

*Recommendations for increasing the transparency and accountability of the Croatian judiciary*

*– the year 2024*

In the last three years, the Miko Tripalo Centre has published a series of documents with recommendations for increasing transparency and accountability in the Croatian judiciary. The documents served as a basis for discussion at round tables organized by the Centre or were the Centre's contributions in e-Consultation procedures in the Government's proposals for changes in legal regulations. Those documents can be found on the websites (https://tripalo.hr/ and <https://pravosudje.tripalo.hr/>).

This year, in June, the Centre, through the agency Ipsos, conducted a survey among the citizens of the Republic of Croatia on what they think about the judiciary and judges. The results confirmed that measures to increase transparency and strengthen accountability mechanisms in the judiciary are urgently needed.

For this purpose, we present here abbreviated and revised versions of our recommendations, while more detailed explanations can be found in the above-mentioned documents.

*Election of judges and court presidents*

*There is a great distrust of the public and the legal profession towards the objectivity of procedures for the selection of judges, and the Constitutional Court has also warned of shortcomings in these procedures. In this regard, we offer five recommendations:*

*Recommendation 1: All DSV's interviews with candidates for judicial positions should be permanently made available to the public via video recording.*

*Recommendation 2: DSV should publish all documents considered in the selection process*

*candidates for higher judicial positions, except for those marked with confidentiality.*

*Recommendation 3: The law stipulates that before the final election, bar associations, prosecutor's offices, academic institutions and civil society organizations can give opinions on candidates for higher judicial positions, for court presidents and for DSV members, which opinions will be published on the DSV's website.*

*Recommendation 4: The voting of DSV members in the election of judges should be public.*

*Recommendation 5: In case of deviation of the choice from the points assigned before and during the course procedure, DSV should explain the choice.*

*Recommendation 6. The appointment of court presidents should be subject to the approval of the President of the Supreme Court, as the first person in the judicial authority.*

*Election/Choice of DSV*

*The current voting system for the election of DSV members is unknown in any democratic system: The first round in each unit, in which up to 15 candidates can be determined in principle (voting results are not published), and the second round, in which the candidate with a relative majority wins votes.*

*Recommendation 7: Preferential voting should be introduced in the first round and all results should be published. Only 2 (in Supreme Court unit 4, because 2 are chosen) candidates for each unit made up of groups of courts should enter the second round.*

*The disparity in representation in the election of DSV members is now enormous, as some 1,000 judges in municipal courts elect only one member.*

*Recommendation 8: In the second round, the voting system that was applied until the legal changes in 2018 should be applied, until which candidates were determined by groups of courts, but judges from all courts voted for all of them simultaneously in the second round.*

*Recommendation 9: Introduce an obligation for every candidate for DSV to*

*submit a statement on why he is running****.***

# Mechanisms for determining the responsibility of judges

*Authorized proponents of disciplinary proceedings (presidents of courts, court panels, minister of justice) show a weak tendency to initiate them. Proceedings are initiated most often on the basis of the legal provision on the mandatory initiation of proceedings in cases of non-fulfillment of the judge's work norm, and in the case of criminal proceedings against judges.*

*Recommendation 10: By law, introduce the institution of a disciplinary investigator at the office of the President of the Supreme Court, who would conduct investigative actions when there is a suspicion that it is necessary to initiate disciplinary proceedings against a judge, and it is not about acts that fall under the jurisdiction of the state attorney's office.1 This office could also act as another instance in the case of citizens' complaints that they submit to the presidents of the courts. The disciplinary proceedings before the DSV would be initiated by the President of the VSRH based on the findings of the disciplinary prosecutor.*

*Recommendation 11: Disciplinary proceedings after initiation by the president of the courts should be public.*

*Annual report of DSV*

*For unclear reasons, there is now no obligation for the DSV to submit a report to the Parliament.*

*Recommendation 12. The law should introduce an obligation for the DSV to submit a report to the Parliament once a year.*

*DSV gives licenses to initiate criminal proceedings against judges. About the rejected*

*requests, however, does not publish any information.*

*Recommendation 13: The reasons for refusal of consent should be published in any case, with names omitted.*

It follows from the constitutional text that this person cannot play the role of a prosecutor, because that is reserved for court presidents and ministers.

