



Recommendations for Increasing Transparency and Accountability of the Croatian Judiciary

– 2024

In the past three years, Centre Miko Tripalo has published a series of documents with recommendations aimed at increasing transparency and accountability in the Croatian judiciary. These documents have served as a basis for discussions at roundtables organized by the Centre or as contributions in the e-Consultation processes in Government proposals for amendments to legal regulations. These documents can be found on the following websites: (<https://tripalo.hr/> and <https://pravosudje.tripalo.hr/>).

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

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

1. Selection of Judges and Court Presidents

There is significant public and legal profession distrust regarding the objectivity of judicial selection procedures. The Constitutional Court has also highlighted deficiencies in these procedures. In this regard, we provide six recommendations:

Recommendation 1: All interviews conducted by the State Judicial Council (DSV) with candidates for judicial positions should be permanently accessible to the public via video recordings.

Recommendation 2: The DSV should publish all documents considered in the selection process for higher judicial positions, except those classified as confidential.

Recommendation 3: The law should provide that bar associations, prosecutors' offices, academic institutions, and civil society organizations can submit opinions on candidates for higher judicial positions, court presidents, and DSV members before the final selection. These opinions should be published on the DSV website.

Recommendation 4: Voting by DSV members in the selection of judges should be public.

Recommendation 5: If the final selection deviates from the scores assigned before and during the process, the DSV should provide an explanation for the decision.

Recommendation 6: The appointment of court presidents should be subject to the approval of the President of the Supreme Court as the head of the judiciary.

2. Selection of the State Judicial Council (DSV)

The current voting system for electing DSV members is unprecedented in any democratic system. It consists of a first round within each unit, where up to 15 candidates can be determined (without publishing the voting results), followed by a second round in which the candidate with a relative majority wins.

Recommendation 7: The first round should introduce preferential voting, and all results should be published. Only two candidates per unit (or four in the Supreme Court unit, as two are elected) should proceed to the second round.

There is a significant imbalance in representation within the DSV election process, as approximately 1,000 judges from municipal courts elect only one member.

Recommendation 8: The second round should use the voting system in place before the 2018 legal amendments, where candidates were determined by court groups, but all judges from all courts voted for them simultaneously in the second round.

Recommendation 9: Each DSV candidate should be required to submit a statement explaining their motivation for running.

3. Mechanisms for Establishing Judicial Accountability

Authorized initiators of disciplinary proceedings (court presidents, judicial councils, the Minister of Justice) demonstrate a weak tendency to initiate such proceedings. Cases are most often initiated based on a legal provision mandating action in instances of failure to meet judicial work standards or when criminal proceedings are initiated against judges.

Recommendation 10: Introduce a legally mandated institution of a disciplinary investigator within the Office of the President of the Supreme Court. This investigator would conduct inquiries when there is suspicion that a disciplinary proceeding against a judge is necessary, provided the case does not fall under the jurisdiction of the State Attorney's Office. This office could also serve as a second-instance body for citizen complaints submitted to court presidents. Based on the findings of the disciplinary investigator, the President of the Supreme Court would initiate the disciplinary proceeding before the DSV.

Recommendation 11: Disciplinary proceedings initiated by court presidents should be public to ensure transparency and public trust in the judiciary.

4. Annual Report of the State Judicial Council (DSV)

Currently, there is no legal obligation for the DSV to submit a report to Parliament, for reasons that remain unclear.

Recommendation 12: The law should mandate that the DSV submit an annual report to Parliament.

The DSV grants permission for the initiation of criminal proceedings against judges. However, no information is published regarding rejected requests.

Recommendation 13: The reasons for denying consent in each case should be made public, with names omitted to protect privacy.

5. Anonymization of published court decisions

The Supreme Court of Croatia (VSRH) has established a rule that all court decisions published online must be anonymized. This is not the practice in all EU countries, as Ireland, Italy, Cyprus, and Malta have limited anonymization to particularly sensitive topics and in cases where there are justified requests from parties, while other countries allow exceptions when it comes to public figures, etc. A recent decision by the President of the VSRH has exempted disputes before commercial courts from this requirement.

Recommendation 12: In the decision on the anonymization of court judgments, all cases should be excluded where there is a public interest, primarily those against individuals playing a role in public life.

6. Assignment of cases to judges

In the world, the practice of randomly assigning cases to individual judges is closely linked to the principles of fair trial and is motivated by the goal of avoiding collusive behaviour within the judiciary. In countries with a legal tradition similar to that of Croatia, such as Germany or Slovenia, the right to a lawful judge (i.e., a judge assigned randomly, not by discretionary decision of a specific body) has constitutional status.

In Croatia, the law mandates random assignment of cases, but this is largely undermined by sub-legislative acts, particularly through imprecise provisions on case redistribution.

Recommendation 13: Ensure that sub-legislative acts strictly adhere to the principle of random case assignment.

7. Publication of court decisions

There has been no progress in introducing the obligation to publish all court decisions. The decisions of the Supreme Court are generally published, but their public release is delayed from several weeks to several years, and numerous decisions related to appeals due to the failure to issue judgments within a reasonable time are not published. In addition to the published decisions of the Supreme Court and other higher courts, related decisions of lower courts are not published. Decisions of county courts are only exceptionally published, and the decision on this is left to the courts

themselves, so the public generally has access to only about 1% to 5% of these courts' decisions. Municipal court decisions are not typically published online, and public access to court records upon request is significantly hindered.

While a significant number of court decisions are available in the "SupraNova" system, it is only accessible to judges, not to the public, nor to professional stakeholders such as lawyers and parties who need such access for effectively utilizing legal remedies necessary to reach the highest judicial instances.

Recommendation 9: Legislate a deadline by which all court judgments must be published on the websites of courts.

8. Access of lawyers, journalists, and civil society organizations to non-anonymized judgments

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

Recommendation 11: In line with the principle of public trial, the law should ensure that lawyers, journalists, civil society organizations, researchers, and citizens with a legitimate interest have full and prompt access to all non-anonymized court decisions in the "SupraNova" system.

9. Economic activities and income of judges outside the courtroom

In the context of a large number of unresolved cases, judges' private economic activities justifiably cause dissatisfaction. Some of these activities are exposed to potential conflicts of interest. Recently, the Ministry proposed measures that would represent progress in this area, and these measures had the support of the President of the Supreme Court (see the annual report for 2023), as well as, according to media sources, the other two highest representatives of the judicial administration. However, after intervention by a group of influential judges, the proposal was withdrawn. Following the recent significant increase in judges' salaries, it is time to take measures that would address these issues.

Recommendation 12: Strengthen provisions on restrictions and control over judges' economic activities outside the courtroom, and expand provisions on

the declaration of assets, including transactions involving real estate that are not on market terms, activities conducted through close relatives, lifetime maintenance agreements, and similar matters.