



THE OPENNESS OF JUDICIAL BODIES

Recommendations for improvement of the current situation



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This grant is supported by the 'Civil Society programme for Albania and Kosovo', financed by the Norwegian Ministry of Foreign Affairs and managed by Kosovar Civil Society Foundation (KCSF) in partnership with Partners Albania for Change and Development (PA). The content and recommendations do not represent the official position of the Norwegian Ministry of Foreign Affairs and Partners Albania for Change and Development (PA).

August 2022

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1. Introduction

Based on the methodology for measuring institutional openness, MJAF! Movement has prepared this paper on policies, in which the levels of transparency and accountability of the judicial bodies in the Republic of Albania are analyzed. The paper presents the results of a comprehensive research, based on scientific methodology, created by members of the ActionSEE network[1]. The purpose of this research is to present a general view of the current state of judicial bodies, as well as to contribute to the implementation of the reforms undertaken for public administration, to influence the reinforcement of the principles of good governance and to help institutions in the more efficient implementation of their duties. This document contains the results of the research carried out during the period March - August 2022, as well as recommendations for improving the institutional openness of the judicial bodies in the Republic of Albania. Taking into consideration the work done over the years, in partnership with regional organizations, some of the indicators that measure performance have been reviewed and changed depending on the measured results, which presented the state of the institutions of the Republic of Albania, including the good practices in this field.

In this study, the methodology for measuring the performance of public institutions has been improved and modified; its indicators are adapted on the basis of results and findings of monitoring, developed in the past years, aiming to generate information that will contribute to better project results. The purpose of using new and improved indicators is to add a new dimension to this research and a more efficient approach to improving institutional openness in the country. Possessing knowledge, concrete results and analyzes of open institutional governance, as well as believing in the improvement of the work of the judicial bodies in this area, also influenced by the concrete steps presented in the prepared guides, we intend to advocate for a higher level of openness in Albania. For this reason, indicators have been added to this research, which advocate for higher standards of proactive transparency.

The policy of open government should be a policy implemented in all judicial bodies and should be defined like other important policies, and not come as a result of an actual decision or the state of the current party in power. Our proposal is addressed to decision-makers of the courts and prosecutions in the Republic of Albania. This paper may be useful for representatives of international institutions and for colleagues from civil society organizations who work on such issues. In order to achieve a high-quality public dialogue on these issues, as well as to ensure the achievement of the principles of research transparency, public institutions will be informed about all the details of the performance and the conclusions drawn. The database with the open data collected within this program will be accessible to all those interested[2]. We are at your disposal for all suggestions, constructive criticism and discussions related to this paper!

1. Introduction

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2. Institutional Openness of Judicial Bodies in the Republic of Albania

The judicial system in the Republic of Albania was reformed according to the constitutional provision for the bodies of justice as amended by law no. 76/2016, dated 22.07.2016[3]. Such a reform came as a very tough measure to affect the reduction of corruption, malfunction, lack of integrity and professionalism, independence, efficiency, reliability, transparency, accountability and responsibility of the system[4]. The seven laws of the Reform of Justice specifically provide for: the temporary reassessment of judges and prosecutors in the Republic of Albania, the organization and functioning of institutions to fight corruption and organized crime, the status of judges and prosecutors, the organization and functioning of the prosecution, the organization of judicial power, the governing bodies of the justice system, as well as the organization and functioning of the Constitutional Court.

As a result of these legal changes, the High Council of Courts and the High Council of Prosecutions were created, which are also subject to monitoring in this report. If the Law Reform foresees making the necessary interventions to reduce costs and increase efficiency, in 2023, from February 1, there will be only one Court of Appeal located in Tirana and the other five courts will be merged attached to the Tirana Court of Appeal, considered as the parent court. This process is intended to reduce the overload of this court for appealed cases, pending review. There is still no clarification on how the provision of administrative services will be operated for the citizens of the districts of Durres, Gjirokastra, Korça, Shkodra and Vlora, where these courts are already located.

2.1. Institutional openness of courts in the Republic of Albania

The courts of the Republic of Albania have resulted in 51.86% institutional openness, in the measurements made for the activity performance of 2021. Compared to the last measurements made in 2018[5], the institutional openness of the courts of the Republic of Albania has changed by 1.63 percentage points. More specifically, the courts have performed 33.64% transparency, 61.49% accessibility, 30.26% integrity, 29.93% effectiveness and awareness; where, the Supreme Court has performed 51.52% transparency, 75.65% accessibility, 41.67% integrity, 37.64% effectiveness. While the High Council of the Court has performed 24.82% transparency, 71.67% accessibility, 70% integrity and 63.33% effectiveness.

In the 2018 performance measurements, the courts scored 42.35% transparency, 51.8% accessibility, 53.16% integrity and 76.49% effectiveness. The only components that have improved are transparency and accessibility, while integrity and effectiveness are in significant decline.

