

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



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Introduction

This is the second year in a row that Partners Serbia has conducted research on the state of courts and prosecutors offices' transparency in the Republic of Serbia.

The research includes an analysis of proactive and reactive transparency levels of courts and prosecutors' offices and an analysis of strategic documents pertaining to the communication of the judiciary with the public. In contrast with last year, the research this year also included an analysis of the legislative reform of the judiciary.

Greater transparency in the judicial authorities' operations is a challenge that has yet to be among the priorities of courts and prosecutors' offices. Civil society organizations and the media frequently say that courts and prosecutors' offices are insufficiently transparent and that it is difficult to get access to information about proceedings in which the public has a justifiable interest. In addition to this, different strategic judicial documents confirm that the judiciary does not have appropriate mechanisms for communication with the public, while passive internet communication of judicial institutions, lack of news conferences and staff specialized for communication with the public, as well as the absence of a plan and a strategic approach in communication with the public, especially with the media, are quoted as frequent problems.

Greater transparency of judicial authorities and improvement in the independence of judicial authorities is a prerequisite for increasing citizens' trust in the work of the judiciary. To bring the judiciary and society closer to each other, the judicial system must open and improve its communication with citizens.

To help the work of the judicial system become more open to understanding for citizens, Partners Serbia has been engaging in activities focused on the improvement of judicial transparency.

This analysis on the state of transparency of judicial institutions stresses the importance of improving the situation in this field and bases our advocacy activities on documented facts.

The analysis is intended for all judicial authorities to ensure that they improve their activities in the field of transparency, especially since some of the identified shortcomings can be relatively easily remedied due to their dependence on the will of individual courts and prosecutor offices. The analysis is also intended for all institutions and professionals participating in the judicial reform process as a way to strategically address identified shortcomings in this field.

Methodology

The same methodological approach was used in both the first and the second cycle of research on the state of transparency of courts and prosecutors' offices. This year's research was conducted from October 2022 to August 2023.

The research 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. Legislative reform of the judiciary as an opportunity for improving the transparency of the judicial system.

The research sample, which was the same as last year, included 30% of basic courts (20 courts in total) and 30% of basic prosecutors' offices (18 prosecutors' offices in total), selected based on their geographic position, level of development of the local communities and their population. In addition to this, the sample also included all higher courts and higher prosecutors' offices in charge of prosecuting corruption cases- 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. In total, the sample consisted of 45 courts and prosecutors' offices. The data was collected through the analysis of strategic judicial documents, legal frameworks on transparency and operations of the judiciary, legal frameworks 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. Other methods utilized included searches through websites of courts and prosecutors' offices, sending requests for access to information of public importance, direct communication at consultative meetings and interviews with representatives of courts, prosecutors' offices, and civil society organizations.

Proactive Transparency

Proactive transparency is the timely publication of information of public importance by the public authority itself at its own initiative. Certain laws and other legal acts, such as the Law on Free Access to Information of Public Importance, the Law on Public Procurement, the Law on the Planning System, etc. regulate the publication of information.

The right to free access to information of public importance is a right guaranteed by the Constitution and the Law on Free Access to Information of Public Importance. The amendments to the latter have created preconditions for greater proactive transparency of institutions. The proactive publication of information increases the accessibility of information and reinforces citizens' trust in institutions, while also reducing the need for reactive operation and consideration of individual requests for access to information. This Law recognizes, *inter alia*, all judicial authorities as the entities that have obligations under it.

In addition to this, several strategies pertaining to the development of judicial authorities include the improvement of judicial authorities' transparency among their goals. Thus, the goals of the 2020-2025 Judicial Development Strategy include the "*advancement of transparency and accessibility of judiciary*," which should help to "*increase the level of public trust in the work of judiciary*." The Strategy says that this goal will be achieved "*through accessibility of judicial institutions and continuous transparency of their work, which entails better functionality of judicial institutions' web pages, consistent implementation of judicial institutions' communication strategies and introduction of the practice of holding regular press conferences where the work of both courts and public prosecution offices, and the High Court Council and the State Prosecutorial Council, as well as the Judicial Academy, is presented.*"¹ Under the Strategy, the measures are to be implemented through the activities referred to in the revised Action Plan for Chapter 23.² The judicial transparency and communication measures referred to in the Action Plan mostly focus on the improvement of the ICT systems and judicial databases.

The 2022-2025 High Court Council Strategic Plan also recognizes the importance of improvement of judicial transparency. Goal 4 in the Strategic Plan envisages the "*improvement of transparency through greater accessibility of information on the work of the judiciary and expansion of types of communication with the public.*" The three expected results of the Strategy related to this goal are:

1. Standardized information on courts' websites;
2. Establishment of spokespersons' offices at Serbian courts;
3. Advanced media informing on courts' methods of operation and functioning of the court system.

¹ The 2020-2025 Judicial Development Strategy is available at the following link: <https://www.vk.sud.rs/sr-lat/strategija-razvoja-pravosu%C4%91a-za-period-2020-2025-godine>

² The Action Plan for the Implementation of the 2020-2025 Judicial Development Strategy for the period between 2022 and 2025: https://www.vk.sud.rs/sites/default/files/attachments/akcioni_plan_strategije_razvoja_pravosudja_2020-2025_period_2022-2025_125_cyr.pdf

In connection with the implementation of this goal, the report on the operation of the High Court Council in 2022³ says that two multiple-day workshops were organized – the first for the representatives of courts, prosecutors' offices and the media, and the other for spokespersons from the territory of the Appellate Court in Novi Sad. The same information was presented because of implementation of the 2018-2022 Communication Strategy of the High Court Council and Courts.⁴

The Strategy detected shortcomings and challenges in the courts' communication with the public and provided recommendations and guidelines for improving communication. However, the report on the implementation of the Strategy is not publicly available and, based on the information collected for the purpose of this and last year's reports, one can conclude that only a few activities were implemented, most frequently due to cooperation with international institutions.

