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# PROPOSALS FOR THE IMPROVEMENT OF THE CURRENT STATE

## Openness of the judiciary in the region and in the Republic of North Macedonia

**МЕТАМОРФОЗИС**  
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## Introduction

In cooperation with the partners from the regional network of CSOs “ACTION SEE”, Metamorphosis Foundation for Internet and Society has prepared the analysis of the level of transparency, openness and accountability of the judicial authorities in the region of Western Balkans. This paper is a result of comprehensive research, based on a scientific methodology, conducted by members of the ACTION SEE network during the previous several months. Our activities aim to determine the actual situation in the region through objective measurement of openness of the judicial authorities and to address recommendations for its improvement. Furthermore, our goal is to improve the respect of principles of good governance, where openness occupies a significant place and we believe that we share the same goals with the institutions involved in this research.

These recommendations for public policy, accompanied by a thorough analysis, constitute the third document of this character. Last year, following the implementation of the research, members of the network also made recommendations towards improving the openness of the monitored judicial authorities.

A thorough analysis has been made based on the results of the research conducted in 2016, which provide an overview of the situation in the Republic of North Macedonia and the region, including perceived shortcomings and good practices in this area. Based on this analysis, recommendations and “roadmaps” were made in the past two years, i.e. in 2017 and 2018, in order to stimulate improvement in the specific areas covered by this research.

Members of the ACTION SEE network, basing their work on the findings and results of the penultimate monitoring, have improved and adapted the research methodology and indicators after the first measurement in 2016, hoping that the new information gathered will contribute to a higher quality of project results. The purpose of using new and improved indicators is to add new dimensions to the research and to contribute more effectively towards the improvement of the openness of institutions in the region.

Having prior knowledge, specific results and analysis of regional openness, and at the same time believing that the judicial authorities will be guided by the presented steps for improvement of the situation in these areas and will work to improve them, we have decided to strive for a higher level of openness of the judicial authorities in the region. Thus, in the last two years our research has been enriched with indicators that advocate for a higher standard of proactive transparency.

The results show that the level of openness of judicial institutions is almost the same as in the previous year. Courts in the region on average meet 42% of the openness criteria, and prosecutors’ offices 31%. As we have pointed out earlier - the challenges of the ongoing reforms of these bodies across the region, as well as the low transparency score, do not indicate that concrete efforts are being made to promote openness and transparency. Openness is not only a goal of the executive and legislative branches of government, but also of the needs of the judiciary, to gain insight into ways in which the rule of law and democracy can be promoted.<sup>1</sup>

1) Open Government Partnership, <https://bit.ly/2Ckfp81>

Concrete and urgent steps need to be taken to improve the openness of the judiciary in the region, thereby contributing to building public confidence in the judiciary.

Our policy proposal is addressed to decision-makers in the courts and prosecutor's offices of the countries in the region. It can be of benefit to representatives of international institutions as well as to colleagues in the NGO sector dealing with these issues.

## **Openness of courts and prosecutor's offices in the region**

This year's research confirmed that we still do not have a satisfactory level of judicial openness. Courts and prosecutors' offices in the region on average meet less than half of the openness indicators. It is not encouraging that this result is almost the same as last year. On the contrary, it indicates that the issue of openness is still not on the list of priorities of these institutions.

## **Most of our findings and recommendations from last year remain unchanged**

Citizens face numerous difficulties in finding public information held by the courts. A large number of courts in the region do not have their own websites, while a considerable number of them have a limited set of data on their websites. As a further restriction on access to information, many courts do not disclose the contact of the person charged with handling requests for free access to information, although this is a legal obligation.

About half of the courts in the region did not provide us with the answers to the questionnaire we had sent them in order to explore more thoroughly their level of openness. This in itself is an indicator of the openness of an institution and its commitment to working with civil society organizations on these issues.

As a rule, court proceedings in the region are open to the public. However, accessibility to courtrooms for people with reduced mobility is still a problem, despite laws that oblige public institutions to adapt the infrastructure of their facilities.

The random allocation of cases is essential to the independence and impartiality of the judiciary. In this section, we recognized the need for concrete steps and interventions that should lead to the full establishment of this principle. In this measurement, too, we have noted problems with the publication of reasoned court judgments.

Neither do the prosecutor's offices provide sufficient opportunities to access information that should be made publicly available. It is worrying that there are still a significant number of prosecutors' offices in the region that have not created their websites. The results of our research show the low level of organizational transparency of those prosecutor's offices that have their own websites.

