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in politics and governance

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# OPENNESS OF JUDICIAL BODIES IN THE REGION AND MACEDONIA

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## Introduction

In cooperation with partners from a regional NGO network “ACTION SEE”, Metamorphosis Foundation for internet and society prepared a policy paper, in which we analyze a level of transparency, openness and accountability of judiciary in the region of the Western Balkans.

A goal of our activities is to define a real state in this area and to give recommendations for the improvement through objective measurement of openness of judiciary in the region. The improvement of respecting principles of good governance, in which openness takes a significant place, represents also one of our goals.

Openness of judicial bodies was measured by using basic performance indicators<sup>1</sup>. However, the situation in the region is bad i.e. judicial bodies did not adopt a policy of openness, which represents a basis for building of institutions. Regional courts meet **48%** of performance indicators while prosecutor’s offices meet **40%**. Such results indicate that urgent action for the improvement of openness is necessary and after the achievement of basic level of openness increasing of requirements, in accordance with standards of openness, is necessary as well.

A level of openness of judicial bodies was measured in the period from October to the end of December 2016 within the Regional index of openness of institutions. The openness was measured on the basis of more than 100 performance indicators, divided into 4 dimensions: transparency, accessibility, integrity and efficiency.

Taking into consideration a low level of public trust into judicial bodies in the region, a strong political will for the improvement of openness is needed, expressed through a proactive approach to publishing of information and improvement of operation of public relations service.

Our policy paper is addressed to decision-makers in courts and prosecutor’s offices in the regional countries. It may be useful for representatives of international institutions and NGO colleagues, who tackle with these issues.

We remain at your disposal for all suggestions, benevolent critics and discussion regarding our policy paper.

1) The differences in the legislative framework in the field of justice in the region, have caused the use of the basic criteria of openness that judicial authorities should fulfil in accordance with international standards and practices.

## COURTS AND PROSECUTOR'S OFFICES IN THE REGION

The research has shown that the openness of courts and prosecutor's offices in the region is not at a satisfactory level. On average, courts meet 48% of performance indicators while prosecutor's offices meet 40%.

Courts and prosecutor's offices must have an independent position in a system of power in their work and they must respect basic principles: impartiality, accountability, efficiency and transparency.

We have identified several critical points in the work of judicial bodies in the region and all countries must pay a special attention to these points, towards the achievement of international standards.

## COURTS IN THE REGION

### Principle of random assignment of cases

The random assignment of cases represents a core of judicial organization since it is related to some of fundamental principles of a fair trial: judicial independence and impartiality<sup>2</sup>, organizational flexibility and efficiency.

One third of regional courts does not respect a principle of random assignment of cases. If courts do not properly organize assignment of cases, the public may have impression that judges are partial and that their own interests are present in their work, which is a suitable ground for the development of corruption. It may have far-reaching consequences when it comes to citizens' trust in judicial system.

### Publicity of trials

The principle of publicity of trials, as one of the basic conditions for the fair trial, is respected in more than 90% of courts in the region. However, this principle is significantly limited by the fact that persons with reduced mobility (or "disability"?) cannot approach courtrooms even in a half of regional courts. A limitation of public exists when it comes to spatial terms given that courtrooms in a specific number of courts are not large enough to accommodate all interested public while not disrupting the course of the trial itself in that way.

### Publishing of information and decisions

The analysis has shown that almost 30% of regional courts does not have active websites<sup>3</sup>. More than a third of regional courts does not publish work reports. Just a half of courts in the region publish other information regarding work: work plans and programs, scope of work, biographies of judges, listings and notifications, etc.

The fact that more than a half of regional courts does not publish justified court decisions (or "rationales within the verdicts"?) is of a particular concern.

Publishing information regarding work is a guarantee of efficient judiciary and approach to the justice<sup>4</sup>. When the transparency of the work of courts is consistently applied, it can help combatting corruption, improving governance and promoting accountability of judicial institutions.

2)

Convention for the Protection of Human Rights and Fundamental Freedoms of the Council of Europe, Strasbourg, 2010. Available at: <https://goo.gl/uclfdF>. Accessed: 01.06.2017.

3.

Magna Carta of Judges, Consultative Council of European Judges (CCJE), Strasbourg, 2010. Available at: <https://goo.gl/PCNBkW>. Accessed: 01.06.2017.

