The HCC and the SPC have the greatest powers in the judiciary. After the latest amendments to the Constitution, these institutions have been granted new powers, including the election of all judges and public prosecutors (except the chief prosecutor, whose election remains in the jurisdiction of the National Assembly).⁸ As such, these institutions create standards for the work of courts and prosecutors' offices.

Taking all of the above into account, Partners Serbia developed a set of criteria for assessing the proactive transparency and development of communication between courts and prosecutors' offices on one side, and citizens on the other. These criteria represent the basic, minimum standards that institutions should meet when it comes to proactive transparency. We have tried to determine whether the criteria have been fulfilled by visiting the websites of these institutions, because citizens most frequently get information on the internet.

The research sample consisted of 30% of basic courts and 30% of basic prosecutors' offices, 4 higher courts, 4 higher prosecutors' offices and the organized crime prosecutors' office. The results are presented below.

1. Posting News and Statements on Websites

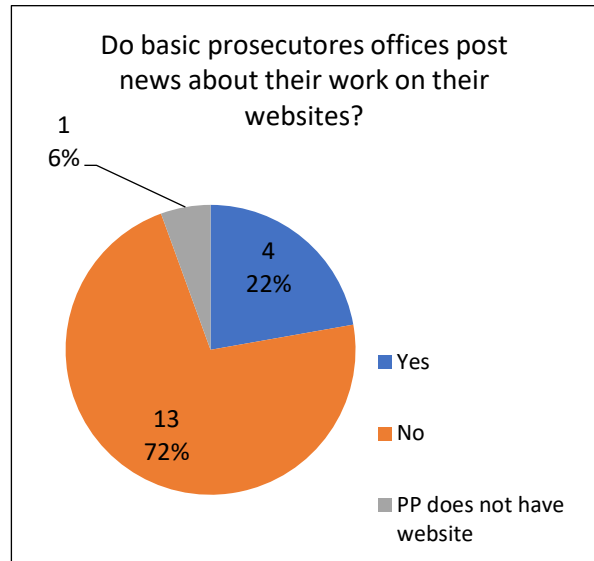
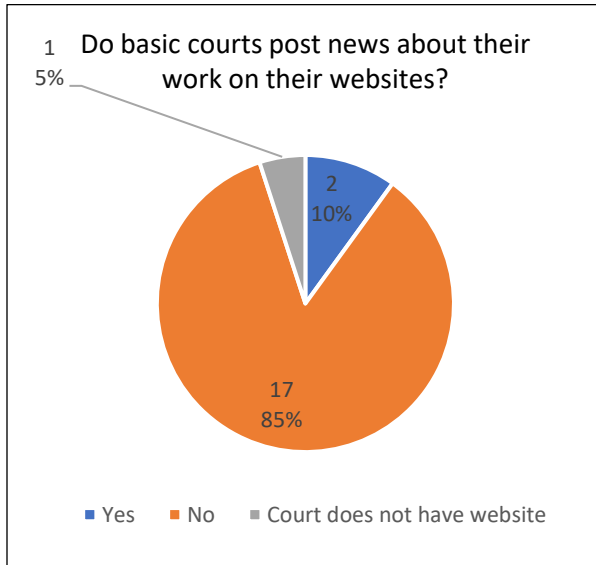
The first analyzed criterion was whether courts/prosecutors' offices posted news about their work on their websites. We reviewed whether the courts had posted news in the 45 days that preceded the date of our visit to the website. We monitored this criterion on April 14 and 15, 2022, which means that March 1, 2022 had been taken as the first day of the 45-day period. **Unfortunately, the analysis showed that the**

⁶ For more information on the HCC and SPC responses on requests for access to information of public importance, see Partners Serbia website: <https://www.partners-serbia.org/post?id=464>

⁷ Report on the Publicity of Operation of the High Court Council and the State Prosecutorial Council between April 2021 and February 2022, CEPRIS: <https://docs.google.com/viewerng/viewer?url=https://www.cepris.org/wp-content/uploads/2022/03/Izvestaj-o-rad-u-VSS-i-DVT-april-2021-februar-2022.pdf&hl=en>

⁸ Ibid

majority of basic courts and prosecutors' offices either did not post news and statements on their websites or did that very rarely.



The situation with higher courts was better. Three out of four higher courts from the sample regularly published news and statements on their websites, while one court did not. As for the higher prosecutors' offices, including the Prosecutor's Office for Organized Crime, three out of five prosecutors' offices did not post news in the observed period.

