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PROPOSALS FOR THE IMPROVEMENT OF A CURRENT STATE

Parliament openness in the region and Bosnia and Herzegovina

ZaštoNe?

 **ActionSEE**



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INTRODUCTION

In cooperation with partners from a regional network NGO “ActionSEE”, the Citizen Association “Zašto ne” has prepared the policy in which we analyze the level of transparency, openness and accountability of parliaments in the Western Balkans region (Srbija, Crna Gora, Bosna i Hercegovina, Albanija, Kosovo i Makedonija).

The policy represents a result of research, based on scientific methodology, developed by ActionSEE members during the previous months. The aim of our activities is to determine a real condition in this area and to make recommendations for its improvement through an objective measurement of regional parliaments' openness. Also, the aim is to improve respecting principles of good governance, in which the openness occupies a significant place.

All regional parliaments must ensure a full openness of their work and thereby demonstrate a political accountability and respect of basic principles of democracy. Through ensuring all relevant information parliaments must provide unimpeded insight into their work. Only open and accountable institutions may work on creating democratic society all regional countries strive to.

Declaration on Parliamentary Openness defines parliaments' obligations in the best way suggesting that a parliament must ensure that citizens have a legal aid while exercising their right on access to parliamentary information. An obligation of a parliament to encourage openness and share examples of good practice with other parliaments in order to increase openness and transparency is emphasized. Further, cooperation with non-governmental organizations which deal with monitoring of parliamentary work and citizens is affirmed in order to ensure that parliamentary information are complete, accurate and opportune.

Taking into account all stated items, it is necessary that all regional parliaments, which have not done it, sign the Declaration on Parliamentary Openness as well as to work on its implementation.

Our policy is addressed to decision-makers in the parliaments of the regional countries. It may also be useful for representatives of international organizations and colleagues from NGO sector dealing with these issues.

We are at your disposal for all suggestions, benevolent critics and discussions regarding the policy.

Openness of legislative power in the region

Regional parliaments meet on average 63% of openness criteria. This result is not satisfactory, taking into account that we talk about bodies which are directly elected and accountable to citizens.

Parliaments have a key role in democratic system and thus they should be bearers of a process which will enable citizens a more effective monitoring of institutions' work. However, as it is the case with executive power, the highest legislative regional bodies do not have a strategic approach to openness policy. Requirements of openness may be indirectly taken from the Constitution, Rules of Procedure and other acts and as such they are a subject of different interpretations and mood of a parliamentary majority.

Information regarding parliamentary work belong to public and thus it is necessary to constantly improve an existing level of culture of parliamentary openness. Openness policy should be developed by following information and communications trends, using new technologies and publishing data in machine-readable format. This is supported by data indicating that regional parliaments are not dedicated to publishing data in open format and thereby use value of published data is minimized.

Insufficient transparency of organizational and financial information

It is shown by monitoring that parliaments are mostly not transparent when it comes to publishing data from sessions of parliamentary committees. Majority of parliaments does not publish voting records and list of MPs who attended committees' sessions. In addition, in most countries committee sessions are not transmitted.

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Insufficiently developed communication with citizens and possibility of their participation

Regional parliaments should strengthen their representative function through establishing communication with citizens and including them in the process of policy creation. The parliaments should pay a special attention to development of electronic services.

Parliaments should be available for citizens and, expect a possibility of establishing communication by telephone or e-mail, it is necessary to initiate innovative channels for two-way communication with citizens. Also, it is necessary to more actively use existing mechanisms for communication, especially social networks. Monitoring has shown that the majority of parliaments does not have accounts on social networks or they do not use it actively.

Additionally, monitoring recognized the need for strengthening capacities for a complete and consistent implementation of Law on Free Access to Information¹.

(Un) ethical behavior of MPs

A consistent implementation of Codes of Conduct is of a fundamental significance for increasing a level of political accountability and citizens' trust in the parliamentary work. However, while some regional countries did not adopt Code of Conduct, other countries neither actively promote it, nor effectively implement it. Parliaments in the region should establish clear mechanisms for monitoring of implementation of Code of Conduct of MPs and sanctions for each violation of prescribed ethical standards. Regional practice shows that violation of Codes of Conduct mostly does not result in sanctioning inappropriate behavior and it is usually a subject of political agreements. Also, it is necessary to establish rules which will oblige member of parliaments to publish documents of procedures regarding violation of Code's provisions. In that way a transparency of these procedures would be increased.