4)

The analysis of websites of regional courts has shown that there is a different structure of publishing data. Some countries have websites only for the highest judicial instances, there are examples of portals where within the same website there are information per each judicial institutions on sub-websites. In some countries websites exist selectively i.e. only for specific courts or prosecution offices.

## BUDGET TRANSPARENCY

Budget transparency represents an obligation of state institutions to enable the entire public (citizens) to become familiar with a type and scope of budget revenues and expenditures. It is equally important to publish data on public procurements and disposal of financial assets.

The annual budget of regional courts is available only in one third of countries. Data regarding public procurements in courts in the form of plans, decisions, contracts and annexes to contracts are not available in more than three quarters of regional institutions. In most countries salaries of judges and asset cards are not published.

## PUBLIC PROSECUTIONS IN THE REGION

### Accessibility of information related to work

A half of prosecutor's offices in the region does not have websites. It is a very common practice that only the highest prosecutorial instance has a website, on which even a list of other institutions is not provided.

If we analyse a content of existing websites, only a half (one quarter of a total number of institutions) publishes basic information related to work, scope of work, annual reports as well as work plans and programmes.

The existing situation does not contribute to the trust of public in the work of prosecutor's office. A practice of obligation regarding proactive publishing of information is accepted as an indispensable part of openness and transparency of institutions in the region. A proactive approach refers to the obligation of institutions to make available to citizens, media and public information about work<sup>5</sup> in a timely and self-initiative manner. A right on access to information is limited by the fact that only a half of institutions publishes contact information of a person responsible for free access to information.

### Relations with media and public

A way of media reporting also defines the closure of prosecutorial institutions and inadequate communication with public. The most common problems, violating international standards and principles of reporting in criminal proceedings<sup>6</sup>, are the following: one-sided media reporting, violation of privacy and presumption of innocence, "information leakage" from prosecutor's office and police, publishing of confidential information in the phase of investigation<sup>7</sup>.

Only one third of regional countries has precise guidelines for media about the way of reporting. Such type of manual for media is significant since it indicates phases of criminal proceedings when information may be delivered to media, while not jeopardizing the course of the proceeding and investigation. The fact that around two thirds of prosecutor's offices does not monitor the way of media reporting related to their work particularly concerns.

5) Darbishire, Helen, *Proactive Transparency: The future of the right to information? A review of standards, challenges, and opportunities*, Washington, 2010

6) Declaration on the provision of information through the media in relation to criminal proceedings (2003), adopted by the Committee of Ministers on 10 July 2003 at the 848th meeting of the Ministers' Deputies; Recommendation Rec (2003) 13 of the Committee of Ministers to member states on the provision of information through the media in relation to criminal proceedings – adopted by the Committee of Ministers on 10 July 2003, at the 848th meeting of the Ministers' Deputies; Recommendation Rec(2000)7 on the right of journalists not to disclose their sources of information, adopted by the Committee of Ministers on 8 March 2000; European Convention for the Protection of Human Rights and Fundamental Freedoms from 4th of November 1950.

7) Association of Public Prosecutors and Deputy Public Prosecutors of Serbia, Partners for Democratic Change Serbia, *Transparency, Privacy and Presumption of innocence, prosecutor's office-media-citizens*, 2017. Available at: <https://goo.gl/u7q3kX>. Accessed: 15.06.2017; Center for Democratic Transition, *Civic Alliance How media report on the work of the State Prosecutor's Office? Analysis of media reporting*, 2016.

### **Control of work of public prosecution offices**

Two thirds of regional countries have established mechanism of control and monitoring of work of public prosecution offices by higher instance. However, the functioning of these mechanisms in practice is questionable. In a half of countries competent institutions do not perform a regular control of the work of prosecutor's offices. Less than half of prosecutorial institutions has delivered to competent authority a work report for previous year.

Also, persons not satisfied with the work of state prosecutors do not have procedures for complaining at disposal even in half of countries.

Code of Ethics of state prosecutors exists in all countries, but only one fifth of institutions publishes it.

## Openness of the Judiciary in the Republic of Macedonia

Over the last several years, in continuity, judicial authorities in Macedonia have been subject of criticism by domestic and international experts, institutions and organizations. The state is facing a major challenge to ensure independence and to eliminate political influence on decision making at prosecution and judicial services, as well as to enable depoliticized appointment and promotion of judges and prosecutors<sup>8</sup>.