At the time when this analysis was drafted, neither the High Prosecutorial Council nor the High Court Council had any current strategic documents dealing with the communication of prosecutors' offices and courts with the public in the broadest meaning of the word.

Proactive Transparency – Research Results

The second cycle of analysis of proactive transparency of the websites of courts and prosecutors' offices was implemented in two stages, between February and March and between July and August 2023. The analysis included the same set of indicators as last year:

1. Institutions have functional websites.
2. Institutions post news about work and statements on websites.
3. Spokespersons are appointed.
4. News conferences are held.
5. Directories are published and updated (obligation under Article 39 of the Law on Free Access to Information of Public Importance).

Regarding Indicator 5, which refers to the drafting and publication of the directories, this year the analysis included the following sub-indicators:

- Have the institutions in the sample published directories on their work in the new format on the Single Information System of Directories portal⁵ created by the Commissioner for Information of Public Importance and Personal Data Protection (Commissioner)?

³ The report is available at the following link:

<https://vss.sud.rs/sr/%D0%B8%D0%B7%D0%B2%D0%B5%D1%88%D1%82%D0%B0%D1%98-%D0%BE-%D1%80%D0%B0%D0%B4%D1%83>

⁴ These activities have also been presented as a result of the implementation of the HCC Communication Council. For more information, see page 12 of the Analysis of the State of Transparency and Openness of Judicial Authorities, Partners Serbia: https://www.partners-serbia.org/public/news/01_Analiza_stanja_transparentnosti_pravosudnih_organ_a.pdf

⁵ Link to the portal: <https://informer.poverenik.rs/naslovnica>

- Do directories on work contain all types of information prescribed by the amended Law on Free Access to Information of Public Importance, which entered into force in February 2022?⁶
- Is the information contained in the directories on work updated in accordance with the Law on Free Access to Information of Public Importance?

Unfortunately, the results of this year's research show that courts and prosecutors' offices have not made any major progress in comparison with last year. In the text below, we will present results from both cycles to facilitate the overview of the institutions' progress in the field of proactive transparency.

1. Do Institutions Have Websites?

Our internet search has shown that all basic and higher courts in the sample, as well as all the basic and higher prosecutors' offices in the sample, have their own websites. Technological progress has changed how citizens and institutions communicate. Today, websites represent the main source of information for citizens as well as communication between citizens and institutions. Consequently, all public authorities must have accessible and functional web pages. What the website analysis has shown, and this will be discussed in greater detail later, is that there are inconsistent practices regarding the type and volume of information published on the websites of these judicial authorities.

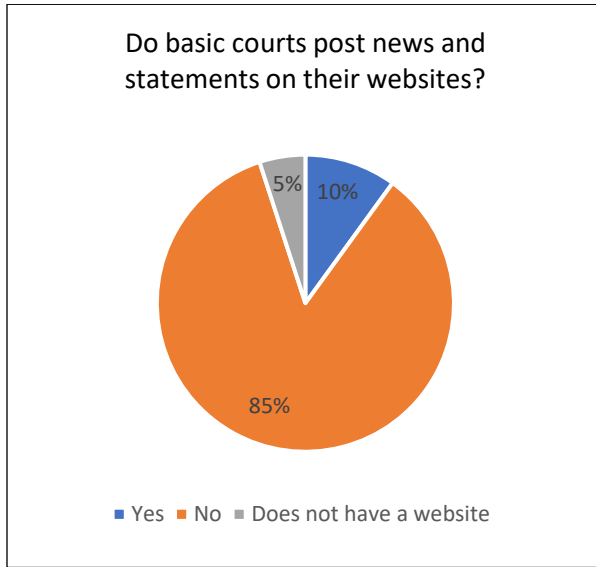
2. Posting News on Work and Statements on Websites

Another analyzed criterion was if courts/prosecutors' offices posted news about their work on their websites. We reviewed whether the courts had posted news in the 45 days preceding the date when we visited the website. We monitored this indicator on March 2 and 3, 2023, which means that January 16, 2023, was used as the first day of the 45-day period. When this year's result is compared last year's, we can see that the basic courts and prosecutors' offices have not made major progress. **The majority of basic courts and prosecutors' offices continued either not to publish news and statements on their websites or to do that very rarely.** Just 30% of basic courts regularly publish information about their activities, while the percentage of prosecutors' offices that do this is even lower (22%).

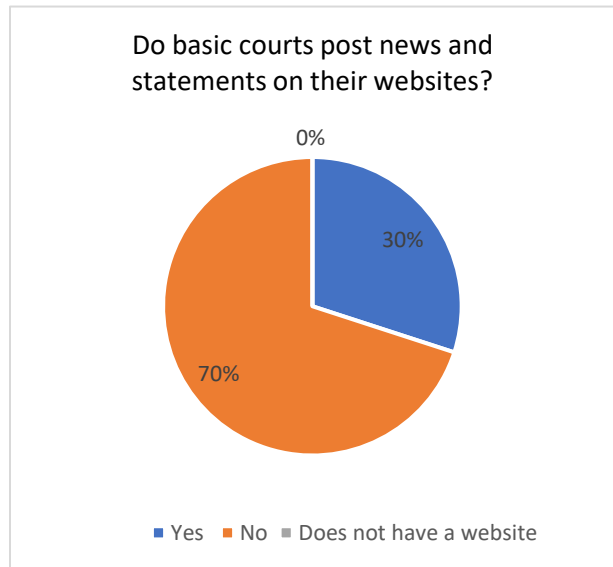
Basic Courts and Prosecutors' Offices, Data for 2022 and 2023:

⁶ We are referring to the harmonization with amendments to Article 39 of the Law on Free Access to Information of Public Importance, which refers to institutions' obligation to publish news bulletins.
https://www.paragraf.rs/propisi/zakon_o_slobodnom_pristupu_informacijama_od_javnog_znacaja.html