¹Parliaments' "rubber stamping" of the laws and non-usage of the existing oversight mechanisms derives from the Western Balkan countries' political systems, which are the direct cause of domination of executive over the legislative.

Insufficient effects of parliamentary control of other branches of power

Monitoring determined that a number of mechanisms for the parliamentary control of executive power is established in countries from the region. However, their implementation is most commonly of formal nature. In practice visible effects of control are missing and thus examples which gave specific outcomes, related to defining accountability and sanctions for representatives of executive or other branches of power, are very rare.

All regional parliaments are obliged to take efforts for a full implementation of existing mechanisms and thereby contribute to increasing level of political accountability.

Openness of the Parliaments in Bosnia and Herzegovina

(Parliamentary Assembly of BiH, Parliament of the Federation of BiH and National Assembly of Republika Srpska)

The legislative branch of government in BiH meets just 51% of indicators of openness and holds the last place in the region, ranking one place behind the Macedonian parliament.

BiH's legislative branch is considerably more complex in structure compared to the other countries in the region. The comparative analysis, therefore, required a special methodological approach to be developed. Taking into consideration that neither entity nor state parliament could be individually compared to the state parliaments of other countries, the research was conducted on parliamentary bodies on both levels of power. Additionally, parliaments in the Federation of BiH and the state level both consist of two houses, unlike other parliaments that were subjects of the analysis in the region. This was another feature that had to be approached differently in terms of methodology, to provide comparable data, due to the fact that, in both cases, the two houses have separate practices of publishing data on their web sites, as well as other communication practices. The indicators were, therefore, analysed and rated separately for each house of the BiH and FBiH parliaments.

The overall result for Bosnia and Herzegovina was presented through the sum total results for both houses of the Parliamentary Assembly of BiH, both houses of the Parliament of the Federation of BiH and the National Assembly of Republika Srpska.

The principle of **accessibility** is met with 48% of indicators fulfilled by the legislative institutions in BiH, with the highest score in the sub-field of access to information (52%), and the lowest when it comes to the interaction with the citizens (37%).

Public involvement in the work of parliamentary bodies is minimal. The communication mechanisms are mostly a one-way street, provided mostly through contact-forms and basic contact information on the parliaments' websites. Parliaments in Bosnia and Herzegovina do not use (readily available) two-way means of communication such as social networks and online petitions. Not a single parliamentary committee has reached out to the experts, CSOs or any other external body, for comments on the legal acts in procedure. Although the FOI Law stipulates that each institution must publish the registry of information it holds and a contact of the person in charge of FOI requests, this is not implemented in practice. **It is necessary to maximize the efforts to open communication channels between citizens and the parliament, and to adopt a systematic and proactive approach in regards to public involvement in the work of parliaments. Parliaments need to include the experts and CSOs in their work, as well as create and actively promote mechanisms for citizen involvement in parliamentary work.**

Freedom of access to information needs to be additionally secured by strengthening the related legislation, through establishment of more firm mechanisms for oversight of implementation of FOI law, including the establishment of an independent body whose decisions would be obligatory for the institutions.

When it comes to the transparency principle, BiH's legislative branch is ranked next-to-last in the region, with 51% indicators met. The highest score is in the sub-area of transparency of public procurements (63%) of indicators fulfilled. On the other hand, the budget transparency is considerably weaker, with 33% indicators met.

Parliaments in BiH have very uneven practices when it comes to publishing the budgets and the reports on budget spending. For example, the National Assembly of Republika Srpska published the budgets for the last three years; both houses of the state parliament published only the last year's budget; the House of Peoples of the FBiH Parliament published the budgets for the last two years, and the House of Representatives of the FBiH Parliament does not have any budgets published in the past three years. Particularly concerning is the fact that none of these institutions pays sufficient attention to the reports on budget spending - according to the research, only one of these five institutions, the National Assembly of Republika Srpska, published a final budget account on its webpage (only for the last year). Citizens' budget is not published (or produced) by any of these institutions.

The parliaments are also not transparent enough when it comes to reporting on their plans and their implementation, with equally uneven practices across the parliaments. Only the website of NARS and FBiH Parliament's House of Peoples provide all the work programs in the past three years; the House of Representatives of PABiH has one, while the House of Representatives of PFBiH and House of Peoples of PABiH have no work programs published.