Lack of strategic framework<sup>9</sup> on reforms in the judicial branch of government in Macedonia has contributed to its undermined independence, which is indispensable in order to yield benefits from previously implemented reforms and to safeguard the judicial system against further backsliding. In its most recent Progress Report for the Republic of Macedonia,<sup>10</sup> the European Commission, inter alia, stressed development and adoption of the Judicial Reform Strategy<sup>11</sup> and Action Plan. Another document developed by the European Commission – Urgent Reform Priorities<sup>12</sup> also addresses reforms needed in the field of judiciary, but to date they remain unimplemented or actions taken are insufficient to improve state-of-affairs.<sup>13</sup>

Transparency of courts is a highly important element that contributes to judiciary's independence. In addition, transparency in terms of court performance and publicity of court proceedings could contribute to increased citizens' trust in the judicial system as a whole.

In practice, several mechanisms have been introduced and imply implementation of the principle of transparency, including the manner in which court rulings and schedule of court trials are published, transparency of courts' financial operations, their relations with the media, as well as automated assignment of cases which, in addition to improving transparency, also affects judiciary's independence and the public's trust in adequate operation of the judicial system.

In addition to appointment of spokespersons tasked to maintain communication with journalists, mechanisms for improved transparency include both the practice and legal obligation on appointing officers responsible for facilitation of citizens' free access to public information.

All above enlisted remarks about the judiciary are duly mirrored in the Index of Openness of Judicial and Prosecution Offices. Under the indicators on openness, courts in the Republic of Macedonia have a score of 52%. The Judicial Council of the Republic of Macedonia demonstrated a slightly better performance and has a score of 58% under the indicators on openness. As regards prosecution services, the State Prosecution Office of the Republic of Macedonia has a score of 51% under the indicators on openness, the Council of Public Prosecutors has a score of only 38%, but basic and higher prosecution offices demonstrate underperformance with a score of only 26%.

- 8) Recommendations of the Senior Experts' Group on Systemic Rule of Law Issues Relating to the Communications Interception Revealed in 2015, also known as the Priebe Report, available at: [https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/news\\_corner/news/news-files/20150619\\_recommendations\\_of\\_the\\_senior\\_experts\\_group.pdf](https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/news_corner/news/news-files/20150619_recommendations_of_the_senior_experts_group.pdf)
- 9) Although by the end of 2015 the draft strategy on judiciary reforms for the period 2016-2020 was in final stage of development, to present it is not adopted.
- 10) EC's 2016 Country Report for the Republic of Macedonia, available at: [https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key\\_documents/2016/20161109\\_report\\_the\\_former\\_yugoslav\\_republic\\_of\\_macedonia.pdf](https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2016/20161109_report_the_former_yugoslav_republic_of_macedonia.pdf)
- 11) Sectors addressed under the draft strategy on judiciary reforms (2016-2020) include: courts, penitentiary system, access to justice and transparency, policy and coordination, administrative courts, information technology system and e-justice.
- 12) Urgent Reform Priorities, available at: [https://eeas.europa.eu/sites/eeas/files/urgent\\_reform\\_priorities\\_en.pdf](https://eeas.europa.eu/sites/eeas/files/urgent_reform_priorities_en.pdf). The list of reform activities requiring great attention by the judiciary include: focus on appointment of judges and prosecutors; application of the merit-based system for promotion of judges; ensuring professionalism of the Judicial Council and its proactive role in protection of judges against political influence and pressures; improved quality of training for judges and prosecutors, as well as improved autonomy and budget of the Academy for Judges and Prosecutors; execution of ECtHR judgments; and obligation of the state to improve online access to court rulings, especially the browsing function and easy access.
- 13) EC indicates the fact that budgets of courts and prosecution services are significantly lower than the per capita average in Europe. On the other hand, contrary to this piece of information, the number of judges and prosecutors is significantly above the per capita average in Europe. Available at <http://fosm.mk/mk/Home/Publication?newsID=7195&catID=9&pageIndex=1>

- 14) In addition, “Practical Guide for the New Code of Conduct” was developed, available at: <http://www.jpacademy.gov.mk/upload/PDF%20Files/Vodic%20za%20sudska%20etika%20BetettoSessa%20MK.pdf>
- 15) EC’s 2016 Country Report for the Republic of Macedonia, available at: [https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key\\_documents/2016/20161109\\_report\\_the\\_former\\_yugoslav\\_republic\\_of\\_macedonia.pdf](https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2016/20161109_report_the_former_yugoslav_republic_of_macedonia.pdf)
- 16) Association of Judges of the Republic of Macedonia: <http://www.mja.org.mk/Default.aspx?id=c2f58fe6-3965-4c1c-87ba-522b742c7fe1>
- 17) Association of Public Prosecutors of the Republic of Macedonia: <http://zjorm.org.mk/?s=%D0%BA%D0%BE%D0%B4%D0%B5%D0%BA%D1%81>

Majority of Basic Courts demonstrated scores above the average of 52% under the indicators on openness, while Appeal Courts and the Supreme Court of the Republic of Macedonia are ranked slightly above the average with score in the range of 55% to 57%.