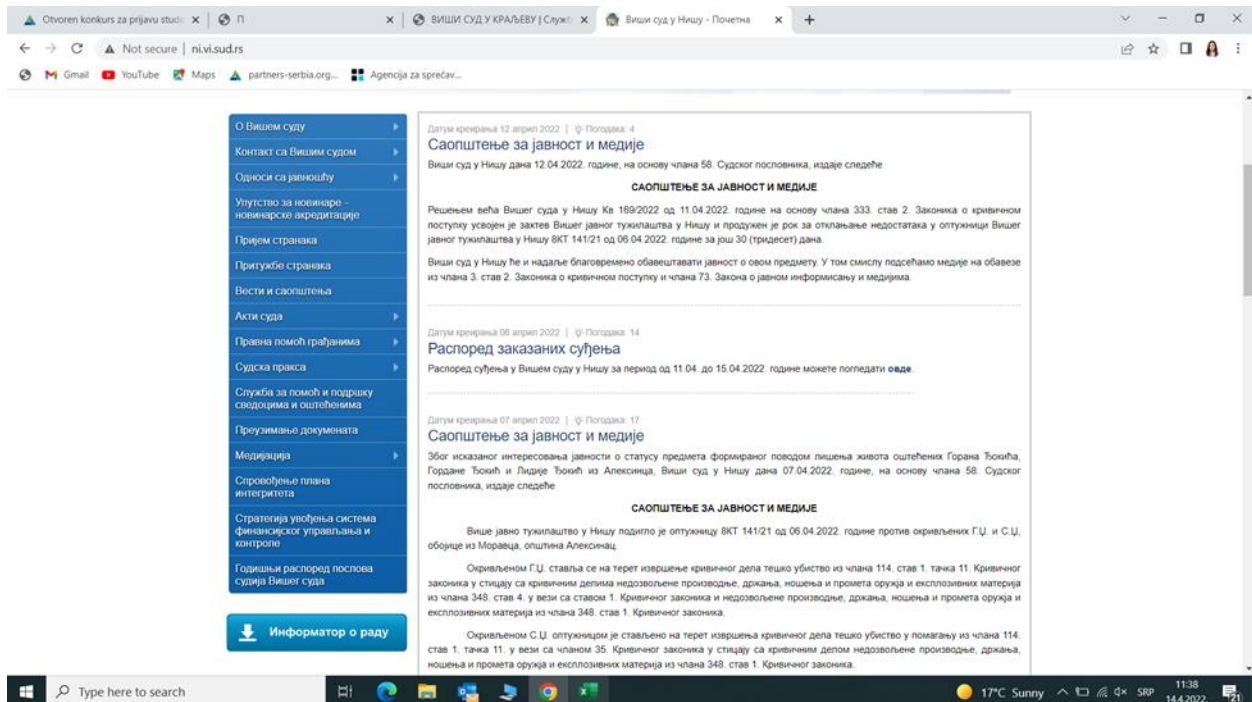


Illustration 1 - Website of the Higher Court in Niš, which regularly posts news on its website.

2. Publishing and Updating the Newsletter

When it comes to data on the operation of courts and prosecutors' offices, the largest number of basic data should be available in their directory. Institutions have an obligation to develop, update and post this document on their websites under the Law on Free Access to Information of Public Importance (Article 39). This also applies to courts and prosecutors' offices.

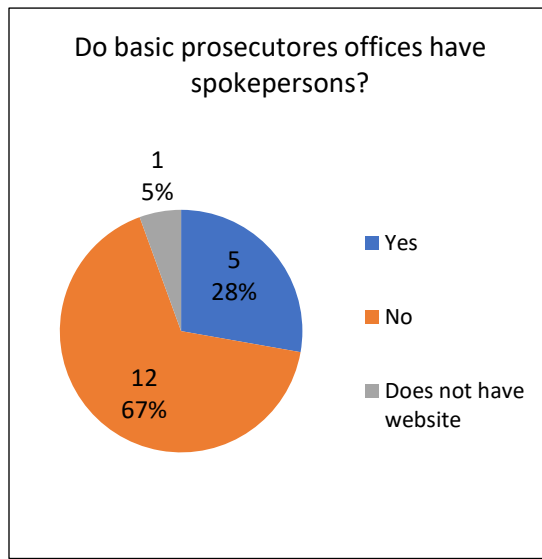
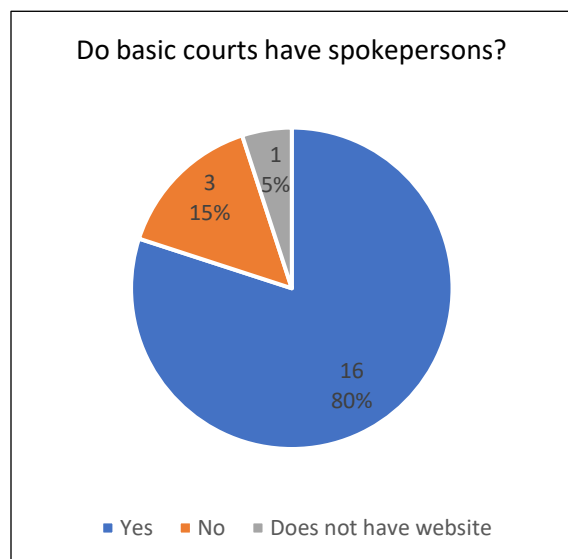
Most courts and prosecutors' offices from the sample have published their directories, but the information contained therein is not updated frequently enough. Under the Law on Free Access to Information of Public Importance, data on their operation must be updated no later than 30 days from the date when a change occurred. Most reviewed directories were updated in July or August 2021, although according to regular annual obligations and operation of the body public authority one could justifiably assume that changes had occurred.

3. Appointment of Spokespersons

An important prerequisite for communication between judicial authorities and the public is the appointment of a person within a court or prosecutor's office who would be in charge of communicating with the public. These persons are most frequently called spokespersons. A spokesperson is a person who should continuously, and usually very quickly, disclose the necessary information to stakeholders, most frequently journalists.

We tried to determine whether courts and prosecutors' offices had spokespersons by analyzing their websites, in a belief that if they did have a spokesperson, his/her name and contact information should be available on the website of the relevant court or prosecutor's office to ensure easier access to requested information to journalists and other stakeholders.

According to the website analysis, a big difference can be observed in the practices of courts and prosecutors' offices. While 80% of courts belonging to the sample had spokespersons, the same could be said for just 28% of prosecutors' offices from the sample.



