



GOOD GOVERNANCE

FOR OPENNESS AND ACCOUNTABILITY
IN POLITICS AND GOVERNANCE

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OPENNESS OF JUDICIAL BODIES IN THE REGION AND MONTENEGRO



CENTER FOR
DEMOCRATIC
TRANSITION



ActionSEE



This project is funded by the European Union. This policy paper has been produced with the assistance of the European Union. The contents of this policy paper are the sole responsibility of ACTION SEE project partners and can in no way be taken to reflect the views of the European Union.

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Podgorica, June 2017

INTRODUCTION

In cooperation with partners from the regional network CSO “ActionSEE”, CDT prepared a policy paper, in which we analyze a level of transparency, openness and accountability of judiciary in the region of the Western Balkans.

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

Openness of judicial bodies was measured by using basic performance indicators¹. 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.

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

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: impartiality, 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 impartiality², organizational flexibility and efficiency.

One third of regional courts does 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 reduced mobility (or "disability"?) 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.

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.

Publishing of information and decisions

The analysis has shown that almost 30% of regional courts does not have active websites³. More than a third of regional courts does 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 does not publish justified court decisions (or “rationales within the verdicts”?) is of a particular concern.

Publishing information regarding work is a guarantee of efficient judiciary and approach to the justice⁴. When the transparency of the work of courts is consistently applied, it can help combatting corruption, improving governance and promoting accountability of judicial institutions.

Financial 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.

3) 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 are information per each judicial institutions on sub-websites. In some countries websites exist selectively i.e. only for specific courts or prosecutions.

4) Magna Carta of Judges, Consultative Council of European Judges (CCJE), Strasbourg, 2010. Available at: <https://goo.gl/PCNBkW>. Accessed: 01.06.2017.

5) Darbshire, 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.

PUBLIC PROSECUTIONS IN THE REGION

Accessibility of information related to work

A half of prosecutor's offices in the region does not have websites. It is a very common practice 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 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 has 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 does 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 has 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 publishes it.

COURTS AND PROSECUTOR'S OFFICES IN MONTENEGRO

In comparison with the region a situation in Montenegro is significantly better. A judicial reform in Montenegro lasts for seventeen years. The actual Strategy for the reform of judiciary 2014-2018 comprises numerous measures affecting an improvement of transparency, openness and accountability of judicial system. Willingness related to increasing of openness is expressed through different documents and statements of judicial management. In the following period a key task is a consistent implementation of proclaimed principles in practice. Numerous activities of international organisation, initiatives of civil sector and reporting on problems in this area by Montenegrin media contributed to increase of openness.

Montenegrin courts and prosecutor's offices fulfil around 75% of indicators of openness.

COURTS

A principle of publicity of trials is initially respected, with specific spatial limitations. Trials are held in offices and court rooms but number of seats for interested public varies from court to court and it can lead to limitations of this right. A specific problem is accessibility of courts for persons with limited mobility since one third of courts in Montenegro is not accessible to wheelchair users.

Availability of work information

When it comes to openness and availability of work information, transparency and openness of misdemeanour courts are not established since they do not have active websites. All other courts on Montenegro have websites with functional search and statements and actual information are regularly updated.

All courts which have websites publish the most important administrative documents – schedule of trials, scope, organizational structure, biographies of judges, list of civil servants and state employee with their functions. Also, anonymous court decisions are promptly published.

Work reports are prepared and published by all courts. However, reports are not always understandable for a wider public since they publish many statistical data and tables without narrative explanations and basic work information. A frequent practice is that courts publish a set of documents without systematic processing and consistent form instead of one report. In this way, publishing of documents loses meaning and usability. Reports must be directed towards specific problems and its causes, contain recommendations and conclusions and provide information about the way of solving recognized problems in the following period.

Judicial information system (JIS) functions in all courts with specific limitations. All acts delivered to a court are electronically registered. These acts actually initiate judicial proceedings. Through programmed parameters and algorithms JIS allocates to judges cases in a random way. However, this system is still deficient and it is necessary to additionally improve it and ensure its complete implementation, especially in misdemeanour courts. There are suspicions that cases are not automatically allocated in some courts and suspicions related to the way of registering cases in case of judge exclusion⁸. Additionally, there are omissions in small courts and thus it is necessary to define a minimal number of judges which one court should have in order to ensure a random allocation of cases⁹.

Code of ethics of judges

A significance of respecting ethical standards in judiciary is recognized and Code of ethics of judges is in compliance with international standards. However, on websites no information are provided to citizens about procedures of reporting judges who violate the Code. The Code of ethics is not published in 30% of Montenegrin courts. Public opinions about citizens' trust in judicial system for 2016 year show that almost half of respondents has not heard of the Code of ethics¹⁰. Also, a half of citizens is not familiar with work of Commission for the Code of Ethics and even 30% of citizens does not know that this Commission exists.

Public relations

Most courts have persons or services responsible for public relations, but this communication is not always proactive. In smaller courts it is a frequent situation that a PR of court performs numerous other administra-

8) HRA, CEMI, *Report on implementation of the Strategy for the reform of judiciary 2014-2018*, Podgorica 2017. Available at: <https://goo.gl/VqEC5H>. Accessed on: 19.06.2017.

9) Action plan for the Chapter 23 – Judiciary and fundamental rights, 2015. Available at: <https://goo.gl/nFUtGB>. Accessed on: 16.06.2017.

