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U POLITICI I UPRAVLJANJU

authors: Aida Ajanović / Selma Aščerić

PROPOSALS FOR THE IMPROVEMENT OF A CURRENT STATE

Openness of institutions of executive power 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 institutions of executive power in the region

After the analysis of a number of methodologically circled data we noticed similarities and differences regarding the state in this area within regional countries.

Generally, results indicate that from regional perspective the openness of executive power is not on a satisfactory level. It approximately amounts to only 41% of fulfilled indicators. Clear, consistent and policies of openness grounded in strategic documents do not exist. A change of approach and treatment of this important segment of functioning of current and future governments is necessary.

Each country has its own specific political conditions in which it develops its transparency and openness, with which we will deal in the second part of this document, but a significant space for the joint regional cooperation regarding the improvement of situation can be noticed.

There is no a strategic approach to the openness in the regional countries. On the basis of collected data we can conclude that openness is treated on ad hoc basis and in most countries the policy of openness, which would be equal with other policies of executive power, is not created. The policy of openness is set in a way where it most commonly represents a good will of the executive power and it is actually the situation which is far from desired condition. It is, for now, a compilation of various rulebooks, acts and obligations and not philosophy or approach actively promoted by governments. Transparency, openness and accountability in good governance represent basic preconditions of high-quality executive power and they must not be treated as gifts for citizens.

The policy of openness should not depend on external initiatives, but it must be a part of internal policies. Only then all international initiatives obtain their full affirmation since they upgrade on existing healthy bases in each regional country.

In a participatory process it is necessary to adopt strategic documents and annual action plans, which deal with the development of openness. It is necessary, within countries, to plan development and equalize the openness of institutions of the executive power. These differences are currently enormous and the question whether these institutions belong to the same country is imposed. After the introduction of strategic planning, it is necessary to consider adoption of law on the Government and ministries since this and other issues related to the functioning of public administration would be solved in the most efficient way.

Our monitoring has shown several “critical points” i.e. critical obstacles for the development of openness in the region.

Transparency and communication

Governments must pay a special attention to the implementation of laws on access to information, which, generally, do not provide satisfactory results. The attention must also be paid to independence and current capacities of institutions responsible for the implementation of laws. Communication with citizens is the next important segment, which must be significantly improved in the following period. Apart from classic methods of communication, executive power must use more modern ways of communicating with citizens. Respecting the principle of publishing data in open data¹ formats represents a regional problem. These formats would increase availability and facilitate citizens’ data collection.

Planning and spending of public funds

A special attention should be also paid to strengthening of financial transparency given that regional governments do not have completed practice of publishing financial information and documents. Institutions of executive power, which publish information on budget, which would make this document understandable for citizens and explain which type of service they receive for money they gave to the country, are very rare.

In addition, information regarding how planned funds were spent are very scant. It is necessary to make visible all payments from the state budget and leave citizens an opportunity to personally control this spending.

Also, on official websites of executive power plans for public procurements are not published, while calls and decisions regarding public procurements and belonging contracts and annexes to agreements were not available in most cases.

¹Open data are data structured in computer-understandable format, which provides opportunity of free and repeated use.

Efficiency, effectiveness and citizens' expectations from powers

A significant question of functioning of executive power and its openness towards citizens is a creation of clear indicators of the success of government policies, which will be available to citizens. Accountable powers transform their electoral promises in official state policies, but they also create an opportunity for citizens to check its results.

Regional governments yet should establish unique methods and procedures for high-quality control of their policies, and they do not have developed adequate methods for measurement of their policies' performance. A sufficient attention was not paid to the establishment of the unique method according to which ministries would inform the Government about their work on an annual level. All stated items negatively reflect on informing citizens about performance of their policies.

Openness of the executive power in Bosnia and Herzegovina

The governments in BiH meet 43% of the indicators used to analyze the openness of government in the areas of transparency, accessibility, integrity and awareness.

This result comes as no surprise and falls in line with previous research on government openness in the region. Bosnia and Herzegovina has started working on the openness policy, through its EU accession efforts. Numerous initiatives from the nongovernmental sector have also contributed to the process, alongside the conditions set by the EU. However, there is a noticeable lack of strategic planning and promotion of government openness, which are yet to be given the place they deserve and to be treated the same as other policies.

The promotion of openness is either rare or nonexistent. There are institutions which show no regard to their legal obligations and principles of good governance, without facing any consequences. This influences the significant differences in government openness between different governments, ministries and other public institutions in BiH.

The issue of openness is still treated as a matter of individual choice of the person in charge of the institution or his/her team, rather than a subject of official policy. The openness decreases significantly with the level of governance, growing weaker at the lower administrative levels. This is another argument in favor of adopting a strategic document that would regulate this field. There is a significant number of institutions which defy the concept of openness and this issue has to be addressed systematically, while engaging the executives of the institutions.

Achieving these goals would require swift reaction and dedicated work, in order to avoid the bad practices of failing to adopt important documents in this area. State and entity strategies of development and promotion of openness need to be drafted and adopted and their action plans implemented.