This lack of uniformity, where some courts and prosecutors' offices have spokespersons, while others do not, points to the absence of a single policy for communicating with the public. The inclusion of spokespersons in the job classification of all courts and prosecutors' offices in the territory of Serbia, and the professionalization of this position would help judicial authorities to improve communication.

4. Holding Press Conferences

For the purpose of gathering accurate and timely information, a particularly important criterion for journalists is the organization of press conferences by courts and prosecutors' offices. If the information on ongoing or completed court proceedings and investigations were disseminated proactively, the quantity of misinformation and level of tabloidization of court proceedings and investigations would be reduced, which is in the interest of courts and prosecutors' offices.

In our analysis of the websites of courts and prosecutors' offices, we did not come across any information about the already held or planned news conferences in the period between early 2022 and mid-April 2022, when the monitoring was completed. Only one court had information about a news conference held in 2021 on its website. **In view of the number of cases under investigation or ongoing court proceedings in which the public is very interested (so-called high-profile cases), which are covered by the tabloids on an almost daily basis, the fact that judicial authorities did not feel the need to engage in proactive communication in these situations gives rise to concerns.**

The general conclusion is that courts and prosecutors' offices do not have a strategic approach to communication with the public. A large number of prosecutors' offices from the sample do not have specially appointed spokespersons. Some courts and prosecutors' offices still do not have websites, which nowadays represent the primary prerequisite for communication. The fact that most courts and prosecutors' offices from the sample do not publish news about their work even in high-profile cases, leads to the conclusion that these institutions have a deep misunderstanding of the fact that they should be accountable to the citizens regardless of their independence, and that all of us, as citizens, are authorized to be interested in and review the work of these institutions. The lack of news conferences shows that there is no culture of proactive public disclosure of information regarding investigations and court proceedings in which the public and media are increasingly interested. The communication of courts and prosecutors' offices is restricted to information available on the websites of courts and prosecutors' offices, where a large discrepancy in the number, type and quality of available information has been observed.

Reactive Transparency

Reactive transparency refers to the way institutions respond to citizens' questions and requests for information of public importance. Most frequently, it refers to the right to free access to information of public importance established under the Law on Free Access to Information of Public Importance. The Law on Free Access to Information of Public Importance requires from public authorities to act on requests for access to information of public importance, and this mechanism enables all citizens to be informed about the operation of Serbian institutions.

Within the analysis of reactive transparency, two requests for access to information of public importance were sent to courts and prosecutors' offices from the sample. The sample consisted of 30% of basic courts (20 courts in total), and all higher courts and prosecutors' offices that prosecute corruption cases (4 higher courts, 4 higher prosecutors' offices and the prosecutor's office for organized crime).

Through the requests, we wanted to find out the following:

1. How transparent are courts and prosecutors' offices in ongoing prosecutor-led investigations and court proceedings in corruption cases;
2. How uniform is the practice of courts/prosecutors' offices when acting on requests for access to information;
3. How they treat privacy – the right to information of public importance in cases where the suspects are public officials;

The first requests were sent to basic courts in order to determine to what extent these courts still adjudicated in corruption cases, in view of the fact that the majority of corruption cases had been transferred to the jurisdiction of special anti-corruption departments of higher courts and prosecutors' offices under the Law on Organization and Competence of State Authorities in Suppression of Organized Crime, Terrorism and Corruption⁹.

In the first request, we asked for the number of corruption-related cases/procedures. **The majority of basic courts responded to the requests (17 out of 20 courts responded and submitted the requested information).** The answers showed that though basic courts still had corruption cases, but these were most frequently reopened (old) cases. In order to examine how courts and prosecutors' offices acted in corruption cases, the research focused on the courts and prosecutors' offices that had jurisdiction in corruption cases, under the Law on the Organization and Competence of State Authorities in Suppression of Organized Crime, Terrorism and Corruption. These are the following prosecutors' offices and courts:

- Prosecutor's Office for Organized Crime
- Higher Public Prosecutor's Office in Belgrade, Anti-Corruption Department
- Higher Public Prosecutor's Office in Novi Sad, Anti-Corruption Department
- Higher Public Prosecutor's Office in Kraljevo, Anti-Corruption Department

⁹ Law on the Organization and Competence of State Authorities in Suppression of Organized Crime, Terrorism and Corruption ("Official Gazette of RS", No. 94/2016 and 87/2018 - other law)
<https://www.paragraf.rs/propisi/zakon-o-organizaciji-i-nadleznosti-drzavnih-organa-u-suzbijanju-organizovanog-kriminala-terorizma-i-korupcije.html>

- Higher Public Prosecutor’s Office in Niš, Anti-Corruption Department
- Higher Court in Belgrade, Department for Organized Crime
- Higher Court in Belgrade, Anti-Corruption Department
- Higher Court in Novi Sad, Anti-Corruption Department
- Higher Court in Kraljevo, Anti-Corruption Department
- Higher Court in Niš, Anti-Corruption Department

The requests asked for the number of cases/investigations held at courts/prosecutors’ offices for criminal offenses against official duty (Articles 359 and Articles 361 through 368 of the Criminal Code) and the criminal offense of giving and accepting bribes in connection with voting (Article 156 of the Criminal Code);

In addition to statistics, we also requested copies of parts of indictment acts for the above-mentioned crimes from these courts and prosecutors’ offices in ongoing court proceedings, on the basis of which the following can be determined:

- Identity of the defendant;
- Whether the relevant criminal offense was committed in the official capacity, i.e., by a public official or within professional duty;
- Key circumstances of the committed crime.