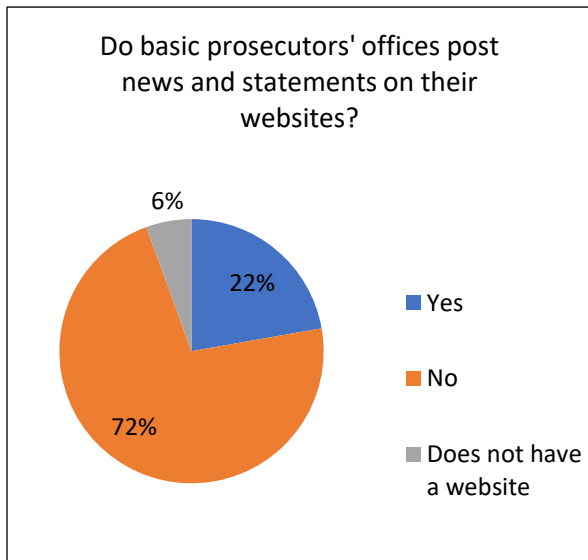
2022



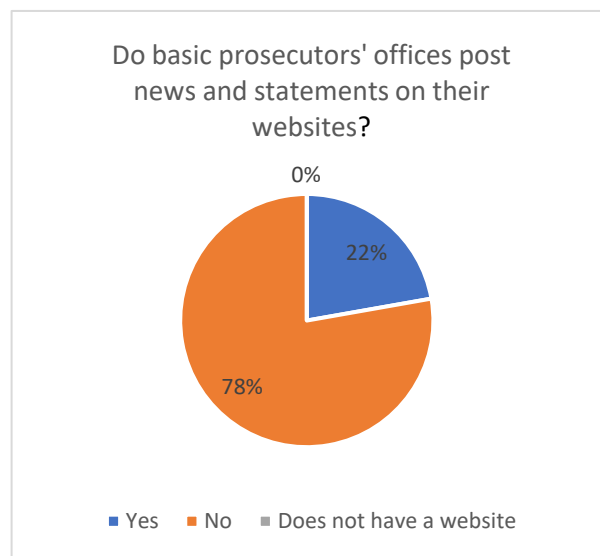
2023



2022



2023



Higher Courts and Prosecutors' Offices, Data for 2022 and 2023:

Throughout the observation period, news on work and statements were found on the websites of two out of four higher courts, which was slightly worse than last year when news and statements were detected on three out of four websites.

As for the higher prosecutors' offices, which includes the Prosecutor's Office for Organized Crime, three out of five prosecutors' offices published news and statements in the observed period

while two did not. This was slight progress compared to last year when just two out of five higher prosecutors' offices published news and statements throughout the observation period.

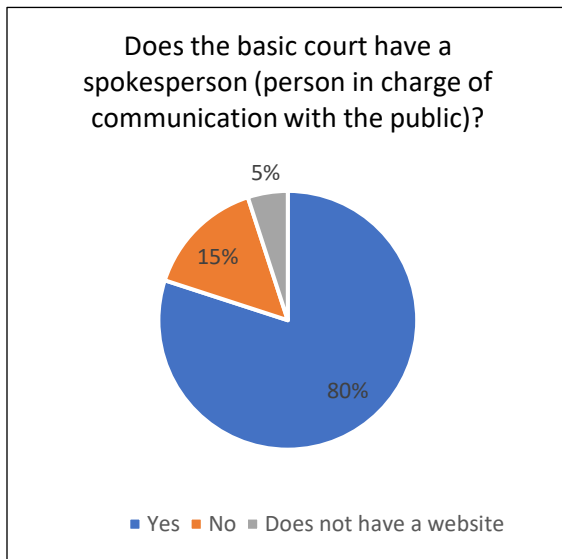
3. Appointment of Spokespersons

An important prerequisite for judicial authorities' communication with the public is the designation of a person within a court or a prosecutor's office to oversee public communications (a person in charge of communication, a spokesperson). Rather than having a person who performs multiple duties at the same time, the job classification would preferably envision separate positions for these activities. A spokesperson would continuously and quickly deliver necessary information to stakeholders, who are most often journalists. We analyzed website contents to try and determine whether courts and prosecutors' offices have spokespersons.

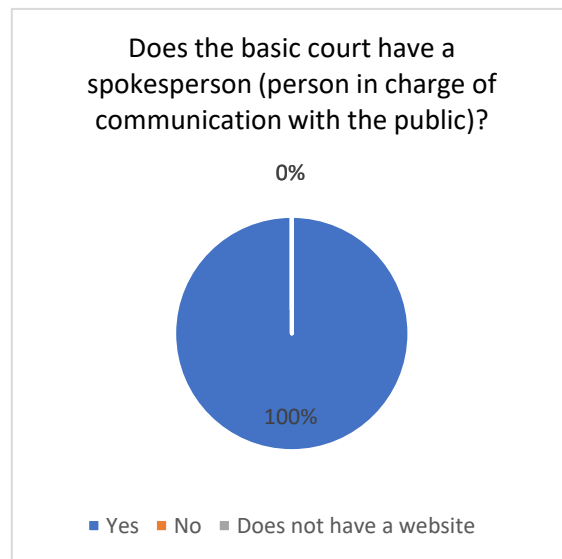
Monitoring has shown that the situation has improved in comparison to last year. In 2022, 80% of the courts and just 28% of the basic prosecutors' offices in the sample had spokespersons, while in 2023 all courts, and as much as 78% of the basic prosecutors' offices in the sample, have spokespersons. This is the indicator where the greatest progress has been observed.