As regards the principles of transparency, accessibility, integrity and effectiveness, which served as baseline for this research, courts have the lowest score under indicators on transparency, standing at only 33%, including indicators on publication of information on organizational structure, operational budget, and publication and access to information on public procurements. In order to improve their transparency, Basic Courts need to publish annual operation reports on their respective websites, which was duly observed as major shortcoming under this research. High number of Basic Courts has failed to publish and/or upload said reports, which affected their low scores under indicators on transparency. Appeal Courts and the Supreme Court publish their annual operation reports. The Judicial Council’s lowest score was observed under indicators on transparency and accounts for 50%.

As part of this research, the principle of accessibility concerns establishment and compliance with procedures on free access to information and enhanced interaction with citizens. In this regard, courts have scored 58% under relevant indicators, while the Judicial Council demonstrated a score of 71%. Better scores under the indicators on accessibility were observed in the case of courts which use the newly established electronic system “Judicial Portal of the Republic of Macedonia” ([www.vsrn.mk](http://www.vsrn.mk)) unlike the courts which, at the time of this research, only had their old websites functional.

## Code of Conduct for Judges

As regards the principle of integrity, courts attained a score of 65% under relevant indicators. More specifically, this principle includes mechanisms on prevention of corruption, application of codes of conduct and regulation of lobbying activities. In spite of adoption of Codes of Conduct for Judges in 2006 and 2014 and Codes of Conduct for Prosecutors in 2004 and 2014, i.e. in spite of the fact that these integrity mechanisms have been introduced a long time ago,<sup>14</sup> there is little evidence on compliance with them.<sup>15</sup>

An additional factor influencing low scores under the index on integrity is the fact that said codes of conduct are not published on official websites of the courts or the prosecution offices that were subject of research, but are uploaded on websites of relevant associations of judges<sup>16</sup> and prosecutors.<sup>17</sup>

## Principle of Publicity and Access to Information

As indicated above, dynamics and implementation of judicial reforms are under continuous monitoring by international and domestic institutions and organizations. Access to court rulings is an obligation assumed by the state and implies improved online accessibility of court rulings, improved “browsing option” and easy access.

At this level of accessibility (publicity and access to information), courts have an average score of 58% under relevant indicators, i.e. 45% under the indicators on publicity and 69% under the indicators on access to information. At the moment, only one Basic Court from those targeted by the research has failed to ensure anonymous electronic access to court rulings. Courts in Macedonia do not provide electronic access to case files for parties involved therein, i.e. there is no electronically available information for said parties in terms of stage of case proceedings or electronic access to minutes from court hearings in cases where they appear as affected parties.

As regards enabling publicity of court hearings, courts do comply with legal provisions,<sup>18</sup> but some of them stressed that “due to lack of courtrooms or lack of interest on the part of the public”<sup>19</sup> they have observed absence of the public at court hearings, i.e. established that the interest is entirely dependent on “subject matter of court proceedings in question”.<sup>20</sup>

Having in mind that judicial authorities also appear as information holders in compliance with the Law on Free Access to Public Information, the research assessed their compliance with legal obligations arising therefrom, i.e. whether they publish the registry of information they dispose with, whether they have appointed officer responsible for free access to information. Only one Basic Court has failed to publish contact information for the officer responsible for free access to information and its score under indicators on publicity accounts for low 26%.

## Improvement of Financial Transparency of Courts

Courts are financed from the judicial budget, which also funds the Judicial Council of the Republic of Macedonia, the Academy for Training of Judges and Public Prosecutors and the Judicial Budget Council.<sup>21</sup> Although for years on end, courts have insisted on financial independence, the judicial budget is part of the Budget of the Republic of Macedonia. Official websites of courts do not include information on planned annual operation budget or budget spending. Only in the case of the Judicial Council of the Republic of Macedonia, the official website features a category titled “judicial budget”, but there are no documents uploaded in this section.<sup>22</sup> Hence, low score of only 33% under the indicators on transparency does not come as a surprise, moreover knowing that this index covers publication of information on organizational structure, operational budget and access to information on public procurements.