Information pertaining the work of MPs (attendance records, voting records, transcripts and recordings of sessions, etc.) are also not consistently published. Only the website of the House of Representatives of PABiH has continuous, complete and easily accessible attendance records on its MPs. None of the parliaments publishes transcripts or detailed information from the parliamentary committees' or other working bodies' sessions.

Budget transparency is at alarmingly low level. Drafts and budget plans, adopted budget documents and the reports on budget spending, must be made available to the public through continuous and harmonized practices established in all parliaments. It is also necessary to establish continuous practice of publishing the work programmes and reports on implementation of these programmes; reports on work of all parliamentary bodies and regular reports on activities of MPs. Parliamentary sessions need to be properly covered and documented through audio and video recordings and broadcasts, but also consistent and continuous archiving of all relevant materials (agendas for sessions, materials discussed at the sessions, transcripts, voting records, etc.) which should be searchable and easily accessible to the public. The same approach should be applied to the sessions of all the committees and other parliamentary bodies. The openness, continuity, scope and availability of information on parliaments' activities mustn't depend on, or be influenced by, the changes in election terms and/or shifts in parliamentary majority.

When it comes to the criteria of **awareness**, the legislative branch meets 57% of the indicators, but there are a lot of differences within this criteria's sub-fields.

The parliaments in BiH have a relatively positive result in the sub-area of parliamentary monitoring (67%), where the House of Representatives of PABiH has recorded the second-highest individual score among all the observed indicators in the legislative branch (79% of indicators met).

However, the sub-area of strategic planning meets only 20% of the indicators, based solely on the results of the House of Representatives of PFBiH, since other parliamentary bodies meet none of the indicators in this respect.

Parliaments in BiH need to establish systemic mechanisms for estimating the effects of the regulations they adopt. These processes should be regulated in a way it would guarantee their efficiency and transparency, and enable the participation of the public when it comes to evaluating the impact of laws and other regulations in the parliamentary procedure, prior to their adoption.

The principle of **integrity** of Bosnian legislative branch, it meets 50,61% of the indicators, which puts it in the last place in the region. The weakest result is recorded in the regulation of lobbying, where none of the observed institutions fulfills a single indicator, since this issue is not legally regulated on any administrative level in Bosnia and Herzegovina. Adoption and publishing of code of ethics is also unsatisfactory, since the observed institutions fulfill only 44,35% of the indicators in this respect. Codes of ethics usually don't have any precise mechanisms to sanction the code violations, and none of the existing codes makes it mandatory for the parliaments to publish the results of the investigations of code violations.

All parliamentary bodies must adopt their own codes of ethics. Existing codes of ethics need to be revised, harmonized and consistently implemented. Codes of ethics must prescribe clear procedures of oversight for their implementation and require that the data on their implementation is published, together with information on the investigations of code violations.

Parliamentary bodies in BiH

Results by parliaments and houses of parliaments

When the results for all the analyzed legislative bodies are compared, the highest overall score is achieved by the House of Representatives of the Parliamentary Assembly of BiH (54,33% indicators met), while the House of Representatives of the Parliament of FBiH has the lowest (45,47%). Looking into the parliaments as institutions, the National Assembly of RS holds the highest score (55,04%), followed by Parliamentary Assembly of BiH (51,80%), while the Parliament of the Federation of BiH comes last with 48,15% of indicators met.

The criteria of **accessibility** is met the most in the House of Peoples of PFBiH (50,76% of the indicators), while the HoR PFBiH and NARS share the last place with 46,21 indicators met. A similar distribution is found in meeting the criteria of **awareness**, with HoP PFBiH fulfilling 65,9% of the indicators, while HoR PFBiH and NARS both meet 50% of the indicators.

House of Representatives of the Parliament of FBiH is also in the last place when it comes to **transparency** (39,31%), while the RS National Assembly has the highest score here (61,61%). Budget transparency is the highest in the House of Peoples of PFBiH and the lowest in the state parliament, whose both houses meet only 23,5% of the indicators. The criteria of **integrity** is met the most in the HoR PFBiH (56,63% of the indicators), followed by HoR PABiH (56,12%) and the NARS (54,08%). The House of Peoples of PFBiH meets 44,9% of the indicators within this criteria and the lowest score is recorded in the HoP PABiH, with 41,33% of the indicators met.

Parliamentary Assembly of Bosnia and Herzegovina

The average score of the state parliament is 52% of the openness indicators met, with the House of Representatives at 54,33% and the House of Peoples at 49,27%.