*Anonymization of published court decisions*

*VSRH has determined by rulebook that all court verdicts published on the Internet must be anonymized. This is not the practice of all EU countries, so Ireland, Italy, Cyprus and Malta have limited anonymization to particularly sensitive topics and in the case of justified requests from the parties, while other countries allow exceptions when it comes to figures of public life and the like. Disputes before commercial courts are exempt from this.*

*Recommendation 12: In the decision to anonymize court judgments, all judgments for which there is public interest should be excluded, primarily against persons who play a role in public life.*

*Assignment of cases to judges*

*In the world, the practice of randomly assigning cases to individual judges is closely related to the principles of fair trial and is motivated by the avoidance of collusive behavior in the judiciary. In countries with a similar legal tradition to Croatia, such as Germany or Slovenia, the right to a legitimate judge (that is, a judge determined by random selection and not by a discretionary decision of a certain body) has the status of a constitutional guarantee.*

*In Croatia, the law mandates the random assignment of cases, but this is largely derogated from by-laws, especially through imprecise provisions on the redistribution of cases.*

*Recommendation 13: Ensure that by-laws strictly respect the principle of randomness*

*allocation.*

*Publication of court decisions*

*There is no progress in introducing the obligation to publish all court decisions. Decisions of the Supreme Court are generally published, but their public publication is delayed from several weeks to several years, and numerous decisions on appeals due to failure to issue judgments in a reasonable time are not published.*

*Along with published decisions of the Supreme Court and other higher courts, related decisions of lower courts are not published. The decisions of the county courts are only exceptionally published, and the decision on this matter is left to the courts themselves, so that, as a rule, an insight into the practice of approximately 1% to 5% of the decisions of those courts is available to the public. Decisions of municipal courts are, in principle, they are not published on the Internet, and public access to court files based on requests is very limited difficult.*

*While a significant number of court decisions are available in the "SupraNova" system, they are only available to judges, but not to the public, nor to professional stakeholders, such as lawyers and parties who need such insight for the effective use of the legal means needed to access the highest judicial instances.*

*Recommendation 9: The law shall determine the deadline by which publication of all court documents should be achieved judgment on the courts' websites.*

*Access by lawyers, journalists and civil organizations*

*society by non-anonymized judgments*

*The electronic system "SupraNova" with non-anonymized judgments is available only to employees of the courts and the Ministry. The recent agreement between the Supreme Court and the Bar Association to provide access to lawyers was not implemented, because the Ministry did not approve the minimum funds necessary for implementation.*

*Recommendation 11: In accordance with the principle of public trial, the law should provide lawyers, journalists, civil society organizations, researchers, as well as citizens who have a legitimate interest complete and quick access to all non-anonymized court decisions in the "SupraNova" system.*

*Economic activities and income of judges outside the courtroom*

*In the conditions of a huge number of pending cases, the private economic activities of judges justifiably cause dissatisfaction. Some of these activities are exposed to a potential conflict of interest. Recently, in a proposal, the Ministry proposed measures that would represent progress in that area, and these measures had the support of the President of the Supreme Court (see the annual report for 2023) and, according to sources in the media, the other two highest representatives of the judicial administration. After the intervention of a group of influential judges, the proposal was withdrawn. After the recent significant increase in judges' salaries, it is time to take measures that would solve the mentioned problems.*

*Recommendation 12: Tighten the provisions on restrictions and control over the economic activities of judges outside the courtroom and expand the provisions on the declaration of assets, including on transactions with real estate that are not on a market basis, activities that take place through close persons, lifetime support contracts, etc*.