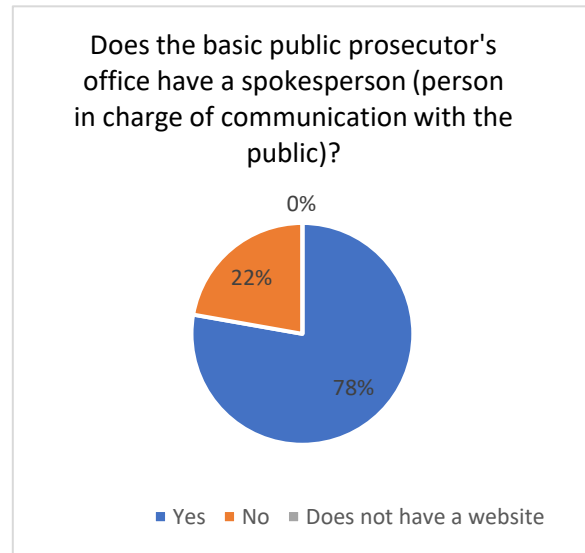
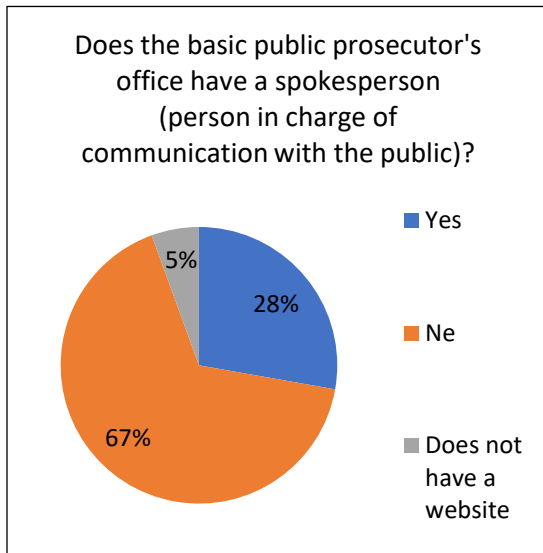
Basic Courts and Prosecutors' Offices, Data for 2022 and 2023:

2022



2023





Higher Courts and Prosecutors' Offices, Data for 2022 and 2023:

All four higher courts have information on spokespersons on their websites, which we assess as very positive, because these courts oversee adjudicating high-profile cases. In addition to this, information on spokespersons is available for four out of five higher prosecutors' offices. We could not find any information about the appointment of a spokesperson only for the Higher Court in Kraljevo.

4. Holding News Conferences

News conferences are important to inform the public about the courts and prosecutors' offices work, especially when it comes to ongoing high-profile cases. News conferences reduce the space for misinformation and tabloid reporting on investigations and court proceedings, while also allowing journalists the opportunity to collect relevant and true data under equal circumstances and without discrimination. We reviewed whether the courts had published news in the period of 45 days prior to the date when we visited the website. The monitoring of this indicator took place from March 2 to March 3, 2023. We examined whether the courts and prosecutors' offices had published news announcements or had reported at a news conference in the past 45 days. January 16, 2023, was used as the first day of the 45-day period.

Regrettably, the analyses show that just one court in the sample held a media conference in the observed period. This was the Higher Court in Novi Sad, which held a media event for the presentation of the annual report and results of the court's work in the previous year.⁷ No information was found on the held or planned news conferences among basic courts, basic prosecutors' offices or higher prosecutors' offices in the sample. These results are almost identical

⁷ Higher Court in Novi Sad: <https://www.ns.vi.sud.rs/vest/826/odrzana-konferencija-za-medije-viseg-suda-u-novom-sadu.php>

to those recorded last year when no information whatsoever was found about held or planned news conferences. The fact that courts and prosecutors' offices do not recognize the importance of news conferences is a major cause for concern. News conferences give the public an opportunity to get information about relevant prosecutor-led investigations and court cases of major importance and their impact on society. A more frequent organization of news conferences would help to increase citizens' trust in the work of the judiciary.

5. Publishing and Updating the Directory (Obligation under Article 39 of the Law on Free Access to Information of Public Importance).

Regarding last year's research, the methodology used for this indicator changed due to the introduction of additional obligations for public authorities under the amendments to the Law on Free Access to Information of Public Importance. Under the amendments, the types of information about which public authorities are required to publish in directories, as well as the format of the directory itself, have been expanded.⁸ Public authorities are now required to publish directories on their work on the Single Information System of Directories portal (hereinafter referred to as the Portal) developed by the institution of the Commissioner.⁹

The research for this indicator was conducted from August 1 to August 8, 2023, and the sample was the same from last year. Results show that all basic courts in the sample have published directories about their work at the Portal. One basic prosecutor's office in the sample did not have the directory in the Portal and the directory on its website was last updated in 2018. Three out of four higher courts in the sample published directories on their work at the Portal, meaning that one higher court did not publish the directory of its work at the Portal. When it comes to higher public prosecutors' offices in the sample, all of them have published directories on their work at the Portal.

This is a positive sign that courts and prosecutors' offices observe their obligation and make directories. However, only one institution in the sample had all categories of data in the directory on its work and updated them in 2023.

Article 39 of the Law says that the directories of work must be updated no later than 30 days from the date when the change occurred. When this is compared with the type of information that should be published in directories, such as data on public procurement, data on the budget, i.e., financial plan, sources of income, data on paid salaries and other revenues, it becomes clear that all institutions have had the duty to update the directories at least once since the beginning of 2023. However, the analysis of the Portal shows that many institutions in the sample have not updated the directories about their work in 2023 and that a large number of institutions do not have all categories of data published in the directories on their work.

⁸ Article 39 of the Law https://www.paragraf.rs/propisi/zakon_o_slobodnom_pristupu_informacijama_od_javnog_znacaja.html

⁹ <https://informativni.poverenik.rs/naslovnica>

Results for this criterion: Do directories contain all types (categories) of information referred to in the amended Law on Free Access to Information of Public Importance, which entered into force in February 2022?

