

authors: Aldo Merkoçi / Xheni Lame / Sonila Biba / Andi Bregu

OPENNESS OF JUDICIAL BODIES IN ALBANIA AND REGION



This project is funded by European Union.

The contents of this publication are the sole responsibility of ACTION SEE project partners and can in no way be taken to reflect the views of the European Union.

autorë: Aldo Merkoçi / Xheni Lame / Sonila Biba / Andi Bregu

OPENNESS OF JUDICIAL BODIES IN ALBANIA AND REGION

THIS PUBLICATION HAS BEEN PRODUCED WITH THE ASSISTANCE OF THE EUROPEAN UNION. THE CONTENTS OF THIS PUBLICATION ARE THE SOLE RESPONSIBILITY OF ACTION SEE PROJECT PARTNERS AND CAN IN NO WAY BE TAKEN TO REFLECT THE VIEWS OF THE EUROPEAN UNION.

TIRANË, MAJ 2017

INTRODUCTION

In cooperation with partners from a regional NGO network “Action SEE”, MJAFT! Movement prepared this policy paper, in which we analyze the level of transparency, openness and accountability of judiciary in the region of the Western Balkans.

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

Openness of judicial bodies was measured by using basic indicators of their performance¹. 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.

The level of openness about 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 the low level of public trust into judicial bodies in the region, is needed a strong political will for the improvement of openness, expressed through a proactive approach for publishing of information and improvement the 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.

2) Convention for the Protection of Human Rights and Fundamental Freedoms of the Council of Europe, from 4th of November 1950. Available at: <https://goo.gl/uclfdF>. Accessed: 01.06.2017.

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: impartiality², 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, organizational flexibility and efficiency.

One third of regional courts do 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 disabilities 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 decisions³

The analysis has shown that almost 30% of regional courts do not have active websites⁴. More than a third of regional courts do 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 do not publish rationales within the verdicts is of a particular concern.

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

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 do not have websites. It is very common practices 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

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 is information per each judicial institution on sub-websites. In some countries websites exist selectively i.e. only for specific courts or prosecutions.

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.

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 work⁵ 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 proceedings⁶, 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 investigation⁷.

Only one third of regional countries have 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 do not monitor the way of media reporting related to their work particularly concerns.

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 have 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 publish it.

COURTS AND PUBLIC PROSECUTIONS IN ALBANIA

The approachability of Judiciary in the Republic of Albania achieves to **22%** of indicators fulfilment. This was an expected result, the result is quite low, compared to the Executive and Legislative Power institutions in our country. Judiciary is considered as one of the most corrupted power in Albania and one of the biggest challenges that the country has to face to integrate in European Union.

The Judiciary Reform was one of the reforms undertaken recently by Albanian Government. There is a general public opinion, that judiciary in Albania is corrupted, in both cases, at its level of internal organization and in dealing with issues⁸. Even the international organizations reports have concluded to that point, as well. According to European Commission, "The functioning of the justice system, continues to be affected by politicization, limited accountability, poor institutional co-operation, insufficient resources, and long procedures and delay processes⁹." As a result of this situation, Albania sought for assistance of the Venice Commission to intervene in this system, to increase transparency and efficiency, by creating an ad hoc commission to deal with the drafting of legal and constitutional acts, for juridical system reform.

The overall approval of this reform took more than a year work, because of disagreements between the main political parties of the country. On May 22th 2017, the voting of Vetting Commissions was approved, the first process of reform which opens the doors for the further implementation of it.

One of the changes brought by implementation of this reform is the separation of the existing structure of the High Council of Justice in: the High Council of Courts and the High Council of Prosecutors. During the period of judiciary monitoring, the reform has been in discussion processes, so, for the fulfillment of the indicators of judiciary openness in Albania, we have found equivalent structures for adapting to the methodology followed by all the partners in the region.

COURTS

Courts in the Republic of Albania are the official bodies which review the facts and make decisions about the parties involved in conflict with the law. Courts in Albania are in three levels and are completed also by the Constitutional Court as the highest level of consideration of legislative issues in Republic of Albania.