The request included a note saying that the submission of the entire case file was not required, and that the request referred only to the entire or part of the charging document containing the above-mentioned data.

The requests focused on ongoing court proceedings for the purpose of finding out how open the courts and prosecutors’ offices were to providing information on ongoing corruption proceedings, in view of the fact that the public had a legitimate interest to be informed about the work of courts and prosecutors’ offices. This is especially the case when it comes to mechanisms for the detection, sanctioning and suppression of corruption which frequently results from the abuse of office of public authorities and abuse of public funds and public goods.

Although different research in which Partners Serbia had previously participated showed that courts were among the most transparent authorities with regard to responses to requests for access to information of public importance¹⁰, this research showed, however, that the transparency of courts and prosecutors’ offices decreased if a request was aimed at information of interest to the media and potentially involved public officials.

The majority of courts and prosecutors’ offices submitted their statistics **but refused to comply with the part of the request in which they were asked to submit copies of charging documents.** The anti-corruption departments of two courts and one prosecutor’s office did not respond at all – those of the Higher Court in Novi Sad, the Higher Court in Kraljevo and the Higher Public Prosecutor's Office in Belgrade.

¹⁰ Analysis of the Implementation of Transparency Standards at Courts in the Republic of Serbia, Partners Serbia, 2020: <https://www.partners-serbia.org/public/news/Analiza%20primene%20standarda%20transparentnosti%20u%20sudovima%20u%20Republici%20Srbiji%20WEB.pdf>

The Anti-Corruption Department of the Higher Court in Niš refused to provide the information, saying that this involved documents created during the work of the prosecutor’s office.

The Anti-Corruption Department of the Higher Court in Belgrade submitted some of the information referred to in the request but refused to submit copies of indictment acts. However, after a telephone conversation, the Higher Court in Belgrade provided researchers with a [table](#) indicating the positions held by persons charged with the abuse of office, trading in influence and soliciting and accepting bribes, on the basis of which one could conclude whether the defendants included civil servants and public officials.¹¹

The Department for Organized Crime of the Higher Court in Belgrade also responded partly, refusing to comply with the part of the request that referred to the submission of copies of indictment acts.

In both cases, the explanation was similar, that the request was too extensive, that it concerned documents created during the work of the prosecutors’ offices, that the information should be requested from the prosecutors’ offices, as well as that the applicant was misusing the right to access to information of public importance.

The Anti-Corruption Department of the Higher Public Prosecutor's Office in Novi Sad submitted their statistics but refused to comply with the part of the request referring to the submission of copies of indictment acts, explaining that this would threaten, impede, or complicate the conduct of court proceedings.

The Anti-Corruption Department of the Higher Public Prosecutor's Office in Kraljevo also responded to one part of the request, refusing to provide copies of the charging documents. The HPP in Kraljevo explained that there were no legal grounds for providing the requested documents because this decision had to be taken by the court, since the court was in charge of the trial and decided on the parts of the case file that could be provided.

That one could get all information on the basis of a request was demonstrated by the Anti-Corruption Department of the Higher Public Prosecutor's Office in Niš and the Prosecutor's Office for Organized Crime, which answered all questions and supplied the copies of charging documents.

Name of the court / prosecutor’s office	No response to the request from the institution	The institution responded and refused to give the requested information	The institution partly answered to the request	The institution provided all requested information
Higher Court in Novi Sad, Anti-Corruption Department	X			
Higher Court in Kraljevo, Anti-Corruption Department	X			
Higher Court in Belgrade, Anti-Corruption Department			X	

¹¹ The text “Where in the public sector is corruption present the most”, which is available on the Partners Serbia website, was created on the basis of the data contained in the table <https://www.partners-serbia.org/post?id=383>

Higher Court in Niš, Anti-Corruption Department		X		
Higher Court in Belgrade, Department for Organized Crime			X	
Higher Public Prosecutor's Office in u Novi Sad, Anti-Corruption Department			X	
Higher Public Prosecutor's Office in u Belgrade, Anti-Corruption Department	X			
Higher Public Prosecutor's Office in u Kraljevo, Anti-Corruption Department			X	
Higher Public Prosecutor's Office in u Niš, Anti-Corruption Department				X
Prosecutor's Office for Organized Crime				X

The answers of the courts and prosecutors' offices lead to the conclusion that courts and/or prosecutor's offices do not have a uniform practice when faced with the same requests. This can primarily be seen from the explanations provided by courts and/or prosecutors' offices which rejected the request. The Higher Court in Niš said that charging documents should be submitted by the prosecutors' offices because the documents had been created during their work, while for example the HPP in Kraljevo explained that they could not submit copies of the charging documents because this should be decided by the court, since the court was in charge of the trial and decided which documents from the case file could be provided. Under the Law on Free Access to Information of Public Importance, information of public importance is **information held by a public authority body, created during work or related to the work of the public authority body, contained in a document, and related to everything that the public has a justified interest to know.** Therefore, the explanation that the information should not be submitted because it was prepared by another body does not have legal grounds. If a public authority has the requested information, it is required to provide access to it to the applicant.