This study has monitored 22 district courts, 6 administrative courts, 6 appeal courts, the Administrative Court of Appeal, the Special Court of First Instance for Corruption and Organized Crime, the Special Court of Appeal for Corruption and Organized Crime, the Court of the Supreme Court and the Supreme Judicial Council. Ranked performance for 2021 activity metrics as follows:

1. Supreme Court 68.77%
2. Special Court of Appeal for Corruption and Organized Crime 54.99%
3. Court Council 52.37%
4. Special Court of First Instance for Corruption and Organized Crime 42.64%
5. Administrative Court of Appeal 29.31%

District Courts:

1. Gjirokastra District Court 69.21%
2. Vlora District Court 64.62%
3. Krujë District Court 63.77%
4. Pukë District Court 63.67%
5. Berat District Court 61.86%
6. District Court Via 61.24%
7. Shkodër District Court 60.1%
8. Fier District Court 59.44%
9. Korça District Court 56.82%
10. Kurbin District Court 56.8%
11. Lushnje District Court 54.92%
12. Lezha District Court 54.39%
13. Mat District Court 53.38%
14. Elbasan District Court 53.18%
15. Durrës District Court 52.92%
16. Kavaja District Court 52.37%
17. Kuka District Court 51.71%
18. Saranda District Court 48.34%
19. Tirana District Court 44.33%
20. Pogradec District Court 44.1%
21. Tropoja District Court 32.85%
22. Dibër District Court 23.35%

Courts of First Instance:

1. Administrative Court of First Instance Tirana 63.6%
2. Administrative Court of First Instance Gjirokastër 59.43%
3. Durra First Instance Administrative Court 54.4%
4. Administrative Court of First Instance Shkodër 45.65%
5. Administrative Court of First Instance Vlora 40.81%
6. Administrative Court of First Instance Korça 35.77%

Courts of Appeal:

1. Shkodër Court of Appeal 60.97%
2. Korça Court of Appeal 57.94%
3. Vlora Court of Appeal 54.87%
4. Durrës Court of Appeal 43.65%
5. Gjirokastra Court of Appeal 39.74%
6. Tirana Court of Appeal 34.83%

It is worth noting that after sharing the performance results with the institutions of this power, the Tirana Court of Appeal reacted to improve the current situation. After the assistance offered to increase the proactivity of publishing official information, the Tirana Court of Appeals percentage of institutional openness changed from 34.83% to 74.25%; more than twice the completed indicators. The Tirana Court of Appeal ranks among the institutions with the highest performance of institutional openness in the Republic of Albania. The indicators that were positively changed are concretely: information about court personnel, annual work plans, annual reports, current strategies, staff payroll, press office, training on the right to information, access to premises by persons with the ability to limited, anonymity of sessions for minors, cooperation with the media, code of conduct, return of response against request for information, annual statistics. After improving the institutional openness of this court, the performance results of the components have changed slightly. More specifically, the courts have performed 34.48% transparency, 62.4% accessibility, 30.92% integrity, 30.92% effectiveness and awareness.

Transparency

All information about the courts in the Republic of Albania is centered on a single page: that of the High Judicial Council[6]. The Supreme Court has its own website available, administered by the institution itself.[7]

For the transparency component, the most frequent indicators that mark negatively the performance of the courts in the Republic of Albania are related to the information about the personnel, where the biographies of the heads of the institutions, the names of the judicial personnel and the corresponding salary categories are missing. Although judges are subject to declaration and their salaries do not constitute confidential information, the courts are still not open to publishing such information. In almost the majority of courts, despite documents for annual work reports, annual plans are missing.

Accessibility

Some of the indicators that have not been fulfilled by the courts, as far as the accessibility component is concerned, are related to the publication of adequate information for marginalized groups, as well as the lack of complete information on how citizens can direct a complaint to the institution's administration.

The opinions of the council members are not published in a separate section and many of the courts do not provide information on the accessibility of their premises for persons with disabilities.

Integrity

Integrity plans have a negative impact on the courts as well. Despite the legal framework in force and the Code of Conduct, which is published by the Supreme Judicial Council, plans and conduct reporting remain missing in electronic access. Also, participation in whistleblower protection training or anti-corruption practices is at low levels.

Effectiveness

For the effectiveness component, the indicators with the most frequent negative scores are related to the publication of the statistics of the reviewed cases and the inclusion in the annual report of the disciplinary measures taken during the year by the judges. On a positive note, all the courts that responded to the sent questionnaire confirmed the sending of the annual report to the competent bodies within the legal deadlines.

2.2. Institutional Openness of Prosecutions in the Republic of Albania

The prosecutions of the Republic of Albania have resulted in 50.3% being open. More specifically, the measurement components of institutional openness have performed 30.2% transparency, 79.05% accessibility, 30% integrity and 45% effectiveness and awareness. The prosecutor's offices mark the institution for the most significant increase in institutional openness compared to the activity performance of 2018, where their institutional openness was 13.75%; 2.42% transparent, 12.91% accessible, 34.21% integrity and 36.58% effectiveness. The main indicator that has influenced this improvement of the situation has been the creation of the official pages of the prosecution offices, which were missing during the first measurements of this methodology.