- 18) Articles 353 to 356 of the Law on Criminal Proceedings and Articles 292 to 286 of the Law on Litigation Procedure
- 19) Responses obtained from the Basic Court in Kavadarci on the questionnaire used for qualitative assessment of indicators.
- 20) Responses obtained from the Basic Court in Strumica on the questionnaire used for qualitative assessment of indicators.
- 21) Law on Judicial Budget (“Official Gazette of the Republic of Macedonia” no. 60/2003; 37/2006; 103/2008 and 145/2010)
- 22) Last accessed on 14th May 2017: [http://www.vsrn.mk/wps/wcm/connect/ssrm/2983c459-7426-446a-8217-61d1db5906df/dummy\\_pdf.pdf?MOD=AJPERES&CACHEID=ROOTW-ORKSPA-CE.Z18\\_L8CC1J41L0B520APQFKICD0-CR4-2983-c459-7426-446a-8217-61d1db5906df-kZzRhJ2](http://www.vsrn.mk/wps/wcm/connect/ssrm/2983c459-7426-446a-8217-61d1db5906df/dummy_pdf.pdf?MOD=AJPERES&CACHEID=ROOTW-ORKSPA-CE.Z18_L8CC1J41L0B520APQFKICD0-CR4-2983-c459-7426-446a-8217-61d1db5906df-kZzRhJ2)

