



Good governance for
openness and accountability
in politics and governance

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Proposals for the improvement of a current state

Openness of the judiciary in the region and Macedonia

METAMORPHOSIS
Foundation for Internet and Society



ActionSEE



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Introduction

In cooperation with the partners from the “ACTION SEE” regional NGO network, Metamorphosis Foundation for Internet and Society prepared the policy paper in which we analyze the level of transparency, openness, accountability of the executive power in the Western Balkans region. The paper represents a result of a comprehensive research, based on a scientific methodology, conducted by the members of the ACTION SEE network during the previous several months. The aim of our activities is to determine the actual state of play in the region through an objective measurement of the openness of the executive power and to address recommendations for its improvement. Also, we seek to improve the respect of the good governance principles, where openness occupies a significant place.

We believe these are the aims we share with the institutions covered by this research.

The public policy proposal, with annexed analysis, is the second document of this kind. Last year, after the research was conducted, the network members gave recommendations on improving the openness of government institutions.

Based on the results found by the 2016 research, several analyses that provide an overview of the state of play in the RM and the region have been made, including noted drawbacks and good practices in this area. On the grounds of these analyses, recommendations and roadmaps on improving the specific areas covered by the research were prepared as well.

Basing their work on the findings and results found by the last monitoring, the ACTION SEE network members began improving and adjusting the research and indicator methodology, hoping that the newly gathered information will contribute to higher quality research results. The purpose of using new and improved indicators is adding new dimensions to the research as well as more effective contribution for enhancing the openness of institutions in the region.

With our previous knowledge, concrete results and analysis of the regional openness, and hope that the institutions of the executive power will be guided by the presented steps for improving the state of play in these areas and will work on enhance it, we decided to pledge ourselves to a higher level of openness of the government institutions in the region. Therefore, this year's research has been enriched with indicators that strive for a higher standard of proactive transparency.

- 1) <https://www.opengovpartnership.org/stories/towards-open-judiciary-achieving-open-justice-through-citizen-participation-and-transparency>. Accessed on 27th of July, 2018.

Regional openness of Judiciary

In 2016, judicial bodies of the Western Balkan countries did not perform satisfactory results regarding openness. Most of basic indicators of performance were not met by regional judicial bodies, scoring 48% (courts) and 40% (public prosecution offices) of institutional openness. One of the main findings of the measurements for the year 2016 was the lack of online web pages of these institutions, raising the concern of taken verdicts not being published to the citizens.

For this year measurement, members of the ActionSEE network undertook improvement and modification of the research methodology and its indicators on the basis of results and findings from the monitoring conducted in the previous year, hoping that the new information obtained would contribute to better project results. The main purpose of using new and improved indicators is adding new dimension to the research and more efficient approach to improvement of openness of institutions in the region.

Openness of judiciary in the region of Western Balkan for this year's measurement meets 36% of the indicators of performance. This result that shows a decreasing performance of judicial bodies is an alarm bell to the transparency, openness and accountability of the administrative activity of these institutions. The challenges of the ongoing reform all over the region on these bodies, as well as the low score on transparency, do not give the perception that concrete commitments are being taken to promote transparency, citizens' empowerment and anti-corruption actions. Open government is not a goal only for the executive and legislative powers, but also it is a need for judiciary, to understand what it can do to improve government, society and democracy (OGP, 2016)¹.

We would like to point out that this year's research comprised and advocated a higher degree of openness of institutions in relation to last year, adding new indicators by which this openness is measured, and thus tightening the measurement criteria themselves. We believe that such a tightened approach to the research added up to the fact that the results show a decrease in openness of the judicial bodies. On the other hand, the results and analyzed data show that the judiciary has not made any effort to develop openness since the publishing of the previous results, so new indicators are not of the crucial importance for a general decline in the openness.

Concrete and urgent steps should be taken to improve the performance of this power to rebuild the public trust into the judicial bodies. 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.

- 2) The result for regional courts and court councils.
- 3) The result for regional public prosecutions, prosecutorial councils and supreme prosecutor's offices.

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

Courts and Prosecutor's Offices in the region

The research shows that there is not an equal distribution of results per each country; significant performance differences appear among the Western Balkan countries.