- Only five of the 20 basic courts in the sample have all categories of information referred to in the Law on Free Access to Information of Public Importance.
- Only two of the 18 basic prosecutors' offices in the sample have all categories of information referred to in the Law on Free Access to Information of Public Importance.
- Only one of the four higher courts in the sample has all categories of information referred to in the Law on Free Access to Information of Public Importance, and this is also the only institution in the sample with all updated categories of data.
- Three of the five higher prosecutors' offices in the sample have published all categories of information.

Results for this criterion: Is the information contained in the directories on work updated in accordance with the provisions of the Law on Free Access to Information of Public Importance?

- Eight of the 20 basic courts in the sample last updated their directories on work at the Portal in 2022.
- Only one court updated all categories of information in the directory; but, still lacked two categories of data: the organization chart and job classification data.
- The remaining 11 courts, which updated their directories in 2023 in the Portal, had not updated all categories of data.
- Five of the 18 basic prosecutors' offices in the sample last updated their directories in 2022;
- One basic public prosecutor's office did not publish its directory at the Portal, while its website contained the directory for 2018;
- Only one basic public prosecutor's office has updated all categories of data in the directory on work; however, two categories of data were lacking, the organization chart and job classification data.
- None of the remaining 11 prosecutors' offices, which said that their directories at the Portal were updated in 2023, had updated all categories of data.
- Only one of the 4 higher courts in the sample updated all data in its directory in 2023. One higher court did this partially, one higher court did not update data in the directory in 2023, and one higher court did not publish its directory at all at the Portal.
- Three of the five higher prosecutors' offices¹⁰ updated their data last in 2022.
- Two higher prosecutors' offices, which said that their directories at the Portal were updated in 2023, had not updated all categories of data.

¹⁰ Results for the Organized Prosecutor's Office have also been included.

What most frequently remained inaccessible or not updated were the financial data and public procurement plans for 2023, job classification, information on the implementation of public procurement procedures in 2023, data on services provided last and this year, information on reports and activity plans, etc.

Courts and prosecutors' offices are required to publish all of this information under different laws. However, although a platform has been created to harmonize and facilitate the publication of data for institutions, practice shows that it is nearly impossible to get basic information about the work of courts and prosecutors' offices for the current year. This is due to, apart from one higher court, none of the institutions in the sample having published all categories of data for the current year.

In view of these results, Partners Serbia sent a letter to the Commissioner on August 11, 2023, with an initiative to review the accountability of institutions in the sample regarding Articles 39 and 46 of the Law on Free Access to Information of Public Importance. Under Article 46 of the Law on Free Access to Information of Public Importance, the failure to prepare and update directories on work is a misdemeanor. The initiative was sent to the Commissioner to use his powers to determine the accountability for the omission of authorities to update directories on work, i.e., for their failure to publish on the directory on work at the Portal.

In the Commissioner's response, dated September 1, 2023, the Commissioner confirmed that Partners Serbia's allegations were well-founded and that the authorities in question do not fully update their informants about their work on the Portal. The Institution stated that "the Commissioner, upon reviewing this information, determined that a certain number of authorities have not published information about their work informant to date, as well as that a large number of authorities that have published information about their work did not enter complete and up-to-date information in directories." As a first measure, before the possible initiation of misdemeanor proceedings, the Commissioner stated that he will inform all authorities that they have a legal obligation to update information in directories within 30 days from the date of the changes.

[Reactive Transparency](#)

Reactive transparency refers to the way institutions respond to citizens' questions and requests for information. 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 public authorities to respond to requests for access to information of public importance. This mechanism enables all citizens to be informed about the operation of Serbian institutions.

To examine how courts and prosecutors' offices handle corruption cases, the research focuses on courts and prosecutors' offices that have been granted jurisdiction in corruption cases in

accordance with the Law on Organization and Jurisdiction of Government Authorities in Suppression of Organized Crime, Terrorism and Corruption,¹¹ which are listed below:

- 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
- 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

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

1. How transparent the courts and prosecutors' offices are about ongoing prosecutor-led investigations and court proceedings in corruption cases;
2. How harmonized courts/prosecutors' offices practices are when responding to requests for access to information;
3. How they treat the right to privacy and the right to information of public importance in cases where public officials appear as suspects.

To compare with last year's results, we sent two requests for access to information of public importance to higher courts and higher prosecutors' offices in the sample again this year. This research was implemented again this year due to the majority of courts and prosecutors' offices in the sample refusing to provide information and documents related to ongoing investigations/court proceedings last year.

The first request for access to information of public importance referred to the statistics on the number of cases/investigations held at courts/prosecutors' offices for criminal offenses against official duty (Article 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 the second request, we asked for copies of the entire/ parts of indictments for the above-mentioned crimes in ongoing court proceedings.¹²

¹¹ The Law is available at the following link: <https://www.paragraf.rs/propisi/zakon-o-organizaciji-i-nadleznosti-drzavnih-organa-u-suzbijanju-organizovanog-kriminala-terorizma-i-korupcije.html>

¹² On the basis of provided statistics, the research team asked each institution in the sample to provide indictments for just one of the above-mentioned criminal offenses, so as not to burden them with too lengthy requests.