The judiciary of Albania, in the last year has been undergoing a comprehensive and continuous reform, by structuring judicial institutions

8) Analysis of Judiciary in Albania, June 2015, http://reformedrejttesi.al/sites/default/files/dokumenti_shqip.pdf

9) Albania Progress Report 2014, pg. 39: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2014/20141008-albania-progress-report_en.pdf

and empowering instruments that, provide more transparency and accountability.

By the monitoring process, courts have shown low levels of transparency and accountability, open governance has not functioned fully in this power, and only 33% of openness indicators are met. Meanwhile, some of the problematic problems are as follow:

Transparency of decisions

Court decisions in Albania are very difficult to be accessed in an online process, most of the courts do not have an official website where to publish decisions made on cases they consider, first instance courts have a joint web system, which is not updated and is impossible to find the required information. The total transparency of the judicial system, does not reach more than 22% of fulfillment of the main criteria considered by the study.

Integrity - Code of Ethics

During the monitoring process, has been noticed a lack of professional capacities in courts' offices. Based on the study it results that some of the responsible persons to respond the questionnaire sent to their offices, claim that there is no Code of Ethics, as it is not possible to access it from the official websites of the courts. On the other hand, others said that there is a code of ethics, but they did not provide an accessible link of this code.

For the relevant effects that the Code of Ethics has on respecting universal human rights, it must be an obligation for courts personnel to have it, both in knowledge and in enforcement.

Accessibility

Access to court, is one of the main problems in the creation of inclusive courts. It is very difficult for people with special needs to have access to the courts of the country; this is also from the evidences reported by the courts themselves. Very few of them meet the accessibility criteria, the most, report that they operate in old, unstructured and inaccessible buildings, and other elements such as the Interpreter or Brail textbooks, are almost totally missing. This is a violation of the right of equality as the fundamental principle of the judiciary.

Structural Transparency and Budget

One of the main elements of transparency is the structural transparency; this element in the judicial system is very weak as indicator.

Organograms in the most part are not published on the websites, only in some cases, information about the executives of the judicial system is provided, but the data is general. The incomes or contacts of personnel, as official functionaries, are not public.

Budget information, is another issue with regard to the judiciary, budget information is a requirement for public institutions to be transparent and understandable, so that everyone can have an overview of annual expenditure and revenue balances. Public procurement and financial assets of the judiciary are generally impossible to be find, they are not reflected in official communication channels and it is very difficult to access them.

Prosecutions

Prosecution's office in the Republic of Albania exercises criminal prosecution and represents the charge on behalf of the state in court, and performs other duties stated by law.

The General Prosecution Office in Republic of Albania has performed at 19% of fulfillment of assessed indicators. This shows a low level of the performance of this institution, compared to other countries in the region. Accessibility's indicator has amounted to 11%, which indicates for the many problems that this institution carries. Prosecutions are closed institutions because of their duties in investigation but in terms of transparency and accessibility they should be open for public. It is very difficult to find information regarding these institutions by online research, or to take information by using a questionnaire.

The actual functioning structure of prosecutions in Albania is based on General Prosecutions Office, as the main head that control the all district offices. In general structure of prosecutions has to be also Prosecutorial Council, where during the monitoring process this council was just a department of General Prosecution Office and not an independent institution. Since the reform in judiciary affects also this institution, we hope for improvement of the ongoing situation. The most satisfactory results are the indicators of Integrity, which result to 50%, but the indicators of transparency continue to be very unsatisfactory, whereby this transparency has resulted in 27%.

District Public Prosecution Offices and of other levels, appear at an alarmingly of their openness level, whereby the percentage recorded for these prosecutors is 0.8%. The reason for this result is that, these prosecutors have no official website, but only a brief description at the General Prosecutor's Office can be found. Also, there were problems on replying to questionnaires sent by this study.

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 undertake 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.