Several findings on the work of judicial bodies in the region and all the countries of the ActionSEE network are being presented throughout this paper, to highlight the most important issues that need to be tackled as soon as possible by the governments of each country, within the framework of the open government standards.

Courts in the region

The results of the conducted research show a decrease of the performance of courts in effectively fulfilling the indicators of openness. On average, regional courts scored **48%** of the fulfilled indicators in 2016 measurements, while in 2017, they reached only **41.6%** of the indicators. On the other hand, decreasing performance results in the regional court councils, scoring **12%** lower than the previous research.

Albania (45%) and Serbia (39%) scored a better courts result compared to the results reached in 2016 (Albania 33% and Serbia 36%). But Albania shows an extremely results decrease regarding the court council by reaching only 2% of the indicators, compared with the analysis of the 2016, with 45% of fulfillment. While all the countries of the region performance a decline in the level of openness, Montenegrin court council performs constantly with the previous measurements and the Bosnian one achieved better results compared to 2016, by 14% higher.

The degree to which regional courts are opened to the citizens, according to four basic principles, is as following: awareness with 50% of the indicators fulfilled, transparency 40%, accessibility 39% and integrity 37%. Except the principle of transparency, which performed 2% higher, the others scored negatively compared to 2016. The situation appears worse regarding regional court council, where the principles of the Regional Openness Index performed on average approximately 10% lower than the previous results.

- 4) Herrero A., Lopez G., 2010, Access to Information and Transparency in the Judiciary: A guide to good practices from Latin America, World Bank Institute.

Accessibility and communication with citizens

Most of the courts in the region fail in providing the opportunity to the citizens to access their offices, using mechanisms that provide information for vulnerable groups about their rights and available adequate remedies on the websites, no guidelines or online mechanisms for raising concerns and making appeals, as well as low results reached in publishing the verdicts along with their respective rationales.

The access to the public information of the courts in the Western Balkans does not reach more than 30% of the fulfillment of indicators. Most of the courts in the region do not have a website and due to this, the citizens face difficulties in finding public information or access the progress of their cases. The column of the relevant FOI information on the courts' website is rarely found, because most of the courts, in practice, do not develop policies that deal with institutional openness.

Public proceeding score 39% of the openness. It is difficult for people with disabilities to access the courtrooms, even though there are legal acts according to which it is an obligation to all the public institutions to adapt the infrastructure of their buildings to facilitate the access of this marginalized group.

Conflict of Interest Prevention

This sub domain of Integrity reaches approximately 20% of the fulfilled indicators. Integrity plans are tools to verify the willingness of the institutions to deal with unethical and corruption practices. Lack of these plans represents a serious concern regarding the judicial proceeding of the Western Balkans' courts. Additionally, most of the regional courts have responded to that they have not conducted any training or workshops on the topics of conflict of interest/preventing corruption/whistle blowing in case of irregularities. But it is also important to mention that the judicial bodies of the region are under reforms and they are facing with a lot of changes and challenges in the near future, so there are yet measurements and recommendations to be done toward these institutions for a continuous improvement of the judiciary in the Western Balkans.

Budget transparency

Only 33% of the information on the budget and 23% of public procurements procedures is published on the websites of the courts of the region. Also, 41% of organizational information is transparent. Partially, this result is due to the lack of official websites or, in the cases that there is a web page, the information is not updated.

This performance impacts the perception of the public on the operations of the courts. Not clearly and opened types of revenues and expenditures of these institutions prevent the opportunity to generate increased flow of information between judicial bodies and society. Moreover, lack of transparency prompts the margins for discretionality, corruption and arbitrariness in the behavior of the judicial system and interest groups⁴.

Prosecution in the region

The results for this year's measurement research show a significant decrease of the performance of the prosecution in the region. In 2016 measurement prosecution in the region scored **40%** of set indicators while in 2017 they scored 31% of set indicators of openness.

The state of Montenegro with 65% of set indicators, Bosnia and Hercegovina with 41% and Kosovo with 46% are in the top three of most opened prosecution in the region. Comparing to last year's measurement only Kosovo has increased its openness in set indicators whereas from 40% of set indicators the score has increased to 44%. Except Kosovo all other states have slightly dropped on their performance which is worrying element in the region.