This study has monitored the 22 prosecutor's offices near the district courts, 6 appeal prosecutor's offices, the General Prosecutor's Office and the High Prosecutor's Council. Ranked performance for 2021 activity metrics as follows:

1. General Prosecutor's Office 64.54%
2. Prosecutors Council 56.56%

District Prosecutor's Offices:

1. Elbasan District Prosecutor's Office 65.47%
2. Dibër District Prosecutor's Office 58.96%
3. Shkodër District Prosecutor's Office 56.89%
4. Mat District Prosecutor's Office 56.51%
5. Durra District Prosecutor's Office 55.92%
6. Tropoja District Prosecutor's Office 54.52%
7. Kuka District Prosecutor's Office 53.74%
8. Lezha District Prosecutor's Office 52.37%
9. Lushnjë District Prosecutor's Office 52.37%
10. Vlora District Prosecutor's Office 52.37%
11. Kurbin District Prosecutor's Office 52.37%
12. Tirana District Prosecutor's Office 52.37%
13. Pogradec District Prosecutor's Office 49.41%
14. District Prosecutor's Office Through 46.45%
15. Krujë District Prosecutor's Office 41.21%
16. Berat District Prosecutor's Office 37.57%
17. Pukë District Prosecutor's Office 37.57%
18. Saranda District Prosecutor's Office 37.57%
19. Kavaja District Prosecutor's Office 37.57%
20. Korça District Prosecutor's Office 34.7%
21. Gjirokastra District Prosecutor's Office 34.62%
22. Fier District Prosecutor's Office 34.62%

Appeal Prosecutions:

1. Durrës Appeal Prosecutor's Office 64.84%
2. Shkodër Appeal Prosecutor's Office 62.39%
3. Vlora Appeal Prosecutor's Office 55.88%
4. Gjirokastra Appeal Prosecutor's Office 49.96%
5. Korça Appeal Prosecution 49.96%
6. Tirana Appeal Prosecutor's Office 49.96%

Transparency

The websites of the prosecution offices, as in the case of the courts, are centered on the website of the General Prosecutor's Office. Despite the increase in performance through the creation of official online pages for these institutions, it is noted that the sustainability and continuous publication of information are not yet at the appropriate levels. Executive biographies and staff information are missing. Meanwhile, other indicators show positive values because part of the information is published by the General Prosecutor's Office and is available on the centralized website.

Accessibility

For this component, the indicators that do not yet provide information to the public are related to cooperation with the media. Unlike the courts, there is no legal obligation for these institutions to have a Media Prosecutor. Participation in capacity building training in the field of right to information, data protection and open data publication remains at low levels.

Integrity

The same as in the performance of the courts, the prosecutors also show deficiencies in the publication of annual integrity reports and participation in trainings in the field of anti-corruption and protection of whistleblowers.

Effectiveness

Performance indicators for the activity of the prosecution and disciplinary measures taken by the prosecutors during the year are not reflected in the annual reports, in cases where they are published on the pages of the prosecutions.

3. Methodology of the research

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. The National Index of Institutional Openness of the judicial bodies was built in order to determine the degree to which citizens receive and understand information from their institutions. The National Index of Institutional Openness measures the degree to which public institutions are open to citizens and society, based on four basic principles, which are: (1) transparency (2) accessibility (3) integrity and (4) efficiency. 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 accessibility through the mechanism of public hearings and 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, efficiency, 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 based on 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 2,913 indicators, MJAFT! has measured and analyzed the institutional openness of 39 courts and 30 prosecutor's offices in the Republic of Albania. The measurements were carried out during the period March - August 2022.

4. Recommendation for improvement of the current situation

Referring to the international standards of good governance and institutional openness, what is most noticeable in the performance of the judicial system in Albania is the lack of administrative will to publicly provide official information. In order to change this situation, there is a need for continuous training to change the attitude of judges/prosecutors and administrative personnel in providing information considered to be of public interest; to lower the mental barriers of confidential information, considering that the activities of these institutions are financed by public funds, so citizens should access transparency for the use of these funds.

Invest more in the development of official website platforms. Despite the legal obligation of the judicial system to record the hearings, the current pages do not allow their publication, due to the size of these documents.

5. References

- [1] ActionSEE “Accountability, Technology and Institutional Openness in the South Eastern Europe” is a regional network of organizations from the countries of the Western Balkans that have built the Regional Openness Index. In order to generate the National Index of Openness for Albania, the same methodology was followed, as MJAF! Movement is part of this network since 2016.
- [2] ActionALBANIA “Accountability, Technology and Institutional Openness in Albania”: <https://actionalbania.org/en>
- [3] Law no. 76/2016, link: <https://bit.ly/3v8Fgev>
- [4] Judicial Reform, access link here: <http://www.reformanedrejttesi.al/pse-nje-reforme-ne-drejttesi>
- [5] The openness of judicial bodies, 2019; <https://bit.ly/3YF0SN2>
- [6] Albanian Court, link: <https://gjkata.gov.al/>
- [7] Supreme Court, link: https://www.gjykataelarte.gov.al/web/Gjykata_e_Larte_1_1.php