2)

Analysis of the implementation of the Judicial Sector Reform Strategy (2017-2022) for the period 2018/2019, <https://bit.ly/2nr2Vri>

3)

European Commission's North Macedonia 2019 Report <https://bit.ly/2EGrVAe>

4)

Analysis of the implementation of the Judicial Sector Reform Strategy (2017-2022) for the period 2018/2019, <https://bit.ly/2nr2Vri>

A significant number of prosecutors' offices do not publish basic information about their work, such as employee lists, contacts, programs and reports, etc. Often, information on disciplinary proceedings against prosecutors and their outcomes is not available.

As we have pointed out last year, a large number of prosecutors' offices have not yet adopted any kind of guidelines or guidelines on cooperation with the media and the manner of reporting, although it is more than necessary to prevent the flow of proceedings and investigations.

## Openness of the judiciary in the Republic of North Macedonia

For years, assessments of the judicial system and the rule of law in international reports notes regression in reforms with particular observations on state capture and selective justice. For the first time in the European Commission's 2018 Progress Report good progress was noted in implementation of judicial system reforms based on the Judicial Sector Reform Strategy.<sup>2</sup> Mostly positive assessments of the independence of the judiciary were given by the European Commission in 2019, primarily due to the numerous legislative changes in this area, in line with the guidelines given in the urgent reform priorities for the state and by the Venice Commission.<sup>3</sup>

Civil society also positively assesses the transparency of the process of passing the legislation, stakeholder and civil society involvement, and the quality of the proposed laws and policies.<sup>4</sup> However, the active transparency of the judicial authorities, according to the data from this research, remains low.

Unlike courts in the region, whose average openness indicators marks a drop of 4%, the openness indicators of courts in North Macedonia mark an improvement of 4%. However, the degree of openness of the courts in North Macedonia is assessed with a modest 43%.

Besides the expectations that the introduction of the electronic Judicial Portal of RNM ([www.vsrn.mk](http://www.vsrn.mk)) in 2017 will contribute to greater uniformity of the courts' transparency, the research shows large differences between the courts. The lowest rated is the Basic Court of Negotino with 30% and the highest of the basic courts is the one in Struga with 51%, while the Supreme Court meets 57% of the indicators. The structure of the Judicial Portal is identical in terms of information to be published by all courts in the country, so the *Center for Information Technology at the Supreme Court of RNM*, as well as the *Judicial Reform Council should pay more attention to the up-to-date and uniform publication of information by all courts*.

Regarding the principles of transparency, accessibility, integrity and efficiency, according to which the research has been conducted, the fulfillment of the indicators on the integrity of the courts is at the lowest level, i.e. the courts fulfill only 35% of the indicators because they do not publish the codes of ethics on their websites. In addition, only three courts from the research sample responded positively to the question of whether they conducted training for standards for corruption and conflict of interest.

Courts are best placed in the area of transparency (50%), which assesses the availability of information on the organizational set-up, strategies and competences of judges and biographies of judges. But the courts have not yet published the salaries of judges and information on court staff.

## Access to justice and public information

Accessibility is one of the most important segments according to which courts are assessed. This includes the principles of access to court, access to information and the openness of court hearings. Access to court is assessed with 48% because there are standards for the use of languages of ethnic communities and there is an electronic database of verdicts. According to the Law on Courts, each court should publish the verdicts within 7 days of their entry into force,<sup>5</sup> but the research shows insufficient timeliness by courts when publishing the verdicts. *Therefore, the Center for Information Technology at the Supreme Court of RNM must ensure timely publication of verdicts and compliance with this legal obligation by all courts.*

A weakness of accessibility is the lack of an adequate mechanism for communication with vulnerable groups. On the courts' websites there is information on a person in charge of contacting with people with disabilities, but the websites themselves are not accessible to people with visual impairments and no specific guidelines on the rights of vulnerable groups have been published. Furthermore, courts publish information on a person in charge of contacting with the media and the public but do not publish guidelines on how the media and the public can communicate with judicial authorities.

Access to information available on the websites of courts is assessed with only 26%, because courts publish a special link and contact persons for exercising the right of access to information, but do not publish the already provided information, i.e. given as a response to a requests for free access to public information.