While a lot of work has to be done mostly especially on the prevention of the conflict of interest and the reporting of the work.

The degree to which regional prosecution offices are opened to the citizens, according to four basic principles, are as following: accessibility with 25% of set indicators, awareness with 39%, integrity with 38% and transparency with 26%. Transparency and accessibility have had a slight decrease comparing to last year's measurement.

Accessibility and communication with citizens

Prosecution Offices in the region score low in regard to accessibility and communication with citizens with only 25% of set indicators. Thus, it comes to the conclusions that prosecution offices in general are not providing opportunities to interesting parties to have access to information that should be opened to the public. As in the courts of the region, most of prosecutions do not offer any type of mechanism for direct communication with the prosecutors. Moreover, prosecution in the region do not offer adequate information on their websites, or a part to raise concerns.

Prosecutions in the region which include public prosecution and state prosecution do not publish all of the raised indictments sent in the court and the ones who move forward to trial. The justice system as a whole failed to create an online system which will track online a indictments and how is moving forward, even that in some countries have established this online system still it fails to be functional.

At last, prosecution in the region most of them have available websites, but they fail on giving information especially to the part for Freedom of Information.

Conflict of Interest Prevention

Conflict of interest as part of the integrity component, in the region has scored 21% of the set indicators. This is a very low worrying score considering the conflict of interest as a tool for integrity of the prosecutors, deals with unethical and corruption practices. One of the main reasons for this low score in the conflict of interest prevention is that in all of the prosecution offices of the Western Balkans, except for Montenegro, have not held a training for its prosecutors and administrative staff in 2016/17 on informing the officials on what is conflict of interest. Furthermore, the prosecution offices in the region fail to conduct a code of ethics for prosecutors especially which will penalize them in cases of corruption/whistle blowing in cases of irregularities or if they do not fulfill their duties as required by the working plan of the prosecutors.

Western Balkans States in the region as they are in their path to European Integration, and some have opened chapter which deal with rule of law and reforms in the judiciary system are facing challenges and changes which will improve the system, it is important to include the recommendation for the part on integrity received from the research which will contribute for the improvement of the prosecution score in the measurement.

Budget transparency

Budget transparency has scored only 20% of set indicators, as part of the component for transparency. While transparency which as a whole includes budget transparency, organizational information and public procurement has scored 22% of set indicators, which is the lowest of all the components of openness. The lowest of the subdomains is about public procurement documents which are only 15% of set indicators.

This low score on transparency in regard to the budget and public procurement impacts also the perception of the public on the work of the prosecution. Because of the missing of the organizational information the prosecution offices in the region do not make public their spending's which immediately reflect on the low score. It is important that prosecution offices in the region start publishing in their offices their quarterly and yearly reports as well as documenting the whole process of the procurement.

The judicial bodies reform strategy in the Republic of Macedonia is focused on transparency, however the results from its implementation cannot be registered yet

Instead of having the major control function over the state and the institutions, the Macedonian judiciary was the weakest link in the system of the state organization with years on end. For many years judicial bodies didn't have a strategic commitment for the direction they had been headed, while the political influence over the work of the judiciary were noted by all prominent domestic and international organizations. By the end of 2017, the Macedonian judiciary got its Judicial Sector Reform Strategy (2017-2022)⁵, whose strategic direction, among other, is transparency of the judicature.

The analysis of the state of play comprised by the Strategy reflects critically to the transparency of the judicial bodies and established: (1) internal channels for implementing the public relations policy and communication between managing bodies in the judicature are insufficiently developed; (2) the Judicial Council and the Prosecutorial Council work in a non-transparent manner regarding the content of the rationales of their decisions; (3) Inconsistent implementation of the principle of transparency and engagement of the public in the judicature's work through the inexistence of an efficient system for collecting, processing and analyzing statistic data on the work of courts; (4) The dissimilar form of the annual work reports of courts, the Judicial Council and the Supreme Court creates clarity, understandability and readability issues.

The Strategy consists detailed measures⁶ for improvement of the detected weaknesses, however the results from its implementation cannot be registered yet. Our research has confirmed that results in terms of the openness of the judicial bodies are unobtainable, quite the contrary - the state of play has worsened in all spheres of the judicial system.

