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THE OPENNESS OF JUDICIARY POWER IN THE REGION AND IN ALBANIA

RECOMMENDATIONS FOR THE IMPROVEMENT OF THE STATUS



This project is funded by the European Union.

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JULY 2018

INTRODUCTION

On 2016, judicial bodies of the Western Balkan countries did not perform satisfactory results regarding openness. Most of the basic indicators of performance were not met by regional courts and prosecution offices, scoring together in average 44% 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 to add a new dimension to the research and more efficient approach to improvement of openness of institutions in the region.

The openness of judiciary in the region of Western Balkan for this year's measurement meets 36% of the indicator's 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 for 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 only a goal for the executive and legislative powers, but it is also a need for the 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 tightening approach to the research added up to the fact that the results show a decrease in the 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 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

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

countries. It may be useful for representatives of international institutions and NGO colleagues, who tackle these issues.

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. On average, courts meet approximately 42% of performance indicators while public prosecutions meet 31%. Compared to the previous year's research, courts and public prosecutions score a significant decrease in performance.

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 in 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.

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 extremely results in decrease regarding the court council by reaching only 2% of the indicators, compared with the analysis of 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 follows: awareness with 50% of the fulfilled indicators, transparency 40%, accessibility 40%, and integrity 37%. Except for the principle of transparency, which performed 2% higher, 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.

The principle of random assignment of cases

The random assignment of the cases scores approximately 69% in the regional level. Based on the previous year's results, in which this indicator was reached in one-third of the courts of the region, an increase in performance is noticed.

Since the random assignment of the cases is fundamental for the judicial independence and impartiality, concrete action steps and interventions are important in developing and improving this principle. The double increase in performance from the previous year's result means that efforts are being made in completing the legal frame to prevent corruption development in the judiciary, but yet, there is still a lot more to be done due to the constant public trust eroding in this system.

Publicity of trials

92% of the judicial proceedings are held in public (with limited exceptions), which is a satisfactory result when it comes to respecting the basic conditions of the trials' fairness. Even in this year's measurements, it is noticed a violence of this principle, due to the results of the courtrooms accessibility of people with disabilities. Most of the courts in the region fail in providing the opportunity to the citizens to access their offices, 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.

Publishing of information and decisions

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, as well as in 59% of the cases when a website exists, the search engine does not function. Due to this, 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.

Judicial decisions published along with rationales remains a concern referring to the measurements. 56% of the decisions are not published in the regional level, which raises the level of corruption perception in these institutions. Also, only 2.6% of the records from the hearings are published. This result shows that no concrete steps are taken under this issue along the measurements conducted.

THE PROSECUTION IN THE REGION

Prosecution as a general term includes the prosecution council, public prosecution, and state prosecution. The results for this year's measurement research show a significant decrease in the performance of the prosecution in the region. In 2016 measurement prosecution in the region scored 40% of set indicators while on 2017 they scored 27% of set indicators of openness.

The state of Montenegro with 65% of set indicators, Bosnia and Herzegovina and Kosovo with 44% 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 for Kosovo, all other states have slightly dropped on their performance which is worrying element in the region. A lot of work has to be done especially on the prevention of the conflict of interest and the reporting of the work.

The degrees 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%, and integrity with 38% and transparency with 26%. Transparency and accessibility have had a slight decrease comparing to last year's measurement.

Accessibility of information related to work

Prosecution Offices in the region score low in regard to accessibility and communication with citizens with a score of only 23% of set indicators. Thus, it comes to the conclusions that public prosecution offices in the region generally are not providing opportunities to interesting parties to have access to information that should be opened to the public. Most public prosecution offices do not offer any type of mechanism for direct communication with the prosecutors. Moreover, prosecutions in the region on their websites do not offer adequate information on their website, or a part to raise concerns.

The justice system as a whole failed to create an online system which will track online indictments and how is moving forward, even that in some countries have established this online system still it fails to be functional.

A proactive approach should take place, which refers to the obligation of institutions to make available to citizens, media and public information about work in a timely and self-initiative manner. A right on access to information is limited by the fact that only a half of institutions publish 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 the public. Most of the public prosecution offices (around two thirds) in the region have not adopted any guidelines on cooperation with media about the way of reporting. Such a guideline is more than necessary in order to avoid jeopardizing the course of the proceeding and investigation.

The most common problems, violating international standards and principles of reporting in criminal proceedings, 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 the investigation.

Control of work of public prosecution offices

Two-thirds of regional countries have established the mechanism of control and monitoring of work of public prosecution offices by higher instance.

Moreover, another important mechanism adopted among public prosecution offices is one of the allocations of cases, which more than 80% of public prosecution offices have adopted and is a necessity the remaining to ones to adopt it as well. However, the functioning of these two mechanisms in practice is still questionable. This due to most of the public prosecution offices have not published or made public the reports of disciplinary measures, complaints towards prosecutors or reports of the past year to the supervisory authority.

The non-documentation and their publishing online make it impossible for interested parties to know if the mechanisms are working and actually having an impact.