## Efficiency or familiarity with the work of the courts

Monitoring and evaluation standards, as part of the efficiency principle, are extremely important, primarily because they form the public's views on the operation, efficiency and independence of the courts. These standards assess the type of information the courts publish within their reports, i.e. whether they publish information on the number of cases initiated, completed and overdue during the year, information on complaints filed against judges and imposed sanctions, and whether reports are submitted and published timely. These standards include the existence/non-existence of an automatic case allocation system. The courts in North Macedonia meet only 41% of the abovementioned standards and they should improve primarily in terms of timely publishing of court reports on the single Judicial Portal. Also, *even though RNM has introduced an Automated Court Case Management Information System, its application needs to be constantly monitored to overcome and avoid system abuses identified in a separate report in 2017.*<sup>6</sup>

5)  
Law on Courts, Article 99

6)  
Report on the inspection into the functionality of the information system and oversight of the application of the provisions of the Court Rules of Procedure in the courts <https://bit.ly/2oeN67i>

## Judicial Council of RNM

The Judicial Council over the past two years shows an identical level of openness, after a significant decline in the fulfillment of transparency indicators by 15% in 2017. Thus, in 2017 and 2018, the Judicial Council fulfilled 43% of the indicators, which is a decline compared to the original measurements from 2016. The principle of accessibility of the Judicial Council is still with the lowest rate - 28%. This is primarily because the Judicial Council does not have good channels of communication with citizens and the media. There is no guide for filing complaints and petitions from citizens through the web portal and there is no guide for the media.

The principle of transparency is also low with only 37% of fulfilled indicators. The Judicial Council is only good in terms of available organizational structure information (64%), with a rating of 0% for lack of public procurement policies and non-disclosure of public procurement related information.

The Judicial Council, at least in the formal sense, satisfactorily fulfills the independence indicators with 76%, because according to the constitution it is defined as an independent body; there are legal criteria for the election of judges; it has its own budget and administrative control over the Supreme Court.

## Openness of the prosecution in the Republic of North Macedonia

The results of the Public Prosecutor's Office as part of the judicial system are at a staggeringly low level, meeting only 4% of the openness indicators, which is 5% lower than the results from 2017. The Basic Prosecutor's Office and the prosecution offices by higher instance still do not have their own websites and together they meet only 4% of the indicators while the Council of Public Prosecutors meets only 32%.

The Prosecutor's Office of the RNM is hierarchically placed as the highest authority over the Basic Prosecution Offices and the prosecution offices by higher instance and little information about them is posted solely on the website of this prosecution. The prosecution did not take into account the recommendations of this research which were aimed at either creating separate websites for the Basic Prosecution Offices and prosecution offices by higher instance or creating a single (joint) website with information on the Higher and Basic Prosecution Offices.

The Council of Public Prosecutors fulfills 32% of the openness indicators, which is a 12% increase compared to 2017 when only 20% were met. Second year in a row the Council has the lowest ratings for accessibility as it meets only 11% of the information accessibility indicators because it only publishes decisions made by the body. The Council is assessed with 0% for public procurement indicators.

As with the Judicial Council, the Council of Public Prosecutors, at least formally, fulfills some of the independence indicators (41%), because there are legal criteria for the election of prosecutors and it has its own budget.



## Research methodology

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

Institutions around the world are taking specific actions to increase their transparency and accountability towards citizens. In order to determine the extent to which the people from the Western Balkans receive timely and understandable information from their institutions, a regional Openness Index was developed.

The Regional Openness Index measures the extent to which institutions of the Western Balkans 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 implies that organizational information, budget and public procurement procedures are published and are publicly available. Accessibility is related to ensuring and respecting procedures for free access to information, improving accessibility of information through the mechanism of public debates and strengthening the interaction with citizens. Integrity includes mechanisms for the prevention of corruption, implementation of the Code of Ethics and regulation of lobbying. The last principle, awareness, is related to the monitoring and evaluation of policies which are conducted by the institutions.

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

The measuring was conducted from December 2018 until the end of March 2019. The process of data collection was followed by a data verification process, resulting in a standard error of +/- 3%. Based on the results of the research, we developed a set of recommendations and guidelines for the institutions.

**Metamorphosis Foundation for Internet and Society** is an independent, nonpartisan and nonprofit foundation based in Skopje, Republic of North Macedonia. Its mission is to contribute towards the development of democracy and towards increasing the quality of life through innovative use and sharing of knowledge. Our guiding values are openness, equality and freedom.

The program areas that Metamorphosis operates in are:

- Media for Democracy
- Education for Innovation
- Social Accountability
- Human Rights Online

**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.

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