Openness of the judicial power in the Republic of Macedonia

The Macedonian courts are on the edge of the average fulfilment of the openness indicators at regional level. In other words, courts in the region have scored 40% of the indicators, while the Macedonian courts 39%. Apart from judiciary's low percentage of openness, the great 13% fall since last year raises a red flag too. Owing to this fact, the launch of the Judicial Portal of the Republic of Macedonia (www.vsrn.mk) didn't contribute to greater openness but instead it lowered courts' openness. The organization and structure of the electronic Judicial Portal of the Republic of Macedonia, launched in 2017, enables the courts to publish all required segments related to their work, but what lacks is a responsible approach of the courts and data entry on regular basis as well as complete transfer of content from the old to the new integrated website of the courts.

5) Judicial Sector Reform Strategy (2017-2022) <http://justice.gov.mk/Upload/Documents/2017-2022.pdf>

6) Action plan for implementation of the strategy for reform of the judicial sector <http://justice.gov.mk/Upload/Documents/29.11.2017AkciskiPlannovo%20za%20veb.pdf>

- 7) 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>
- 8) EC's report on the state's EU accession progress, 2016, available at https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2016/20161109_report_the_former_yugoslav_republic_of_macedonia.pdf

The least open are the courts in Ohrid and Kumanovo, with a score of 28% and 29% respectively, while the most open are the Basic Court Kriva Palanka (48%), Basic Court Skopje 2 (51%), Supreme Court of the RM (55%) and the Appellate Court Bitola (59%). The Judicial Council is reviewed separately from the courts, and its level of openness, which stands at low 43%, doesn't set an example and doesn't inspire the courts that it ought to assess.

With regard to the principles of transparency, accessibility, integrity and efficiency, which served as a baseline of this research, the fulfillment of the efficiency indicators on the part of the courts is at the lowest level, that is, the courts have a score of only 25% for their websites neither feature information on the duration of cases both judge-wise and court-wise, nor information on complaints against judges and initiated disciplinary proceedings.

In terms of transparency, which assesses the accessibility of information on annual plans and reports of courts, strategies and competences of the courts as well as biographies of judges, the decent score of 44% is courts' best score. However, courts do not publish the salary brackets of judges and information on employees.

Access to justice and electronic database of judgments

The humble 52% scored under the indicators of access to justice are Macedonian courts' strongest point. The courts have a good score in this area for they publish information on persons for media contact and providing access to information and there are also provisions on the use of the ethnic communities' languages. Websites of all courts feature a separate link for electronic publication of judgments, which is of exceptional importance. Still, the regular updating and judgment entry is of great significance.

When it comes to access to justice, the courts must put greater efforts as regards media relations and pass guidelines for cooperation between courts and media. In addition, courts ought to improve websites accessibility to persons with special needs. The principle of access to justice cannot be considered satisfied only because courts publish contact information of persons in charge of contact with persons with disabilities.

Codes of Ethics do exist, but they are not published

Courts have demonstrated a score of 42% under the principle of integrity, which is a lot less than 2017 when courts had a score of 65%. This principle encompasses mechanisms for prevention of corruption and application of codes of ethics. Although introduced many years ago⁷, there is a few evidence for compliance⁸ with the Codes of Ethics on court ethics from 2006 and 2014. In addition to this, the percentage of fulfillment of the integrity principle is affected by the fact that these codes are not published on courts' websites.

Judicial Council of the RM

The Judicial Council has demonstrated a significant fall of 15% regarding the fulfillment of the transparency indicators. In 2017, the score was 58%, while the score of 2018 is 43%. The principle of accessibility of the Judicial Council has the lowest score of 29%. That's mainly because the Judicial Council doesn't have good communication channels with citizens and media. There is no guide for lodging complaints by citizens through the website, there is no guide for media, and there isn't even information on persons in charge of free access to public information as well as spokesperson.

The principle of transparency also stands at a low level of 35% fulfillment of indicators. Judicial Council's sole good score has been demonstrated by the available information on the organizational set-up, the inexistence of policies on conflict of interest brings a score of 0%, while the score under budget transparency is only 15%.

The Judicial Council has shown a satisfactory score of 75% under the indicators of independence, at least formally, since the Constitution defines it as an independent body; there are legislative criteria for election of judges; has its own budget and administrative control over the Supreme Court.

