

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

Summary and recommendations



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Introduction

Partners Serbia has conducted research on the state of transparency of courts and prosecutors' offices. The research, conducted between August 2021 and July 2022, was focused on three topics:

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

The Analysis of the State of Transparency and Openness of Judicial Authorities was developed on the basis of the research and is available on the website of Partners Serbia.¹

Results of the analysis show that courts and prosecutors' offices do not have a uniform approach to communication, regardless of whether this is 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, and the media. The research has also shown that both oral and written communication largely depends on the individuals in charge of communicating with the public within the courts or prosecution offices.

Within the research, we analyzed strategic judicial documents, legal framework regulating transparency and operation of the judiciary, legal framework regulating 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; searched the websites of the courts and prosecutors' offices; sent requests for access to information of public importance; and communicated directly through consultative meetings and interviews with representatives of courts, prosecutors' offices, media and civil society organizations.

The research sample consisted of 30% of basic courts (20 courts in total) and 30% of prosecutors' offices (18 prosecutors' offices in total). 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 High Court in Belgrade, and the Prosecutor's Office for Organized Crime. The sample consisted of a total of 45 courts and prosecutors' offices.

Results

The search of the websites of the courts and prosecutors' offices revealed a major discrepancy in the number, type and quality of available information. Visits to the websites showed that a large number of prosecutors' offices within the sample did not have a information about PR person or person in charge for communication with the public. Some courts and prosecutors' offices still do not have websites, which is nowadays the first prerequisite for communication. Most courts and prosecutors' offices do not publish

¹ Serbian version:
English version:

news about their work, even when it comes to high-profile proceedings.² The search of the websites also showed that there was no information about planned or held press conferences, indicating that there is no culture of proactivity in disclosing to the public information about investigations and court proceedings of public interest.

We sent requests for access to information of public importance in an attempt to determine the level of transparency of the courts and prosecutors' offices with respect to ongoing anti-corruption investigations and/or court proceedings, and to find out whether the courts and prosecutors' offices have uniform practice in responding to requests for access to information. Although earlier research by Partners Serbia indicates that courts are one of the most transparent institutions when it comes to access to information of public importance, **this research showed, however, that the transparency of courts and prosecutors' offices reduces if the subject of the request is information of interest to the media and information potentially including public officials.**

The majority of courts and prosecutors' offices disclosed their statistics but refused to submit copies of indictments and motions to indict, as requested. According to the responses of the courts and prosecutors' offices, we can conclude that there is no uniform practice of courts and prosecutors' offices in situations in which they receive identical requests.

In order to find out whether the courts and prosecutors' offices have strategic documents on communication and how they are implemented, we sent requests for access to information of public importance to the High Court Council (HCC) and the State Prosecutorial Council (SPC).

The HCC response does not show what has been done in order to improve the transparency of courts and communication with the media, or to what extent the existing 2018-2022 HCC and Court Communication Strategy has been implemented³. Three activities aimed at improving communication of the courts were mentioned: organization of trainings for court spokespersons, development of a guide for court spokespersons, and organization of a workshop aimed at improving relations between courts and public prosecutors' office with journalists who specialize in the judiciary. Other activities mentioned in the response mostly referred to the improvement of HCC capacity for communication with the media and the public, and all of them had been implemented through various international projects.

In its response, the SPC said that the latest Communication Strategy of the Prosecution was applicable until 2020, but that the SPC had not prepared a report on its implementation. It also said in the response that a new communication strategy had been drafted, but that its development had lasted longer as a result of the COVID pandemic and selection of new SPC members. One can reasonably wonder about the indicators on the basis of which the new strategy has been drafted if the previous one was not evaluated.

Although the HCC and the SPC responded to the Partners Serbia requests, it remained unclear what had been done strategically in order to improve transparency and communication between prosecutors' offices and courts, on one side, and the media on the other.