- 23) [http://www.vsrn.mk/wps/portal/osskopje1/sud/bl/linkovi/korisni%20linkovi!/ut/p/z1/tVTLbsIwEPyV9sAx8oa8zDFQCIUg2oJL4gvKE1yIE0ICVb--pkWqQCVphDF8np2NDveNaLIQZR7O7bwCpZyb3OLtXnuqWqgIdgA5loYHbbgMEYyxYx0OwUgCcVbQEAA09bJl9QFRct-BBl9sdsMdDA4M5Il2bWI8DW5bRK6KIBmWeR7xAbpGX0VeAF1mxRG5W-msWzJNVA7Zl2AA\\_\\_2B3a8ZX6Y41YJXmbMsvBw5MWcBC5PpBpIW6qkua4oOkelEstfSwJQWx0pTlWl08zZuWUqGVXmEFVpQ6K77z4cly4W\\_5FQJpNf3s4FeNglMPfmxCnBohz6gQR3GFYUYP4Bxv2eASbqyZuLnpGPc6Y5Fe0R4mieiRyf\\_fOcz-jOf-sZt6W-sXr6SfIDX5eJHaOajzmghaL1iKTEep8g5nzyBYm-bDTXFLKe8iN4L5Fw5zFlCEqwkEiHEAfa0tDo-3k\\_j5LjN8Na8\\_wQl34no/dz/d5/L2dBISEvZ0FBIS9nQSEh/?urile=wcm%3Apath%3A%2Fpublic\\_mk%2Fsd%2Fbrzi%2Blinkovi%2Fkorisni%2Blinkovi%2Fkorisni%2Blinkovi](http://www.vsrn.mk/wps/portal/osskopje1/sud/bl/linkovi/korisni%20linkovi!/ut/p/z1/tVTLbsIwEPyV9sAx8oa8zDFQCIUg2oJL4gvKE1yIE0ICVb--pkWqQCVphDF8np2NDveNaLIQZR7O7bwCpZyb3OLtXnuqWqgIdgA5loYHbbgMEYyxYx0OwUgCcVbQEAA09bJl9QFRct-BBl9sdsMdDA4M5Il2bWI8DW5bRK6KIBmWeR7xAbpGX0VeAF1mxRG5W-msWzJNVA7Zl2AA__2B3a8ZX6Y41YJXmbMsvBw5MWcBC5PpBpIW6qkua4oOkelEstfSwJQWx0pTlWl08zZuWUqGVXmEFVpQ6K77z4cly4W_5FQJpNf3s4FeNglMPfmxCnBohz6gQR3GFYUYP4Bxv2eASbqyZuLnpGPc6Y5Fe0R4mieiRyf_fOcz-jOf-sZt6W-sXr6SfIDX5eJHaOajzmghaL1iKTEep8g5nzyBYm-bDTXFLKe8iN4L5Fw5zFlCEqwkEiHEAfa0tDo-3k_j5LjN8Na8_wQl34no/dz/d5/L2dBISEvZ0FBIS9nQSEh/?urile=wcm%3Apath%3A%2Fpublic_mk%2Fsd%2Fbrzi%2Blinkovi%2Fkorisni%2Blinkovi%2Fkorisni%2Blinkovi)
- 24) [http://sud.mk/wps/portal/ssrm/sud/za-sudski-sovet/javni-nabavki/javni%20nabavki!/ut/p/z1/zVRLc5swEP4r6YEjlnhDb9RN4rp1nJBNrowAmQsYyQCMjT59RvumzaZFqbjdqZcxEq7--3j2wUIbABiuKEYFpQzJfByiOzIvJZN6H6En661uQv9YB7Y3uRK98Y2WPcpBIEBUL\\_9CiCAEiZKsQNhzRsiiojXYH1MFfiEL-RZ5\\_Ti9KDAPW4YvWA4xk1OX4mdnzKhKQgdJ8Za0ieqq3meapqWp7qOEase0ZLE0i1ieKTTFoSlpLrhpwIwBmvHlf4cCQgVGB5jA80iVJS04wpcNpBRc\\_IK5pKIUp5xhteKXApulxgPVSSrhbwN58P--2nvj5Uy6\\_2PQCD9mgoRNTn4xRin0LHhylANCS5GbVVKM4MjVDMvQXdsyddN1bK3jm89iw80AqsiVVKQaHStJw50Q5VsFKrBt21FTV8W0Y0lb1rjTvBL4oEBelzkv90T7xp5Y3h00y3kjG5bzitaMKpr-\\_e5XUDteC7D5CQKESqTOj3TmkytHpnOpWb57p49XsmcNJ5OIGK8KOS7LP2fhejyL7oLlLhUR6jQ78\\_yuEnMDXCbzshzWx\\_u8E-qPXjDOjHygO\\_Lfu9TPdT4fmWTJcr2bjmWR4icVOPWzLwebl1pQ6dP\\_wgHy5AzkT5LMcglPWcFkEhWvkSbVYbJcfVBQ\\_Gk\\_vbqzstm3vSfjebe-3xTg-HWu39t98AWRrrcA!/dz/d5/L2dBISEvZ0FBIS9nQSEh/?tenderNo=&categoryValue=%2Fpublic\\_design%2Fjavni\\_nabavki%2FVid\\_na\\_dogovor%2FStoki](http://sud.mk/wps/portal/ssrm/sud/za-sudski-sovet/javni-nabavki/javni%20nabavki!/ut/p/z1/zVRLc5swEP4r6YEjlnhDb9RN4rp1nJBNrowAmQsYyQCMjT59RvumzaZFqbjdqZcxEq7--3j2wUIbABiuKEYFpQzJfByiOzIvJZN6H6En661uQv9YB7Y3uRK98Y2WPcpBIEBUL_9CiCAEiZKsQNhzRsiiojXYH1MFfiEL-RZ5_Ti9KDAPW4YvWA4xk1OX4mdnzKhKQgdJ8Za0ieqq3meapqWp7qOEase0ZLE0i1ieKTTFoSlpLrhpwIwBmvHlf4cCQgVGB5jA80iVJS04wpcNpBRc_IK5pKIUp5xhteKXApulxgPVSSrhbwN58P--2nvj5Uy6_2PQCD9mgoRNTn4xRin0LHhylANCS5GbVVKM4MjVDMvQXdsyddN1bK3jm89iw80AqsiVVKQaHStJw50Q5VsFKrBt21FTV8W0Y0lb1rjTvBL4oEBelzkv90T7xp5Y3h00y3kjG5bzitaMKpr-_e5XUDteC7D5CQKESqTOj3TmkytHpnOpWb57p49XsmcNJ5OIGK8KOS7LP2fhejyL7oLlLhUR6jQ78_yuEnMDXCbzshzWx_u8E-qPXjDOjHygO_Lfu9TPdT4fmWTJcr2bjmWR4icVOPWzLwebl1pQ6dP_wgHy5AzkT5LMcglPWcFkEhWvkSbVYbJcfVBQ_Gk_vbqzstm3vSfjebe-3xTg-HWu39t98AWRrrcA!/dz/d5/L2dBISEvZ0FBIS9nQSEh/?tenderNo=&categoryValue=%2Fpublic_design%2Fjavni_nabavki%2FVid_na_dogovor%2FStoki)

In order to improve their transparency, it is not sufficient for courts to publish only contact information of spokespersons appointed, but should also publish information such as: name, contact information and salary brackets of judges; organograms; scope of work and short professional biography of court employees; public procurements, including contracts signed and annexes to said contracts, which are subject of interest for the public and the media; judicial budget spending.