Openness of the basic and high prosecutor's offices in the Republic of Macedonia

The results of the public prosecution, part of the judicature, stand at a startlingly low level of only 9% fulfillment of the openness indicators. Macedonia occupies the last place in the region, with an average of 27%. This branch of the judicature has no champions, and the fall under the openness indicators is 15% compared to last year. The basic and high prosecutor's offices still have no websites and have jointly demonstrated a score of only 4%; the State Prosecutor's Office fulfills 43% while the Council of Public Prosecutors only 20%.

The State Prosecutor's Office of the RM stands at the top of the prosecution hierarchy, above the basic and high prosecutor's offices, and the small amount of information about them are uploaded on this prosecutor's office's website. The State Prosecutor's Office hasn't taken heed of the recommendations of this research given in that vein or the recommendations pertaining to the creation of separate websites for the basic and high prosecutor's offices or the sole (mutual) website to feature information that the basic and high prosecutor's offices don't have their own websites.

State Prosecutor's Office of the Republic of Macedonia

State Prosecutor's Office's average fulfillment of the openness indicators is higher, but still amounts to insufficient 43%. The regional average of these institutions' openness level is low - 41%, the State Prosecutor's Office is right behind the Montenegrin, which has demonstrated a score of 65% fulfillment of indicators. This prosecutor's office has the highest score under the principle of integrity, i.e. monitoring of state prosecution's work - 75%, while the lowest score has been demonstrated under the principle of transparency, i.e. public procurements, which stands at 16%. Last year's score of this institution under the indicators of openness of public procurements was 75%, therefore last year's strongest point is this year's weakest link in terms of openness. This is just one example for the absence of continuous practice of transparency of institutions. Such findings may also point out to untimely publication of information. This research was carried out between January and March, so it's possible that the institutions had been preparing the documents during that period and to have published them on their websites behind schedule.

Prosecutorial Council

The Prosecutorial Council fulfills only 20% of the openness indicators, which is 18% less than 2017 when the score was 38%. The Council has the lowest score under the principle of accessibility for the second year in a row because it doesn't fulfill the indicators of access to information at all! Besides the free access, the Council has a score of 0% under the indicators of public procurements.

Like the Judicial Council, the Prosecutorial Council fulfills some of the independence indicators (41%), at least formally, since there a legislative criteria on election of prosecutors and it has its own budget.

Methodology of research

Openness represents a key condition of democracy since it allows citizens to receive information and knowledge, necessary for an equal participation in political life, effective decision-making and holding institutions accountable for policies which they conduct. Around the world institutions undertake specific activities with the aim to increase their transparency and accountability to citizens.

The Regional Index of Openness was established in order to define to which degree citizens of the Western Balkans receive opportune and understandable information from their institutions.

The Index of Regional Openness measures a degree up to which institutions of Western Balkan countries are open for citizens and society and it is based on the following four principles: (1) transparency, (2) accessibility, (3) integrity and (4) effectiveness.

The principle of transparency includes that organizational information, budget and procedure of public procurements are publicly available and published. Accessibility is related to ensuring and complying with procedures for a free access to information, improving accessibility of information through a mechanism of a public debate and strengthening interaction with citizens. Integrity comprises a mechanism for prevention of corruption, conducting code of ethics and regulations of lobbying. The last principle, effectiveness, refers to monitoring and evaluation of policies conducted by institutions.

Following international standards, recommendations as well as examples of good practice, these principles are further developed through special quantitative and qualitative indicators, which are evaluated on the basis of: accessibility of information on the official websites of institutions, quality of a legal framework for individual issues, other sources of public information and questionnaires delivered to institutions.

By using more than 110 indicators per institution we have measured and analyzed the openness of the judiciary in the region and collected over 1000 pieces of data. The collection of data was followed by a process of data verification, which resulted in standard error of +/- 3%.

ActionSEE is a network of civil society organizations that jointly work on promoting and ensuring government accountability and transparency in the region of South-East Europe, raising the potential for civic activism and civic participation, promoting and protecting human rights and freedoms on the internet and building capacities and interest within civil society organizations and individuals in the region in using technology in democracy promotion work.

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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