² After a search of the websites of basic courts and prosecutor's offices, we established that as many as 85% of the basic courts from the sample do not publish information about their work on their websites, and the same applies to 72% of the basic prosecutor's offices covered by the research. For more information, see the Analysis of the State of Transparency and Openness of Judicial Authorities, which is available on the Partners Serbia website.

³ 2018-2022 High Court Council and Court Communication Strategy:
<https://HCC.sud.rs/sites/default/files/attachments/%.pdf>

Within the part of the analysis that refers to cooperation between the judiciary and the media, two consultative meetings attended by 35 representatives were held, including representatives of basic and higher courts, the Appellate Court in Belgrade, the High Court Council, the basic and higher prosecutors' offices, the Prosecutor Association of Serbia, the Independent Journalists' Association of Serbia and civil society organizations that focus on the operation of the judiciary.

The meetings helped to identify the following issues and challenges in cooperation:

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

During the meetings, the media pointed out that their success in obtaining information and cooperation mostly depended on individuals in charge of communicating with the media and responding to requests for free access to information of public importance. They stressed, however, that the communication with courts was slightly better than the communication with prosecutors' offices, which were much more closed. Representatives of media and media associations also agreed that courts and prosecutors' offices were selective in responding to journalists' questions and requests, and that, as a rule, the greater the importance of the proceedings and the public interest, the more closed the courts and prosecutors' offices became. They also pointed out that there were differences in communication with higher and basic courts and/or prosecutors' offices, that basic courts and prosecutors' offices rarely had spokespersons and that they found it more difficult to get contact information about persons in charge of communication with the public.

2. Inability to Enter Courtrooms and Attend Hearings

Another issue stressed by the participants pertained to their access to trials. They said that courtrooms are frequently small and that judges sometimes prohibit journalists from entering the courtroom even if there were no statutory reasons for restricting access to the public.

3. Insufficiently Systematized Data

Another issue pointed out by journalists was the lack of systematized databases, and they suggested that records kept by courts and prosecutors' offices should be expanded. They also said that the portal of courts is not functional and that they believed it should be more informative.

4. Lack of Press Conferences

During the meeting, the participants repeatedly mentioned a lack of press conferences, which was corroborated by the results of an analysis of court and prosecutors' office websites conducted by Partners Serbia, showing that between January and mid-April 2022, the websites of courts and prosecutors' offices from the sample contained no information about organized or planned news conferences.

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

Representatives of journalist associations and journalists themselves said that access to information of public importance depends on the good will of those who decide on them, and that there is no uniform practice. They also stressed that in case of a complaint, the Commissioner for Information of Public Importance and Personal Data Protection frequently returned the request to the first-instance authority for reconsideration, which additionally extended the deadline for obtaining information and rendered the information outdated. Previously, in accordance with the Law on Free Access to Information of Public Importance, upon receiving a complaint, the Commissioner determined the facts and issued decisions saying either that the requested information represented information of public importance, ordering the first-instance authority to submit the requested information, or that the requested information was not information of public importance, upholding the first-instance decision of the public authority that refused to disclose the information. The journalists' views were corroborated by the research. Deciding on two complaints filed during the research, the Commissioner 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 quoting the same arguments and once again refusing to provide access to the requested information to Partners Serbia. As a result, Partners Serbia had to complain to the Commissioner again about the same requests. The initial requests were sent in December 2021, meaning that Partners Serbia had not received the requested information for ten months and that the Commissioner had not decided that the public had the right to access the requested information.

6. Lack of Accountability in Case of Failure to Respond to Inquiries and Questions of Journalists

The lack of accountability and real sanctions for the silence and non-transparency of institutions enables institutions to be even more closed. Chief judges or spokespersons are not punished if they do not respond to journalists' questions or fail to publish news on the websites. The Commissioner does not have a lot of power in this respect, and the above-mentioned practice of returning requests for access to information of public importance to first-instance authorities for reconsideration has an additional adverse effect on the right to access to information of public importance, which is already difficult to implement.