PA BiH has the highest score in the criteria of **awareness** (60,59%), followed by **transparency** (53,15%) and **accessibility** (47,73%), with the lowest score in the criteria of **integrity** (48,72%).

The indicators that were tested through the survey received the lowest scores, as the state parliament hasn't provided answers to the questionnaire, although it has been submitted twice, at the specific request of the sector for public relations of the joint department of both houses. This kind of conduct by the highest legislative institution in the state, itself demonstrates the lack of good communication practices.

The House of Representatives of PABiH has better results than the House of Peoples in three out of four criteria. Regarding **awareness**, this house meets 62,71%, while the HoP meets 58,47% of the indicators. The HoR PABiH meets 56,43%, and the HoP meets 49,86% of the indicators for the criteria of **transparency**. The two houses have the most distant results in the criteria of **integrity**, with the HoR fulfilling 56,12% and the HoP just 41,3% of the indicators. Their scores are the closest in the area of **accessibility**, where the HoR meets 45,45% and the HoP 50% of the indicators.

During the monitoring period, the website of PA BiH was redesigned and in the process some content was lost and became harder to search, which has influenced the institution's score negatively. Other analyzed institutions in BiH also have a problem with the continuity of online publishing of data and the lack of consistent archiving of existing materials, which would provide comprehensive and accessible electronic archive of institutional information.

The Parliament of the Federation of BiH

The Parliament of FBiH has the lowest average score out of the three legislative institutions analyzed, with 48,15% of the indicators met. The Parliament's overall score comes from the scores of its House of Peoples (50,83%) and the House of Representatives (45,47%). The criteria of awareness is met most successfully, albeit with a modest score of 57,95% of indicators met. The weakest result is in the criteria of transparency (44,45%) and accessibility (48,48%), while the criteria of integrity is met with 50,77%.

The PFBiH House of Peoples is more successful than the House of Representatives in three out of four criteria analyzed, unlike the state parliament, where the situation is reversed. The HoR PFBiH has a better result only in the criteria of integrity, which it meets with 56,63% of the indicators, whereas the HoP fulfills 44,9% of the indicators. There is a stark difference between two two houses in the criteria of awareness, where HoP PFBiH meets 65,9% and the HoR PFBiH 50% of the indicators.

The principle of accessibility is met with 50,76% in FBiH Parliament's HoP and 46,21% in the HoR. Finally, the principle of transparency - where the Parliament of FBiH was ranked the lowest among the legislative institutions in BiH - is met with 49,58% in FBiH Parliament's HoP and 39,31% of the indicators in the HoR.

The National Assembly of Republika Srpska

Like the Parliamentary Assembly of BiH, the National Assembly of RS also failed to provide answers to the openness questionnaire. Unlike the PABiH, the department for public relations of the NARS hasn't given any feedback after the questionnaire was sent, and, after it was contacted again, has confirmed that the questionnaire was received, but that no parliamentary body or department has been put in charge of providing answers. It is worth noting that the institutions of executive power in Republika Srpska acted in a similar manner, explicitly refusing to give answers to the survey, stating that the government has a policy of "not participating in this kind of research".

The National Assembly of RS meets 55,04% of the openness indicators, with the highest score in the criteria of transparency (61,61%), followed by integrity (54,08%), awareness (50%) and accessibility (46,21%). The highest individual score was recorded within the transparency of public procurement, where NARS meets 75% of the indicators. The weakest results are in the areas of strategic planning and lobbying regulation (0%), budget transparency (36,38%) and the parliament's code of ethics (39,13%).

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 undertakes specific actions towards increasing their own transparency and accountability to citizens. The Regional index of parliamentary openness is developed in order to define to which extent citizens of the Western Balkans receive opportune and understandable information from their institutions.

The Regional index of openness measures to which extent parliaments are open for citizens and society based on the following four principles:

1. transparency, 2. accessibility 3. integrity and 4. effectiveness.

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 the prevention of corruption, conducting codes of conduct and regulation of lobbying. The last principle, effectiveness, is related to monitoring and evaluation of policies which are conducted.

Following the international standards, recommendations¹ 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 regional parliaments and collected more than 1000 pieces of data.

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.

¹Standards and recommendations of numerous international organizations (such as Access Info Europe, EU, IPU, OECD, OGP, SIGMA, WORLD BANK, etc.) were analyzed.

CA WHY NOT

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