Another interesting explanation was provided by the Higher Court in Belgrade, which did not submit the requested indictment acts, explaining that the request was too extensive, that the documents had been created during the work of prosecutors' offices and that the information should be requested from the prosecutors' offices, as well as that the applicant had misused the right of access to information of public importance. Statistics showed that this concerned 23 cases, and the Higher Court said that the trial judges in each of the 23 cases would have to agree to the submission of the requested charging documents. However, according to the Law on Free Access to Information of Public Importance, such consent is not a requirement for making information available to the public. In multiple decisions and publications, the Commissioner said: *"the organization of work is a matter of internal organization of a public authority and it cannot be at the detriment of the applicant's right to access information of public importance."*

In the 2015 Publication No. 4 *Free Access to Information: Views and Opinions*¹², the Commissioner for Information of Public Importance and Personal Data Protection describes in detail a situation in which the

¹² Free Access to Information: Views and Opinions, Commissioner for Information of Public Importance and Personal Data Protection: https://www.poverenik.rs/images/stories/dokumentacija-nova/prirucnik/publikacija4/poverenik_slobodan%20pristup%20informacijama_knjizni%20blok.pdf

provision of data represents an unreasonably large task for the authority, pointing out that this must be assessed under relevant circumstances, taking into account human and other resources of the authority, number of cases and regular tasks.

In view of everything presented above, the question is whether the copies of 23 charging documents, without attachments or motions, "represent too much information" for the capacity and regular tasks of the Higher Court in Belgrade.

According to the statistics from the official website of the Higher Court in Belgrade, the Court had 166,172 ongoing cases in 2019, 197,889 cases in 2020, and a total of 161,909 ongoing cases in 2021. Partners Serbia requested charging documents in 23 cases. Observed against the total number of cases in 2021, the requested number accounts for just 0.014% of the total number of cases. In view of the above-mentioned data, we believe that the Higher Court in Belgrade incorrectly applied the provision of the Law on Free Access to Information of Public Importance that refers to the applicant's misuse of rights.

Moreover, the fact that the provision on the misuse of the right to access information of public importance has been completely removed from the recent amendments to the Law on Free Access to Information of Public Importance speaks in favor of the applicant, which means that the first-instance authority inappropriately applied the reference to the misuse of rights when it decided on the applicants' requests.

Because of everything presented above, Partners Serbia filed complaints against the courts and prosecutors' offices which had not provided all the requested information.

Commissioner's Consideration on Partners Serbia Complaints

The Commissioner's consideration of complaints became a subject matter of this analysis because a new negative trend had been observed in the Commissioner's handling of applicants' complaints. Previously, under the Law on Free Access to Information of Public Importance, the Commissioner received complaints, determined facts and issued decisions either deciding that the requested information was information of public importance and ordering the first-instance authority to disclose the requested information, or that the requested information was not information of public importance and upholding the first-instance decision of the body of public authority that had refused to submit the information. Acting on the two complaints filed during the research, the Commissioner quashed the decisions refusing to disclose the requested information to Partners Serbia and ordered the first-instance authorities to decide again on the same request. After receiving this decision from the Commissioner, the courts and prosecutors' offices issued new decisions in which they quoted the same arguments and again denied access to the requested information to Partners Serbia. As a result, Partners Serbia was forced once again to file complaints for the same requests to the Commissioner. The initial requests had been sent in December 2021, meaning that Partners Serbia had not received the requested information for ten months although the Commissioner had not decided that the requested information did not represent information which the public had the right to access. Such actions of the Commissioner put the applicant into an unfavorable position, since this caused delays in the complaints procedure and meant that the applicant had to wait longer to get access to the requested information (if he/she got it at all). In addition to this, the applicant has to file multiple complaints for the same request, which calls for the engagement

of additional human resources especially if the applicant is not a lawyer, which puts him/her in an unfavorable position in relation to the requested institution and the service of the Commissioner. Unnecessarily, this also calls for the engagement of additional human resources of the Commissioner's office since the Commissioner has to decide on the same legal situation twice. Therefore, it is unclear why the Commissioner resorts to this practice if it is generally known that the Commissioner's office has insufficient human resources and a large backlog of cases, which results in the exceeding of the statutory deadline for the Commissioner's decision¹³. Institutions thus get an additional impetus to deny applicants' requests, because even if an applicant files a complaint against this kind of behavior, he/she will quite certainly be worn out by this legal battle, which systematically makes it possible for public authorities not to disclose the requested information or to make it available only after two applicants' complaints and two decisions of the Commissioner on the same legal matter, which can last up to two years in practice. In this situation, even if the institution eventually provides the requested information, the question is whether it will still be relevant for the applicant and the public in general.

We also learned that this was not an isolated case during a consultative process within this research, where multiple civil society organizations and investigative media outlets complained that they had experienced the same practice of the Commissioner.

Therefore, we believe that it is of crucial importance that the Commissioner change this practice in order to enable applicants to exercise their right to access information faster.

¹³ Following amendments to the Law on Free Access to Information of Public Importance, the deadline for the Commissioner's decision about complaints was extended from 30 to 60 days from the date of receipt of the complaint.