Courts and Prosecutions in the Republic of Albania

Courts and prosecutions in the Republic of Albania have performed 32% of the institutional openness, thus being placed in the third place in a regional level.

Comparing with last year, this power shows a scale of improvement; 22% of the indicators which were completed last year have been raised with 10 points in percentage in the second study.

Being one of the most discussed powers in this year's political debates, as part of the reforms this system is having in Albania, this increase of performance still isn't in the satisfactory levels and indicates that still needs a lot of work done in order to increase the institutional transparency of courts and prosecutions.

The challenge of creating new institutions, that are predicted by the judiciary reform and vetting of the all system's representatives, are seen as two important factors that influence these results. The concentrations of power in the truth of the declaration of the judges and prosecutors assets in Albania have left the focus of the issues related to the institutional opening of power.

Courts

The courts in the Republic of Albania have completed 45% of the indicators that measure their institutional opening. Comparing with last year, the performance has been increasing, being very close to the region's average and is among the Western Balkan's country which has performed better in the opening of these institutions. The fact that not even half of the indicators were not complete, indicates that there is still needed a lot of work and attempts to be made from these institutions to be more transparent and accessible from the public. From the research, it's been noticed that the Mat's Court has the lowest results with 17% of the indicators completed meanwhile the court with the highest results is the Tirana's Court with almost 67% of completed indicators.

Transparency regarding decisions

According to the study, in the 77% of the cases, the issues are shared with the judges with the principle of impartiality. However, what appears to be problematic regarding issues is that decisions made by judges for them are difficult to find online. Many of the courts in Albania still do not have their official website but are inscribed on a single page that provides trivial information for all these institutions. As a consequence, the organizational information regarding the administrative persons of these institutions scores low, with only 36% of the completed indicators.

Accessibility

Accessibility for courts in Albania reaches 51% of institutional opening indicators. More specifically, access to information reaches 40%, access to justice is 60%, and public prosecution complements only 50% of the indicators.

What is noteworthy is that the second study that Action SEE has developed is the accessibility of courtrooms by people with disabilities. The facilities of these institutions are accessible in only 50% of the cases. Additionally, it is worrying about the fact that in no case the courts do not publish on their pages audio recordings of court hearings, which violates the transparency and security of the process.

PROSECUTIONS

Prosecutions in the Republic of Albania complete only 10% of the indicators of the institutional opening, result which is shown far from the regional average, even though the latter is in unsatisfactory value. In the case of Albania, all district prosecutors are listed within the official website of the General Prosecutor's Office, where the lack of detailed information on their institutional activity is very pronounced and explains the outcome of the indicators designed to measure the institutional opening of the prosecutor's office.

With the lowest score of 3% of the completed indicators, there are several prosecutors, such as Durrës Appeal Prosecutor's Office, Korça District Prosecution, Serious Crimes Prosecution Office, Pukë District Prosecution Office, Skrapar District Prosecution Office, and Prosecutor's Office Tropojë district. While the highest score is recorded by the Durrës Prosecution Office, with 25% of institutional filling indicators completed.

More specifically, for each category, Albania's prosecutors' offices have met 5% of accessibility indicators, 31% of efficiency, 34% of integrity and only 2% of transparency, which seriously undermines public confidence in this institution.

Concerning the publication of a concrete integrity plan or initiatives related to the training of staff to prevent corrupt practices, these institutions have noted the lowest integrity values, with 21% of the achieved result, which leaves room for discussion on the efforts of these institutions to improve their work.

RESEARCH METHODOLOGY

Openness is a key requirement of democracy because it enables citizens to obtain the information and knowledge needed for equal participation in political life, efficient decision-making and holding institutions accountable for policies they implement.

Institutions around the world are undertaking concrete actions in order to increase their transparency and accountability towards citizens. With a view to determining the extent to which the citizens of the Western Balkans receive timely and understandable information from their institutions, the Regional Openness Index has been developed.

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

The principle of transparency implies that organizational information, budget, and public procurement procedures be publicly available and published. Accessibility refers to the provision of an abiding by procedures for free access to information and to the enhancement of the information accessed through the mechanism of public hearings and the strengthening of interaction with citizens. Integrity includes mechanisms for the prevention of corruption, the implementation of the Codes of Ethics and the regulation of lobbying.

The last principle, awareness, concerns the monitoring and evaluation of policies implemented by institutions. Following international standards, recommendations and examples of good practice, these principles are further elaborated through specific quantitative and qualitative indicators that are assessed on the basis of availability of information on official internet sites of institutions, the quality of the legal framework for individual issues, other sources of public information and questionnaires forwarded to institutions.

Through more than 30 indicators per institution, we measured and analyzed the openness of all judicial bodies in the region and collected over 8000 data. The data collection was followed with data verification process which resulted in the standard error of +/-3%.

The measurement was conducted in the period from December 2017 to the end of February 2018. A set of recommendations and guidelines directed towards institutions was developed on the basis of research results.