At the same time, the Judicial Portal of the Republic of Macedonia should also host links<sup>23</sup> to the State Commission for Prevention of Corruption, which publishes asset statements of judges, as well as link to the Ministry of Finance which publishes reports on budget spending. Official website of the Judicial Council of the Republic of Macedonia includes a section on public procurements, but this section is not browser-friendly unless the user knows the number of the relevant procurement notice.<sup>24</sup>

## Openness of Prosecution Offices in the Republic of Macedonia

The score of 26% under the indicators on openness calculated for prosecution offices is extremely low. Single group of institutions with lower performance under the index on openness concerns the executive branch of government in the Republic of Macedonia, with a score of 24% under relevant indicators. The situation is better, but still unsatisfactory, in the case of the State Prosecution Office of the Republic of Macedonia, with a score of 51% under the indicators on openness. The Council of Public Prosecutors is also characterized by extremely low openness, with a score of only 38% under relevant indicators.

As regards information accessibility, which is also used to assess openness of institutions, the State Prosecution Office enjoys a hierarchical top position compared to basic and higher prosecution offices, and the small scope of information of these lower-echelon prosecution offices are published only on the website of the State Prosecution Office.

Absence of individual websites for basic and higher prosecution offices would not have been perceived as fault if official website of the State Prosecution Office is richer in contents and information. Single sources of information available on this website include the annual operation report for all public prosecution offices and incidental press releases.

## Basic and Higher Prosecution Offices

Analysed in terms of categories, basic prosecution offices have a defeating score of 1% under indicators on transparency, as they do not have own websites where they would publish data such as: current strategies, operation programmes and plans; competences; organograms; staff members, including name and surname, and salary brackets of public prosecutors; etc. Said categories of information, with the exception of annual reports, are not uploaded on the website of the State Prosecution Office as well.

Furthermore, in terms of access to information prosecution offices scored 38% under relevant indicators, which is a result of the fact that, at the time of this research, the websites hosted information on officers responsible for free access to public information. In their responses to the questionnaire, institutions claimed that they have in place system of training and guidelines on training employees on the manner in which they should provide access to case files and other information at their disposal.

As regards performance monitoring for prosecution offices, they have a score of 42% under the indicators on openness. On the other hand, their score under the indicators on integrity accounts for 50%, mainly due to adoption of the Code of Conduct for Prosecutors, but this document is not uploaded on the State Prosecution Office's official website.

## State Prosecution Office of the Republic of Macedonia

Average score of 51% calculated for the State Prosecution Office under the indicators on openness is higher, but it is still unsatisfactory. This prosecution office has the highest score under accessibility, i.e. access to public information – 75%, while its lowest score is noted under transparency – 37%. In spite of the fact that this office is the highest body within the prosecution service hierarchy before which basic and higher prosecution offices are held accountable and should therefore serve as example, it has failed to publish any information related to its budget and is therefore assigned a score of 1% under these indicators. In contrast, this institution has published many information related to public procurements and is therefore assigned score of 75% under indicators on openness.

In general, the public prosecution service is marked by lack of independence, efficiency, transparency and citizens' trust. Within a period of one year from its establishment, the new Special Prosecution Office, which was not included in this research, enjoys greater trust than the State Prosecution Office. In 2016, according to one public survey inquiring about citizens' opinion about the political crisis, 50% of respondents have given high assessments to the Special Prosecution Office, while the State Prosecution Office enjoyed the trust of 24% of respondents.<sup>25</sup>

The Special Prosecution Office was established as result of long-standing inactivity on the part of regular prosecution offices which, for example, failed to take any action in high profile corruption cases,<sup>26</sup> while the Special Prosecution Office – within a period of one and a half year – has opened investigation into more than 68 cases,<sup>27</sup> majority of which concern corruption.<sup>28</sup>

Adoption of the draft strategy which, inter alia, is geared towards increased transparency of judicial bodies,<sup>29</sup> should become one of the priority policies to be adopted, as stepping stone on the path to address serious weakness faced by judicial bodies.