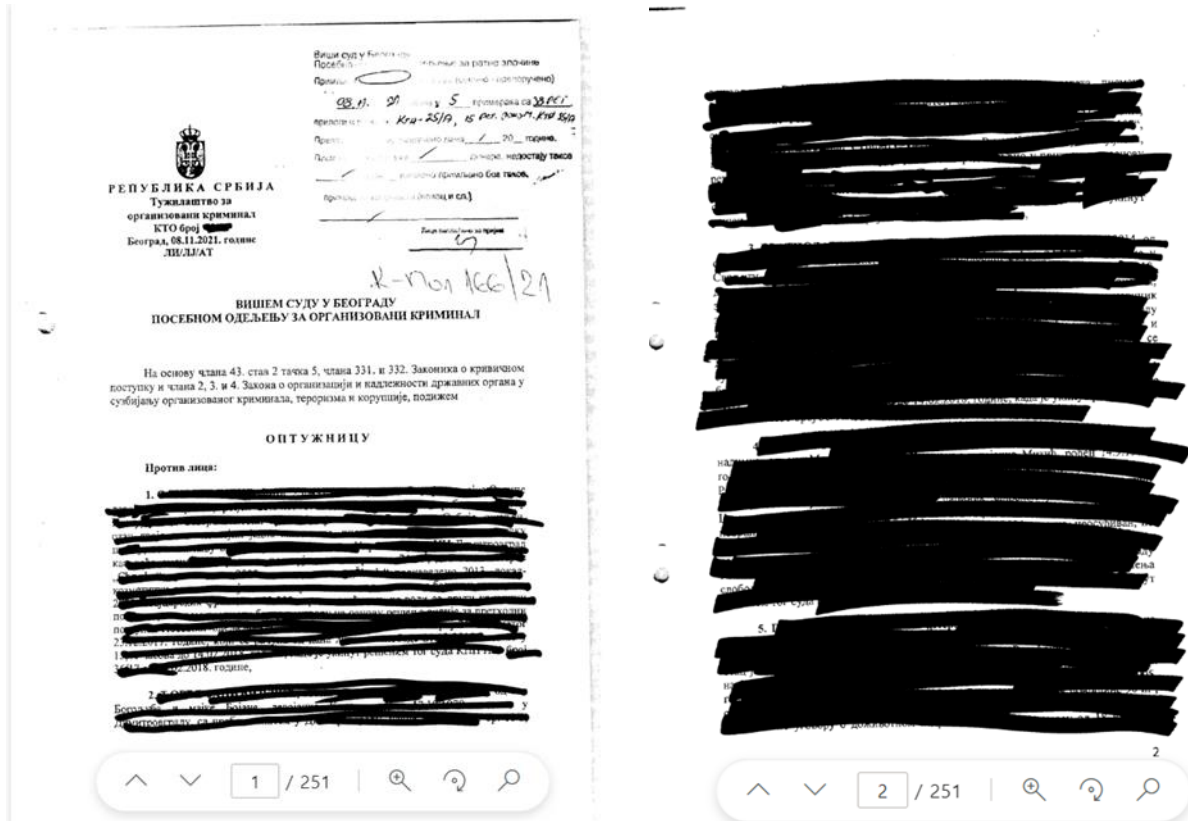
The first round of requests for free access to information was sent in early November 2022. All courts and prosecutors' offices, except for the Higher Court in Kraljevo, submitted their statistics to Partners Serbia. Due to the lack of response from the Higher Court in Kraljevo, Partners Serbia filed a complaint to the Commissioner on December 13, 2022. Upon receiving the complaint, the Higher Court in Kraljevo submitted its response to the request.

The second round of requests for free access to information was sent in February 2023. We requested copies of indictments for the above-mentioned corruption-related crimes and for ongoing proceedings. Unlike last year, when the majority of courts and prosecutors' offices refused to provide copies of these documents, this year all courts and prosecutors' offices in the sample complied with the requests and submitted the requested documents.

In this context, one can say that the institutions have improved their practice. However, these results should be taken with reservations because most of the institutions in the sample redacted the documents excessively.

When the key information about corruption cases, such as the defendants' identities or positions, where they work, and which companies/legal entities are connected with the potential corruption case, etc. is omitted or deleted, the public cannot be truly informed about the ongoing proceedings. We believe that the public has a legitimate interest to be informed about the work of the courts and prosecutors' offices, especially when it comes to mechanisms for the detection and sanctioning and suppression of corruption, both of which are frequently related to the abuse of office of bodies of public authority and abuse of public funds and public goods. In this way, institutions appear that transparent while keeping information inaccessible. An example of such practice is illustrated below.

Illustration 1



In contrast to the above example, one prosecutor’s office submitted a copy of an entire indictment of more than 500 pages without protecting personal data. It is important to stress that information and documents submitted through requests for access to information of public importance are public documents. If this document were published, all personal data referred to in this case, which is irrelevant for the public, would become publicly available. This includes data such as the unique master citizen number, telephone and bank account numbers, and other data of participants in the case.

Due to these differences in operation, it is of the utmost importance to harmonize the practice of courts and prosecutors’ offices concerning the provision of information. When providing information, other rights protected by the Constitution and laws should be considered. Moreover, a balance needs to be struck between the public right to know and the protection of other rights and interests in the provision of information.

Judicial Reform as an Opportunity to Improve the Transparency of the Judicial System

This year was also marked by the adoption of new judicial laws. However, these laws did not have a major effect on improving judicial institutions because the new laws only impacted the publicity of operation of judicial authorities in general. The new laws governing the operation of courts and prosecutors' offices do not include specific obligations concerning the proactive publication of information about the work of these institutions or proactive communication of courts and prosecutors' offices with the public.

Several participants in a public debate, which was organized within the process of drafting of the new set of judicial laws, proposed provisions that envisioned the introduction of spokespersons and the definition of their work for the purpose of improving the communication between courts and prosecutors' offices and the public.

Participants in the public debate also had objections concerning provisions that referred to the provision of information to the public about the operation of the prosecutors' offices. The draft laws did not contain criteria or requirements that would concretize or specify which cases the public prosecution should communicate with the public. Instead, they contained terms such as "in accordance with the interests of the proceedings" and "in accordance with the law." Similar objections were made regarding the definition of publicity of the work of the courts, which is envisioned only generally and without specifics, and which even then refers only to the public character of trials.