Cooperation between Judicial Authorities and Media

"Although in Serbia they very frequently stand on the opposite sides, media and the judiciary actually have - ideally speaking - the identical social mission and a huge number of shared goals. We may say that the development and democracy of a state can be measured by the relationship between the media and judicial authorities. In countries with a developed institutional and democratic system, media and the judiciary are on the same side and, together, represent a corrective mechanism for social deviations as well as an impediment to the abuse of power. On the other hand, if they are instrumentalized, they - together or separately - can be one of the most important levers of the uncontrolled rule and unrestrained criminalization of the society."¹⁴

Most citizens' experience of the judicial system is limited to their personal experience as participants in court proceedings, and to what is presented to the public about the work of judicial bodies. The role of the media in informing the public about the operation of prosecutors' offices and courts is therefore extremely important. One of the key issues in the relationship between the judiciary and the media is the lack of trust of the judiciary in the media, and the fear of judges and prosecutors that their statements to the media will be misinterpreted, tabloidized and placed in a convenient political context. Media is blamed for the tabloidization of court proceedings, violation of the presumption of innocence, secondary victimization of victims and threat to the right to privacy of victims, defendants and other participants in court proceedings. In addition to this, fake news about court proceedings and investigations are also frequently mentioned. Examples of the media and political lynch of members of the judiciary who have publicly criticized the recent amendments to the Constitution result in the additional closure of the judiciary. The silence surrounding investigations and court proceedings in which the public is particularly interested is therefore very frequently broken by public officials who assume the role of judges and condemn and exonerate individuals in advance in an attempt to score political points and to show that Serbia is fighting a fierce battle against corruption and organized crime. Nevertheless, transparency of the judiciary is not just a legal obligation but also the best way for the judiciary to protect itself.

Speaking about communication issues, media stress that prosecutors' offices and courts have become more and more closed to them from one year to another, that communication is largely written and slow, and that it is very difficult to obtain information in real time. In addition to this, it is said that certain media have preferential treatment, and that information is leaked to certain media, although multiple laws guarantee the equal treatment of all journalists. Representatives of the judiciary frequently say that *"media do not know enough about the judiciary and frequently do not have the "luxury" to specialize in it, while, on the other hand, journalists claim that members of the judiciary frequently do not understand the nature of the media, or the specific features of main journalistic formats."*¹⁵

The Communication Strategy of the Supreme Court of Cassation identifies as one of the main issues that ***courts do not have planned and proactive communication to/with the media, as one of the most***

¹⁴ Media Freedoms and the Judiciary, Handbook for Judges, Public Prosecutors and Lawyers, Nedim Sejdinović, NUNS: <https://www.bezbedninovinari.rs/static/themes/bezbedni-novinari/documents/Medijske%20slobode%20i%20pravosudje%20-%20KON1.pdf>

¹⁵ The Lexicon of Media and Legal Terms in the Republic of Serbia, Council of Europe: <https://www.pars.rs/images/biblioteka/leksikon-medijskih-i-pravnih-pojmova-u-RS.pdf>

important target audiences. In the explanation, it says that *media has undeniable importance in the shaping of the public image of the judiciary.* In addition to this, it is said that ***courts do not communicate in a planned and proactive manner, do not "listen" to the needs of the media, and are almost completely absent from the media.*** In addition to this, the so-called *high-profile cases have the biggest effect on the image of courts created by the media, while courts do not have a sufficient capacity to proactively recognize and engage in preventive communication in this type of cases.* When it comes to compliance with the Law on Free Access to Information of Public Importance, the Commissioner's report for 2021 says that a total of 595 complaints, or 11.3% of all complaints, were filed against judicial authorities.

For the purpose of preparing this part of the analysis, two closed consultative meetings were held with representatives of the media and judicial authorities in order to collect information on the level and quality of cooperation between judicial authorities and the media. We wanted to determine if and how the judiciary cooperates with the media, especially in the case of high-level corruption, as well as to learn about the challenges in communication between the judiciary and the media.

Invitations to two closed meetings were sent to representatives of investigative media which report on the work of prosecutors' offices and courts, civil society organizations that monitor the work of the judiciary, courts, prosecutors' offices, the High Court Council, the State Prosecutorial Council and professional associations of judges and prosecutors.

A total of 35 participants took part in the two gatherings: representatives of basic and higher courts, Appellate Court in Belgrade, High Court Council, basic and higher prosecutors' offices, Association of Prosecutors of Serbia, Independent Association of Journalists of Serbia, Slavko Ćuruvija Foundation, CEPRIS, Center for Investigative Journalism (CINS), Network for Crime and Corruption Research (KRIK), Južne Vesti, Insajder, Bujanovačke Portal, Media and Reform Center Niš, etc.

As agreed at the meetings, the analysis does not include the names of persons who expressed their views, but only the names of their institutions/organizations. This is the usual practice in information gathering (focus groups), ensuring that participants feel free to express their views on the above-mentioned topics. Both meetings were held online, via the Zoom application, and were recorded to ensure the accurate presentation of participants' views.

➤ **Media Perspective**

Journalists and representatives of media associations pointed out that courts and prosecutors' offices had been more and more closed to cooperation with journalists from one year to another. As an issue of particular importance, they stressed selectivity in responding in high-profile cases, such as high-level corruption. Based on everything that journalists, representatives of media and associations said during the first meeting, the following problems were identified:

1. Lack of Uniform Practice in the Communication of Courts / Prosecutors' Offices

During the meetings, media stressed that the success in obtaining information and cooperation mostly depended on the individuals in charge of communicating with the media and response to requests for free access to information of public importance. They emphasized that their communication with courts was still slightly better than that with prosecutors' offices, which were much more closed. The speed of

obtaining information is also affected by whether the court or the prosecutor's office has a person in charge of communicating with the public, and/or if the institution has a spokesperson.

"The cooperation with the prosecutors' offices is rather bad, we rarely get any information from them - we have succeeded in getting hold of just one indictment in two years."

The Higher Court in Belgrade was quoted as an example of good cooperation, and local media from southern Serbia said that the spokespersons of the Niš courts and prosecutors' offices were also examples of good cooperation.

"The spokespersons of the Niš courts and prosecutors' offices answer most of my questions and try to find the relevant case, even if I don't have the relevant number, names and family names and other specific information. I can say that I have a very good cooperation with them and that until now there has been almost no need to remind them to answer my questions."