10) Civic Alliance, Association of judges of Montenegro, Association of public prosecutors of Montenegro, Reports – Views of judges and public prosecutors on judicial system, Citizens' views on trust in the judicial system, 2016. Available at: <https://goo.gl/QzXdST>. Accessed on 16.06.2017.

tive issues and s/he is not specialized for public relations. It is necessary to improve policy of court communication with media and public through trainings of PR and preparation of Communications strategy.

PROSECUTOR'S OFFICES

A practice of proactive publishing of information, existence of separate websites of all prosecutor's offices and its content represent an exception in the region. Work information, work plans, actual strategies, list of employees, names of prosecutors and their salaries are published.

Statements and current affairs are published only on the website of the Supreme state prosecutor's office. Other prosecutor's offices do not have space for publishing statements. A significant disadvantage is the fact that authentic texts of confirmed indictments and plea agreements are not published, per prosecutor's offices.

A way of communication of prosecutor's offices with public in the case "State coup", way of reporting of a part of media and a complete situation created in public does not help to increasing trust in the work of prosecutor's offices. In sensitive and complicated cases there is a large number of interested parties which are not only parties in a proceeding, thus prosecutor's offices must in advance plan and design this communication so that public will be objectively and timely informed. Also, a significant effort must be undertaken when it comes to preventing and sanctioning of "leakage of information" from institution.

Even though the official website tuzilastbocg.me contains a lot of data, it is technically non-adequate. The website does not have a functional search, it is unobtrusive for use and limited for further improvements of contents. It is necessary to create a portal, adjusted to number of institutions and quality of published information by structure.

State prosecutor's office is still late with a complete implementation of judicial information system¹¹.

Montenegrin prosecutor's offices regularly prepare and publish work reports. A problem is the fact that only the Supreme state prosecutor's office makes reports available for more previous years. Other prosecutor's offices make available only a report for previous year. Reports contain narrative explanations and tabular display. However, conclusions, related to the way in which activities of prosecutor's offices contributed to state in areas prosecutor's offices deal with, are not made in a high-quality way. Causes of problems and solutions which will be applied in the following period are

11) The Report of the European Commission on Montenegro 2016. Available at: <https://goo.gl/iJwTFs>. Accessed on 19.06.2017. Strategy of information-communication technologies of judiciary 2016-2020, available at: <https://goo.gl/YGNHLLf>, accessed on 19.06.2017.

12) For the Judicial Council only annual work of sessions for 2014 was found, <http://sudovi.me/podaci/sscg/dokumenta/1516.pdf>

not identified. In addition, a half of institutions in annual reports does not report on disciplinary procedures and measures as well as on complaints related to work of state prosecutors.

JUDICIAL AND PROSECUTORIAL COUNCIL

The Judicial and Prosecutorial council should strategically plan annual activities in form of separate work plan and program. On websites of councils there are not currently available work plans which contain aims and activities on annual level. Councils' rules of procedures prescribe an obligation of adopting annual plan for sessions but the councils do not have practice of publishing them¹².

Both councils should increase a financial transparency. On its website the Judicial council does not publish all relevant information regarding public procurements: plan for public procurements, decisions and contracts. The Prosecutorial council does not publish a budget and final account of prosecutor's office on website, even though planning and proposing to the Government resources for work of state prosecutor's office is its constitutional obligation.

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 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 judi-

cial 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.

CDT Research Center (RC) was established in **2011** with the support of Think Thank Fund. RC strives to advance public policies, contribute to the quality of decisions made by authorities, and enhance public dialogue, and strengthen institutions.

Using contemporary scientific - research techniques and methods RC specially analyzes, investigates

- The regularity of the electoral process;
- Transparency and accountability of public administration at national and local level;
- Negotiation processes of European and Euro-Atlantic Integrations;
- Civil society functioning

RC in its work applies standards of transparency, objectivity, and accuracy. Relying on comparative examples of good practice and concrete results it defines measures and recommendations for improvement, which are delivered to decision makers and the general public.

RC is committed to continuous building of its research capacities and mechanisms, and successfully cooperates with domestic and foreign experts.

RC has conducted a series of research projects. We recommend to your attention:

Analysis of openness of local self-government in Montenegro and region

<https://www.cdtmn.org/2017/06/20/otvorenost-opstina-na-niskom-nivou/>

Recommendations for improvement of communication of the Ministry of European Affairs

https://www.cdtmn.org/wp-content/uploads/2017/03/Preporuke-za-pobolj%C5%A1anje-komunikacije-Ministarstva-za-Evropske-poslove_final.pdf

Policy - Depoliticized and effective electoral management - Precondition for trust in elections

<https://www.cdtmn.org/wp-content/uploads/2017/02/DIK-Policy-01022017.pdf>

Recommendations For Improvement of Work of Agency for Prevention of Corruption

<https://www.cdtmn.org/izbori/izbori-analize/preporuke-za-unapredenje-rada-agencije/>

ANB - from the necessary confidentiality to the democratic transparency

<https://www.cdtmn.org/nato/nato-analize/transparentnost-anb-predlog-prakticne-politike/>

Planning, measuring, and reporting leveraging success of government policies

<https://www.cdtmn.org/dobroupravljanje/du-analize/predlog-prakticne-politike/>

Good governance in Montenegro - challenges and recommendations for improvement

<https://www.cdtmn.org/dobroupravljanje/du-analize/dobro-upravljanje-u-cg-predlog-prakticne-politike/>

Accession negotiations between Montenegro and the EU - active and well informed citizens or mere observers in the process

<https://www.cdtmn.org/eu/eu-analize/pregovori-o-pristupanju-cg-eu/>

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