7. Tabloids' Need for Sensationalism

The participants in the meetings have an impression that the judiciary's trust in journalists is particularly badly because of the media that use sensationalism in order to increase their profits as much as possible when reporting on court proceedings, which often results in the publication of incorrect information about court proceedings and prosecutor-led investigations, violation of the presumption of innocence, secondary victimization, and violation of the right to privacy of victims, defendants and other participants in court proceedings, etc.

8. Insufficient Human Resources at Courts and Prosecutors' Offices

Speaking about their issues, representatives of courts and prosecutors' offices stressed in particular that they had insufficient capacity for communicating with the public. They pointed out that they needed additional personnel who would be specifically in charge of communication with the public and cooperation with the media, as well as handling requests for access to information of public importance.

They said that since currently judges and prosecutors most frequently performed these tasks in addition to their regular duties, this had an adverse effect on the quality and speed of obtaining information.

9. Journalists' Lack of Knowledge about the Work of the Judiciary

Another issue observed by the participants was that journalists lack the knowledge for reporting on investigations and court proceedings, and that they do not fully understand that certain data from investigations and court proceedings could only partly be presented to the public. This is frequently the case because most media, rather than having journalists who specialize in reporting on the judiciary, have journalists who cover a wide range of topics and therefore do not know enough about the main characteristics of investigations and court proceedings.

Recommendations

On the basis of the Analysis, Partners Serbia developed a set of recommendations aimed at improving the transparency of the judiciary and communication between the judiciary and the public. The recommendations are useful both for the strategic and legal regulation of the issue of insufficient transparency of the judiciary and improvement of transparency of individual courts and prosecutors' offices, especially in view of the fact that some of the identified shortcomings can be improved relatively easily, and that they primarily depend on the good will of individual courts and prosecutors' offices.

1. 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.
2. Type of information on the websites of courts and prosecutors' offices should be standardized in order to ensure that all websites offer the same type of information of public importance about ongoing and completed proceedings and investigations.
3. Databases maintained by prosecutors' offices and courts should be improved in order to facilitate access to information and handling of journalists' questions and requests.
4. Courts and prosecutors' offices should appoint persons in charge of communicating with the public. These persons should be made professional 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.
5. 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.
6. Regular and special news conferences should be organized.

7. New strategic documents and accompanying action plans for the communication of courts and prosecutors' offices with the public should be drafted. In addition to this, the existing and already implemented strategies should be evaluated for the purpose of ensuring a better recognition of challenges and issues in the implementation of this type of activity.
8. Instructions and recommendations for prosecutors' offices and courts should be drafted in order to standardize 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. Practice and the Analysis prepared by Partners Serbia have shown that in these cases courts and prosecutors' offices do not act uniformly, which results in uncertainty on the part of the applicants regarding the type of information they can request, as well as uncertainty of persons deciding on requests for access to information with regard to the type of information they may provide to the applicants.
9. Decisions on requests for access to information of public importance should be made within the time limit provided by the Law on Free Access to Information of Public Importance. Under the Law on Free Access to Information of Public, the public authority has 15 days from the date of receipt of a request for access to information of public importance to respond to the applicant by making the requested information available, or to issue a decision refusing to provide the information. Silence of the authority, i.e., ignoring and not responding to a request, is considered a violation of the Law on Free Access to Information of Public Importance.
10. Journalists should be granted access to hearings in public proceedings. This recommendation refers to the discontinuation of judges' practice to prohibit journalists and the public to attend proceedings in situations in which there are no legal obstacles to the holding of a public trial. Also, physical access to hearings should be ensured in situations in which, due to the nature of the case, a large number of journalists is expected to be interested in attending the trial, by moving the trial to a courtroom that can accommodate a large number of persons.
11. Judicial authorities should organize continuous trainings on reporting on court proceedings and investigations for journalists.
12. Trainings for spokespersons, judges and prosecutors should be organized to improve their communication skills with journalists and the public.