"We have the best cooperation with the Higher Court in Belgrade, through spokesperson Tatjana Tešić, who is very responsive to questions. We frequently send requests for free access to information of public importance, but information on specific cases is more difficult to obtain."

The journalists stressed that cooperation with courts and prosecutors' offices formally existed, but that the answers frequently came late, and that they had the greatest problems in trying to get hold of indictments and motions to indict. These views were also corroborated by our analysis, because most courts and prosecutors' offices in the sample did not provide Partners Serbia with copies of charging documents.

Another problem they quoted was the shifting of responsibility from one authority to another.

"When we contact the prosecutors' offices, if they do not have the requested information, they most frequently say that they have contacted the police and are waiting for their answer, which is why they are unable to provide the requested information. The situation is similar when we address courts that refer us to prosecutors' offices and vice versa."

The participants agreed that courts and prosecutors' offices apply a selective approach in responding to journalists' questions and requests, and that, as a rule, the greater the importance of the proceedings and the greater the interest of the public, the more closed the courts and prosecutors' offices became.

They also said that there was a difference in communication between higher and basic courts and/or prosecutors' offices, that basic courts and prosecutors' offices rarely had spokespersons, and that it was more difficult to obtain contact information of persons in charge of communicating with the public, as well as that these were frequently chief judges.

2. Inability to Access Courtrooms and Hearings

As another issue, the participants stressed access to trials, the fact that courtrooms were frequently small and that judges sometimes prohibited journalists from entering the courtroom in situations where there were no statutory reasons for restricting the presence of the public.

"A frequent problem in trial monitoring, especially in cases in which the general public is interested, are cramped courtrooms. There is not enough room even for the key participants in the proceedings, let alone

journalists. Therefore, rather than ensuring the access to all journalists, exclusivity is granted to those who improvise and get in."

3. Insufficiently Systematized Data

Journalists also said that there were no systematized databases and suggested that the records kept by courts and prosecutors' offices should be expanded.

"Due to a lack of records in the judiciary, the applicants face the problem of how to ask the institution anything at all when the records kept by courts and prosecutors' offices are restricted and defined by rulebooks."

They also said that the court portal was not functional and that, in their opinion, it should be more informative. They believe that the improvement of records kept by courts and prosecutors' offices and the court portal would unburden the courts, prosecutors' offices, Commissioner and journalists, whose access to information would be facilitated.

5. Lack of News Conferences

During the meeting, the participants repeatedly referred to the lack of press conferences. This is corroborated by the results of this analysis, because in the period between January and mid-April 2022, there was no information on organized or planned press conferences on the websites of courts and prosecutors' offices that made up the sample.

"Perhaps the biggest indicator of the closedness of the judiciary lies in the fact that we haven't had the opportunity for years to see prosecutors, judges or spokespersons for prosecutors' offices and courts at press conferences, and to ask them questions directly; instead, we get information about investigations from public officials."

They believe that press conferences would be a huge help both for the media and for the judicial authorities, and that they would perhaps turn down the noise which is sometimes caused by tabloids that quote their "sources" and disclose details from investigations.

6. Ignoring Requests for Access to Information of Public Importance and Inadequate Protection of the Right to Access Information of Public Importance

The media representatives who attended the meetings stressed that they used the mechanism of requests for free access to information whenever they had more time to collect the necessary information, as well as when they needed documents that would corroborate the information they had already collected in other ways. In this regard, they said that access to information depended on the will of those who decided on the requests, and that there was no uniform practice.

"We strive to formulate questions well enough to prevent the institution from rejecting our request, and then we pray to God that they provide us with the requested information. If the institutions do not respond, we complain to the Commissioner, but the Commissioner more often than not returns the procedure for re-deciding, which additionally extends the deadline and makes the information outdated."

➤ Perspective of Judicial Authorities

Representatives of the judiciary confirmed that there is a difference in practices and levels of transparency of different courts and prosecutors' offices. Thus, it was stressed that there was a *big difference in transparency between first- and second-instance courts*, as well as that courts that had a spokesperson as a separate position functioned better, *because this kind of engagement represents an additional burden for judges. The publication and updating of the directories* was highlighted as particularly important - *for example, a representative of the Appellate Court in Belgrade said that the directory on the work of this court have 260 pages, which is certainly why they received fewer questions and requests for access to information of public importance from citizens and journalists. She also stressed that the Appellate Court in Belgrade tried to disclose as much information as possible to the media, but that she was aware that they are in a privileged position because they have time to prepare their statements.*

The situation is similar in the case of prosecutors' offices, where we can observe *a lack of uniformity of practice in the work of different spokespersons*. As a result, communication with some public prosecutors' offices is unimpeded, as is the case, according to the representative of the Association of Prosecutors of Serbia, with the *Higher Public Prosecutor's Office in Belgrade, whereas it is very difficult to get timely information from certain prosecutors' offices*. Another problem lies in the fact that *there is no accountability if information is not made available, and precisely because of the closedness of prosecutors' offices, citizens are not informed about the work of these institutions.*

In the absence of a new communication strategy, some prosecutors' offices (like the HPP of Belgrade) still apply the old one, and it was expressed a need to define the framework of cooperation between prosecutors' offices and the media more precisely.