- 25) Public opinion survey about current political events in Macedonia, Institute of Democracy “Societas Civilis” – Skopje, available at: <http://idscs.org.mk/wp-content/uploads/2016/05/0905-Izvestaj-od-istrazuvanje-na-aktuelni-stavovi-IDSCS-16052016.pdf>, page 12
- 26) EC's 2016 Country Report for the Republic of Macedonia, available at: [https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key\\_documents/2016/20161109\\_report\\_the\\_former\\_yugoslav\\_republic\\_of\\_macedonia.pdf](https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2016/20161109_report_the_former_yugoslav_republic_of_macedonia.pdf), страница 56
- 27) Report on Activities of the Prosecution Office for Prosecuting Cases Surrounding and Arising from Contents of Unauthorized Interception of Communications, for period of six months (15.9.2016-15.3.2017), available at, <http://www.jonsk.mk/wp-content/uploads/2017/03/6-MESECCEN-IZVESTAJ.pdf>, page 12
- 28) Ibid. Preliminary investigations are related to illegal interception of communications, as well as irregularities in relation to financing of media, abuse of funds in financing election campaigns, various abuses of public procurement procedures, tax evasions, money laundering, various abuses of office and authorizations, financial investigations, as well as irregularities in procedures related to construction works, etc.  
Shadow Report on Chapter 23 developed by Network 23, available at: [http://www.epi.org.mk/docs/Izvestaj\\_mk.pdf](http://www.epi.org.mk/docs/Izvestaj_mk.pdf), pg. 13
- 29) Shadow Report on Chapter 23 developed by Network 23, available at, [http://www.epi.org.mk/docs/Izvestaj\\_mk.pdf](http://www.epi.org.mk/docs/Izvestaj_mk.pdf), page 13

- 30) EC' 2016 Country Report for the Republic of Macedonia, available at, [https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key\\_documents/2016/20161109\\_report\\_the\\_former\\_yugoslav\\_republic\\_of\\_macedonia.pdf](https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2016/20161109_report_the_former_yugoslav_republic_of_macedonia.pdf), page 13 & 54.

### Council of Public Prosecutors

The Council of Public Prosecutor has score of only 38% under the indicators on openness and proves to be yet another weak link in the system of prosecution services. The Council has the lowest scores for accessibility, as it fails to demonstrate any performance under indicators on access to information, however the highest of its scores are under the indicators on integrity (72%), i.e. 82% for the code of conduct and 62% for independence.

Its score under the indicators on transparency is exceptionally low and stands at 27%, in particular due to the fact that the Council does not publish information on public procurements, basic documents such as reports, operation plans or strategies, and its budget.

Remarks of the European Commission presented in its last country report are serious,<sup>30</sup> and underline the need for urgent efforts for reforms at judicial bodies.

## RESEARCH METHODOLOGY

The openness is a key condition of democracy since it allows citizens to receive information and knowledge about an equal participation in a political life, effective decision-making and holding institutions responsible for policies they conduct.

A number of countries undertakes specific actions towards increasing their own transparency and accountability to citizens. The Regional index of openness OF judiciary is developed in order to define to which extent citizens of the Western Balkans receive timely and understandable information from their institutions.

The Regional Index of Openness measures to which extent judicial bodies are open for citizens and society based on the following four principles: 1. transparency, 2. accessibility 3. integrity and 4. awareness.

The principle of transparency includes the fact that organizational information, budget and public procurement are publicly available and published. Accessibility is related to ensuring and respecting procedures for a free access to information and strengthening interaction with citizens as well. Integrity includes mechanisms for ensuring the independence of the judicial bodies and conducting codes of ethics. The last principle, awareness, is related to monitoring and evaluation of policies which are conducted.

Following the international standards, recommendations and examples of good practice, these principles are further developed through quantitative and qualitative indicators, which are estimated on the basis of information availability on official websites, legal framework's quality for specific questions, other sources of public informing and questionnaires delivered to institutions.

Through more than 100 indicators we have measured and analyzed openness of the judicial bodies.

The measurement was conducted in the period from October to December 2016. Based on the research results, this set of recommendations and guidelines, directed towards institutions, was developed.

**Metamorphosis Foundation** is an independent, nonpartisan and nonprofit foundation based in Skopje, Macedonia. Its mission is to contribute to the development of democracy and increase the quality of life through innovative use and sharing of knowledge. Our guiding values are openness, equality and freedom. Program areas that Metamorphosis operates in are:

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