Suggestions for the improvement of transparency were also made regarding the operation of the High Prosecutorial Council (HPC) and the High Court Council (HCC). Several organizations proposed the introduction of mandatory live broadcasts and recordings of the two Councils' sessions. Moreover, they proposed mandatory preparations of communication strategies, an obligation that annual work reports contain information related to the Councils' communication with the public and the media, and information on the implementation of communication strategies.¹³

The Ministry of Justice, which led the drafting process, did not accept the proposals from professional associations, civil sector or media associations. Its explanations for this were brief and repeatedly used the argument that the publicity of work of judicial institutions will be regulated, or, that it has already been regulated by other laws or by-laws.

In the coming period, the newly formed High Court Council and the High Prosecutorial Council, which started operating in May 2023, are expected to adopt a set of by-laws concerning the work of judicial authorities.

¹³ For more information, see the comments and proposals of the organizations Transparency Serbia, the Independent Association of Journalists of Serbia, the Center for Judicial Research, Partners Serbia and others in the document: Report on the Public Debate – Responses to Comments Received during the Public Debate, which is available on the Ministry of Justice website: <https://www.mpravde.gov.rs/sr/sekcija/53/radne-verzije-propisa.php>

As of the publication of this analysis, the newly formed HPC held 5 regular sessions.¹⁴ As for the transparency of the work of the Council, major progress has been observed. As a reminder, in 2022 the High Prosecutorial Council (formerly: State Prosecutorial Council - SPC) held just two regular sessions and 26 extraordinary telephone sessions. The public learned about the extraordinary sessions only once the report on the SPC work for 2022 was published in February 2023. Though the report provided a brief description of these sessions, it did not provide sufficient information to the public about the topics of the sessions or the way in which the SPC worked in 2022. The newly formed HPC opened the Council sessions to the public by making it possible to watch its sessions live or to watch them later through Zoom and YouTube. This practice started even before the adoption of the new HPC Rules of Procedure, which contains provisions on the establishment of technical requirements for the video broadcasts of sessions.¹⁵ To that end, one can say that one of the civil society organizations' proposals provided in the public consultation stage has been implemented.

The HPC also invited the National Convention on the European Union (the NCEU) to take part in the by-law adoption process by submitting written comments and monitoring sessions of working groups for the development of by-laws, which made it possible for the public to influence the quality of these regulations. Until now, the NCEU has been given the opportunity to submit comments on several draft by-laws, including the Draft Rules of Procedure of the High Prosecutorial Council, the Draft Rules of Procedure of the Ethics Committee of the High Prosecutorial Council, the Draft Rules of Procedure on the Administration in the Public Prosecution, etc.

At the time this analysis was published, the newly formed HCC held 7 sessions where it discussed, *inter alia*, the adoption of the new by-laws.¹⁶ Unlike the HPC, HCC sessions are not publicly available and cannot be watched live. Information about sessions can only be found in short minutes from the sessions. The beginning of the new Council's operation was followed by the adoption of a new Rulebook on conducting and evaluating interviews with candidates for judges,¹⁷ a Rulebook on the criteria and standards for the evaluation of expertise, required competencies and worthiness of judicial candidates to be selected as a judge to a permanent judicial office in another or higher court, nomination criteria for court president candidates¹⁸ and the amendment of the

¹⁴ HPC website, information on held and planned sessions: <https://vst.jt.rs/sednice-2/>

¹⁵ Rules of Procedure of the High Prosecutorial Council, Article 25. The publicity of sessions: <https://vst.jt.rs/wp-content/uploads/2023/08/Poslovnik-o-radu-Visokog-saveta-tuzilastva.pdf>

¹⁶ HPC website, information on held and planned sessions: <https://vss.sud.rs/sr/%D1%81%D0%B5%D0%B4%D0%BD%D0%B8%D1%86%D0%B5>

¹⁷ Rulebook on conducting and evaluating interviews with candidates for judges <https://www.pravno-informacioni-sistem.rs/SlGlasnikPortal/eli/rep/sgrs/pravosudje/pravilnik/2023/48/1/reg>

¹⁸ Rulebook on the criteria and standards for the evaluation of expertise, competence and worthiness of candidates for the process of selection of a judge to a permanent office in another or higher court and on the criteria for the nomination of candidates for the court president: https://www.paragraf.rs/propisi_download/pravilnik_o_kriterijumima_i_merilima_za_ocenu_strucnosti_osposobljenosti_i_dostojnosti_za_izbor_sudije_na_stalnoj_sudijskoj_funkciji_u_drugi_ili_visi_sud_i_o_kriterijumima_za_predlaganje_kandidata_za_pre_dsednika_suda.pdf

Rules of Procedure of the High Court Council.¹⁹ In contrast to the Rules of Procedure of the HPC, there are no provisions for video broadcasts of the HCC sessions or any other provisions that would improve the proactive transparency of the HCC. According to the information available on the HCC website, one can conclude that the professional associations and the civil sector did not have the opportunity to join the processes of drafting these by-laws.

Partners Serbia sent the High Council of the Judiciary a letter with questions about the work and plans of this Council in the coming period. In its response, dated September 18, 2023, the Supreme Court of Justice indicated that future by-law drafts will be published on the website of the High Council of the Judiciary to inform the public and enable the public to provide comments and suggestions. It is a positive step forward, bearing in mind that the public was not involved in the process of adopting new by-laws so far (mentioned above). The draft of this analysis was submitted to the HJC for comments and suggestions. In this regard, we emphasize the comment of the Supreme Court of Justice on the provision of public access to the sessions of this Council. In the letter, it was pointed out that the sessions of the Council are public, and that "*Article 11 of the Rules of Procedure of the High Council of the Judiciary prescribes that the public session can be attended by interested persons and representatives of the media up to the number of available seats in the space of the High Council of the Judiciary, according to the order reporting to the Administrative Office*". It was also recognized that the minutes of the sessions are published publicly. In its letter, the HJSC did not refer to the issue of introducing video transmission of sessions as a way to improve public access to sessions. We hope that this proposal will be considered by Council in the coming period.

