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Transparency of work – main findings and recommendations

Most judiciary institutions aren't active enough in regards to proactive publishing of information on its work. It is especially concerning in situations **when legal obligations are not being respected**, like publishing of Information Booklets. Obviously, besides holding accountable for non fulfillment of legal obligations, it is necessary to engage in cooperation and education. For example, it is obvious that **problem in creating Information Booklets could be** largely resolved **by creating template documents that would look the same for all courts or prosecutors of the same instance**, and that could be amended with specific data for each of the institutions. Also, that work should be lead by those courts and prosecutors that are of higher instance.

Matter of **internet presentation is not resolved in systemic way**. Since there are **large deviations on type of documents and other information that can be found and downloaded from web-pages**, as well as in regards to practice of updating, it is obviously **necessary that this matter is to be organized with by-law acts of HJC and SCP**, through recommendations or on the basis of authorities that should be prescribed in relevant regulations.

Information published in web presentations of courts and prosecutors can serve in some cases as a base ground for further research and conclusions. However, **since statistical data are not being grouped in a way that allows comparison on category of certain processes**, it is not possible to reach to clear conclusions in regards to performance of certain institutions in anticorruption area. There is no practice of publishing information on measures undertaken to prevent corruption (e.g. implementing measures from anticorruption strategy, introducing integrity plans), except in exceptional cases. Court portal doesn't enable overview of data on categories of cases, **except with Commercial Courts**. Also, methodology for statistics on police, prosecutors and courts isn't harmonized. Published **decisions on election of judges and prosecutors do not contain elaborations on the basis of which general public could judge on method of implementation of prescribed criteria**. There is no practice of **publishing information on applications and procedures lead for determining accountability of judiciary**

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officials for violation of regulations or ethical code. There is no practice of **publishing over web decisions of prosecutors and courts**, even in cases that initiated interest in public.

Therefore, **harmonizing of record keeping on cases, enabling search on proceeding of judiciary institutions on different areas, that organize publishing of data on validation of judges' and prosecutors' work, during their election and periodical verification, proceeding in the cases of determining accountability and practice of proceeding in cases of prosecuting corruption,** is necessary**.** These questions must be specially treated in the process of creating **new Strategy for Judiciary Reform**, that are ongoing, **introducing transparency** as one of the key principles of the reform.

Partial data on scope of work in certain institutions points out to large disproportions, in areas covered by courts/prosecutors and in level of judiciary institutions (first instance/higher/appeal), which indicates further to necessity of reassessing parameters on the basis of which number of judges and prosecutors is determined.

From the analysis of previous overview and practice of courts several conclusions impose themselves:

1) **Criminal acts of corruption (pursuant with its definition in National Anticorruption Strategy) are not grouped in one chapter**, but in several chapters of Criminal Code.
2) **Code on Criminal Procedure limits possibility of implementing special measures for unveiling and proving of criminal acts (activities in collecting proofs) limits to only four acts of corruption** (abuse of official position, trading with influence, bribe accepting and bribe giving), although, Criminal Code prescribes other corruptive criminal acts (violation of the law by the judge, public prosecutor and its deputy, professional fraud, unveiling official secret, abuse of authorities in business, abuse related to public procurement and abuse of official position of responsible person);
3) **All first instance courts of general jurisdiction (first instance, higher and appeal) are**

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authorized to trial for these criminal acts;

4) **Judges who in charge of trialing criminal acts of corruption don't have special conditions prescribed,** in the sense of having certain years of working experience and necessary training. **Only for the judges of Special departments in Higher Court in Belgrade and Court of Appeals in Belgrade** is prescribed to have certain years of experience as well as advantages during deployment to judges that possess special professional knowledge and experiences from fight against organized crime and corruption. However, it is not organized in details what kind of special knowledge are needed and where were they obtained;
5) **Judges are deployed into special departments by a president of the court, or supreme judiciary council,** in the case of judges from other court, and with annual schedule of work, thereby, without special criteria and measures on the basis of which this is being done;
6) **Judges in these special departments have specific status** because they are being appointed into that department with their own consent and to the period of the least six years;
7) Before the courts **as most common form of corruption appears criminal act of abuse of official position**;
8) Most often activity of this offence is „abuse of official position"

Recommendations for improving legal framework for trialing criminal acts of corruption:

1) **Amending the Code on Criminal Procedure to define the term of corruptive criminal acts**, as it was done for organized crime. That would make unveiling and trialing of these criminal acts more efficient because implementation of all special measures for their unveiling and proving would be possible (activities in collecting proofs), because they are now limited to only four criminal acts. Besides that, their implementation would be

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possible to newly prescribed criminal acts of corruption in Criminal Code;

2) **Amendments to the Law on Seizure of Property Originated from Criminal Act to widen the possibility of its implementation to all criminal acts of corruption**, because it is now limited to only four criminal acts;
3) **Prescribing necessary continuous training of all judges who trial for criminal acts of corruption**, as well as obligation of Academy in that sense;
4) **Prescribing clear criteria and procedures for „election" of judges into Special departments and their status** that will guarantee expertise and integrity in trials for criminal acts of corruption under jurisdiction of those departments;
5) **Securing sufficient number of judges and personnel in special departments**, as well as spatial-technical conditions for work, that will allow judging in reasonable deadline in those cases;
6) **Prescribing jurisdiction to a few courts for trialing criminal acts of corruption,** outside jurisdiction of Special Department of Higher Court in Belgrade, to secure professional expertise of judges for trialing such acts;

Reassessing the need for more precise determining of criminal act of abuse of official position