Speaking about problems, representatives of the judiciary said that *journalists do not observe the presumption of innocence and secrecy of the investigation, as well as that certain tabloids feel a great need for sensationalism*. Also, in view of the fact that *courts and prosecutors' offices manage a large number of secret and protected data, the impression is that journalists do not understand what types of information cannot be publicly available.*

Representatives of the judiciary pointed out that nowadays applicants were considerably better educated. According to a representative of the HPP of Niš, requests arriving to this prosecutor's office have become much more precise now, but the lack of internal resources is still a big problem. Thus, for example, the HPP of Niš *does not have a person or a department in charge of handling requests for free access to information of public importance, but "it is regarded by everyone as an additional responsibility,"* which is why *this institution needs more human resources.*

All representatives of the courts and prosecutors' offices agreed that journalists were insufficiently sensitized for reporting on investigations and court proceedings, and that journalists did not understand sufficiently that certain data from investigations and court proceedings could not be fully disclosed to the public. They also said that some media showed no understanding for victims' privacy. They said that an important prerequisite for the improvement of cooperation with the media was the organization of trainings and education for the media, where they would learn more about the work of judicial authorities and their restrictions in communication on sensitive cases.

Conclusions from the meeting regarding activities that should be undertaken to improve the situation are listed below:

1. Courts and prosecutors' offices should appoint persons in charge of communicating with the public. These persons should be professionals in field of public relations, in order to provide timely information from investigations and proceedings to journalists in a sufficiently clear and comprehensible manner, leaving as little room as possible for different interpretations.
2. The issue of accountability of courts and prosecutors' offices, i.e., authorized persons for communication with the public should be regulated in situations where they do not respond to media questions and show favoritism towards certain media.
3. Regular and special n conferences should be organized.
4. Proactive transparency of the judiciary should be improved through the posting of more information about ongoing investigations and proceedings on websites, which would reduce the number of questions and requests for information.
5. Databases maintained by prosecutors' offices and courts should be improved in order to facilitate access to information and handling of journalists' questions and requests.
6. New strategic documents and accompanying action plans for the communication of courts and prosecutors' offices with the public should be drafted and implemented.
7. Instructions and recommendations for prosecutors' offices and courts should be drafted in order to harmonize their responses to questions and requests for access to information from citizens and media. They should provide the most precise possible guidelines on what the information to which the public has the right of access is. This primarily refers to information on ongoing investigations and court proceedings, as well as to information on so-called high-profile cases.
8. Journalists should be granted access to hearings in public proceedings.
9. Judicial authorities should organize continuous trainings on reporting on court proceedings and investigations for journalists.

General Conclusions

Improving the transparency of work of courts and prosecutors' offices is a complex task that calls for a systematic approach. Results of the analysis show that courts and prosecutors' offices do not have a uniform approach to communication, regardless of whether this involves information available on the websites of these institutions, response to requests for access to information of public importance, or direct communication and cooperation between courts and prosecutors' offices on one side, and the media on the other. The research has also shown that communication, both oral and written, largely depends on the individuals in charge of communicating with the public at the courts or prosecution offices.

When it comes to proactive transparency, it is necessary to establish the basic infrastructure for communication with the public, which calls for the development of websites for courts and prosecutors' offices that do not have them yet, the appointment of persons within institutions who would be in charge of communicating with the public, and regular updating of websites with information about ongoing investigations or court proceedings and other information concerning the work of courts and prosecutors' offices. In addition to this, the type of information that should be available on the websites of courts and prosecutors' offices needs to be standardized in order to enable citizens to get as much information as possible about the work of the judiciary. The improvement of proactive transparency would directly result in the reduction of the number of requests and questions which citizens, researchers and media are sending to courts and prosecutors' offices, which would, in turn, unburden these institutions.

In the context of improvement of cooperation with the media, it is necessary to adopt communication standards at the systemic level, and to envisage the obligations of courts and prosecutors' offices in communication with the media. The 2018 Communication Strategy of the High Court Council has identified the problems well: this research, however, shows that not much has been done in this regard. For example, courts and prosecutors' offices do not organize press conferences at all and the network of court spokespersons has not been formed almost 4 years after the adoption of the Strategy.

The relationship between the judiciary and the media should primarily be built by the judiciary. Informing the public about the work of judicial authorities is an obligation under multiple laws and should not be left to the good will of individuals within the judicial system. In addition to spokespersons, judges and prosecutors should be more open to direct communication with the media. Direct communication between judges and prosecutors on one side, and journalists on the other would help to improve cooperation between the judiciary and the media. Judges and prosecutors would have the opportunity to understand better what kind of information journalists need and how media work, while journalists would become more skilled in reporting on judicial topics.

The failure of courts and prosecutors' offices to respond to requests for access to information of public importance sent during this research is a cause for concern, especially in view of the fact that the requested information refer to public office holders who are defendants in corruption proceedings.

The lack of accountability and real sanctions for silent and non-transparent institutions allows them to be more and more closed. There are no penalties for chief judges or spokespersons if they fail to respond to a journalist's question, or to post news on websites. The powers of the Commissioner in this regard are modest, and the practice of returning requests for access to information of public importance to first-

instance authorities for reconsideration, described in this analysis, has an additional adverse effect on the already endangered right of access to information of public importance.

Everything described above results in the continuously low level of citizens' trust in the judiciary. A strategic reform is necessary in order to improve the transparency of the judiciary, but small steps forward can also be made at the level of individual judicial bodies, especially in the field of proactive transparency and publication of information on institutions' websites.

We are calling on all judicial authorities to take decisive and concrete steps aimed at improving the situation in the field of judicial transparency and hope that this analysis will be helpful in establishing better standards in this field.