Provisions pertaining to the improvement of transparency and communications of courts and prosecutors' offices can be implemented through by-laws that have not been adopted yet, such as the Rulebook on Administration in the Public Prosecution and the Rules of Procedure of courts. We therefore appeal to the HCC and the HPC to consider the recommendations provided by civil society organizations and professional associations during the public debate on judicial laws and to elaborate on mechanisms for improving the publicity of judicial authorities' through by-laws.

¹⁹ Rules of Procedure of the High Court Council:
<file:///D:/Downloads/Poslovnik%20o%20radu%20Visokog%20saveta%20sudstva.pdf>

Conclusions and Recommendations

The results of the research presented in this analysis show that courts and prosecutors' offices have not made significant progress in the field of transparency and openness when compared to the results of the previous year's research. The conclusion remains the same - **there is no uniform approach in courts and/or prosecutors' offices communication, regardless of whether this concerns information available on the institutions' websites or responses to requests for access to information of public importance.**

As for proactive transparency, the main problems remain the **irregular updating of information on the institutions' work, rare publication of news and information on the ongoing investigations and court proceedings, and a complete absence of news conferences on cases in which the public is justifiably interested.** Although the Commissioner influenced the standardization of the type of information and formats in which institutions should publish information about their work through the creation of the Single Information System of Directories platform, the research shows that a large number of courts and prosecutors' offices in the sample did not update their directories in 2023. In addition to this, many institutions have not published all categories of data in the directories on their work, violating the Law on Free Access to Information of Public Importance.

The analysis of courts and prosecutors' offices response to requests for access to information of public importance did not produce encouraging results either. **Although all courts and prosecutors' offices in the sample responded to the requests and submitted the requested documents, the majority anonymized the documents excessively. In this way, institutions appear to be transparent while the requested information remains inaccessible.**

Omitting or removing key information from corruption-related cases in indictments prevents the public from being truly informed about ongoing investigations or court proceedings. We believe that the public has a legitimate interest in being informed about the work of the courts and prosecutors' offices, especially when it comes to the mechanisms for detecting, sanctioning, and suppressing corruption, which is frequently linked to the abuse of public officials' offices, public funds, and public goods.

Another discouragement is that the adoption of new judicial laws did not have a major influence on the improvement of transparency of judicial authorities, although problems in this field are recognized in different strategic documents of the highest judicial institutions. Since laws do not contain more detailed provisions on the publicity of judicial institutions' work, two institutions of the same rank have already prescribed different measures for achieving transparency in their work. The new Rules of Procedure of the HPC contain a provision for live broadcasts of its sessions; however, the new Rules of Procedure of the HCC do not envisage the introduction of the same or similar measures that would make it easier for the public to get information about the work of the High Court Council. This could have been avoided if the laws on the work of these institutions had included more specific provisions on transparency instead of leaving it to the institutions to decide on their own.

We believe that provisions on the publicity of sessions of the High Prosecutorial Council should be transferred to the Rules of Procedure of the High Court Council and that both Councils should apply the same standards regarding the publicity of sessions and proactive transparency.

In addition to this, a number of other judicial by-laws are planned to be drafted this and next year. Therefore, we invite the highest judicial authorities to include provisions on securing access to information on judicial authorities' work while drafting these documents.

Based on the first research conducted in 2022, we developed a number of recommendations that should help to promote transparency in the work of judicial institutions. The recommendations were amended and expanded after this year's research.

The recommendations are useful for the strategic and legal regulations of insufficient judicial transparency and for individual courts and prosecutors' offices to improve their practices, especially because some of the perceived shortcomings can be improved relatively easily. The implementation of all the recommendations depends on the will of those who lead the courts and prosecutors' offices.

The recommendations are presented below.

1. The proactive transparency of the judiciary should be improved by posting of information concerning ongoing investigations and court proceedings on websites, reducing the number of inquiries and requests for information.
2. Information posted on the websites of courts/prosecutors' offices should be standardized to ensure that the websites of all courts/prosecutors' offices contain the same type of information on ongoing and completed proceedings and investigations that have a wider importance and impact on the society.
3. Directories on work should be developed and the information contained therein should be updated in accordance with the Law on Free Access to Information of Public Importance.
4. Electronic databases kept by prosecutors' offices and courts should be improved to facilitate access to information, responses to inquiries, and requests for access to information of public importance.
5. Courts and prosecutors' offices should have an appointed position to oversee public communications. These positions should be professionalized so that information from investigations and proceedings are presented to journalists and the public in a timely and sufficiently clear and comprehensible manner, reducing the space for misinformation.
6. By-laws on the work of courts and prosecutors' offices should be amended to include specific obligations of judicial authorities regarding publication of information on work. This would include the types of information that should be published, information format, the organization of news conferences and regulations for the spokespersons position.
7. By-laws on the work of courts and prosecutors' offices should be amended to regulate the issue of judicial authorities' accountability and the persons who are authorized to

communicate with the public in situations where they do not respond to media inquiries, including cases when certain media outlets are given preference.

8. New strategic documents and accompanying action plans should be developed for communication between courts/ prosecutors' offices and the public.
9. The implemented communication strategies should be evaluated to ensure better recognition of challenges and issues in the implementation of this type of activity.
10. Instructions and recommendations should be created for prosecutors' offices and courts for to harmonize their responses to inquiries and requests for access to information from citizens and media. This would contain guidelines that are as precise as possible and would define the information that the public has the right to obtain and include instructions for the appropriate anonymization of data.
11. Cooperation with the media should be improved through the organization of regular and extraordinary news conferences and the simplification of procedures for journalists' communication with representatives of courts and prosecutors' offices.
12. Other thematic events should be organized for journalists and representatives of courts and prosecutors' offices to improve cooperation.
13. Judicial authorities should organize workshops for journalists on how to report on court proceedings and investigations.
14. Workshops should also be organized for spokespersons, judges and prosecutors to improve communication skills with journalists and the public.