Legislative branch in BiH

(The Council of Ministers of Bosnia and Herzegovina, The Government of the Federation of BiH; The Government of Republika Srpska)

The executive power in BiH has a far more complex structure and composure than the countries in the region. This research, therefore, required a specific methodological approach in order to provide data comparable to that from other countries. Since neither entity nor state governments could be compared to other states' governments individually, all three governments were included in the research. The sum total of their scores was used to get the overall results for the executive power in BiH.

The executive branch of government meets 60% of the openness indicators.

The principle of accessibility, with emphasis on access to information, interaction with the citizens and public consultations, is met with 72% of the indicators. The criteria of awareness is met with 42% of the indicators.

When it comes to the integrity of the executive in BiH, it meets 53% of the indicators in this field, while the principle of transparency is met with 61% of the indicators.

One of the dominant problems with transparency of the executive branch that has been identified, is the lack of complete transparency of government sessions on all levels. Although there are always some limits to coverage of the government sessions, the public in BiH doesn't have insight into some elements which should be available to it (key points of discussion at the session, for example). The website of the Council of Ministers of BiH doesn't provide the materials discussed at its session, publishing only the agenda, conclusions and a press release after the session. Minutes from the sessions aren't published either, so the citizens are denied a complete insight into the dynamics and approach to policies and issues which influence their lives. The same conclusions apply to the sessions of the entity governments. This aspect of the executive's work needs to be significantly improved.

The budget transparency is met with 57% of the indicators. The budgets are not entirely searchable, making it harder to conduct budget analysis, comparisons, or utilizing the budget data. The citizens are not given an opportunity to analyze budgets through narrative and graphic clarifications which should be available through "Citizens' budgets", or similar forms which present the budgets in a way that is simple and easy to understand.

The Council of Ministers of BiH hasn't published the Law on budget in its final text for the past three years, nor has it published the Law on execution of the budget. The entity governments have laws on budgets and budget execution published for the last two years. BiH has a solid transparency of public procurement, scoring 71% of the indicators met, out of which the CoM BiH meets 80%, the RS Government 85%, while the FBiH Government has the lowest score, with 48% of the indicators met. Official web pages have public procurement plans for the current and the past two years.

The information on completed public procurements are, however, very scarce. It is only possible to gain insight into notifications, decisions and reports on the conducted public procurement procedures.

There are usually no contracts, or information on the most successful bidders, available to the public.

Publishing the yearly work reports is one of the key instruments of openness and oversight of the executive powers by the citizens. The executive branch in BiH meets only 44% of the indicators in this sub-criteria. The Council of Ministers is the only one of the observed institutions that publishes work reports, while the governments of FBiH and RS don't publish their reports in a way that would meet the research indicators criteria.

The CoM BiH should adopt instructions, for both its ministries and the wider area of its jurisdiction, which would list, in detail, the necessary data to be published on official websites, and the form in which it should be done. Specifically, the documents should be in open data format; the publishing of the data should be made mandatory and mechanisms should be set in place to guarantee that these principles are fully implemented. The same recommendations should be implemented by the entities' governments.

BiH has adopted a Strategy of administrative reforms for the 2016-2020 period.² The implementation of the Strategy should create a more efficient and accountable public administration, which would serve the citizens better at a lower cost and base its work on principles of transparency and openness, while also fulfilling the conditions required for the EU integrations. This way, the public administration would become a positive factor in the continuous and sustainable social and economic growth.

²Strategija reforme javne uprave za period 2016-2020. http://www.adsfbih.gov.ba/uploaded/posebnidokumenti/strategija_reforme_ju_u_bih.pdf

The ministries in BiH (on state and entity level)

The ministries in BiH, on average, meet only about 34% of the openness criteria, which is a testament to the low level of openness of the executive power in BiH.

The differences between the ministries on state and entity levels are stark. The highest score was recorded for the state Ministry of Justice, which meets 63% of openness indicators; while the Ministry of Administration and Local Self-Governance of Republika Srpska has the lowest score, with only 15% of the criteria met.

Looking into the four analyzed criteria, the principle of accessibility is met with only 25% of the indicators. Only 9% of the ministries in BiH conduct some form of public consultations, which is a discouraging fact, considering that public consultations are a basic premise for citizen participation in the decision making process. Recently, a web-portal (eKonsultacije)³ has been created in order to provide the citizens with an online mechanism to get involved in creation and implementation of public policies of the state institutions. This public consultations platform has, however, still not become entirely operational in its full capacity.

³„eKonsultacije“ (<https://ekonsultacije.gov.ba/>) is a web platform which enables the citizens and CSO-s to get informed on and included in the process of drafting of certain legal acts.

The criteria of awareness is fulfilled to a somewhat higher degree by the BiH ministries, with 46% of the indicators met. However, only 21% of the ministries publish their work programs online, while the number of the ministries which published their work reports for the past three years is almost half of that (12%).

The integrity of all the analyzed ministries is at 0%, since assets cards of the ministers are not publicly available on any of the ministries' websites. Since the Central Electoral Committee has been requested to remove the assets cards of the officials from their online presentation, they have become largely unavailable to the public. The CEC does not issue these cards at request, and the only way to get insight into their content is to browse them at the CEC's premises.

The overall rating of transparency of BiH ministries is at modest 38% of the indicators met. The ministries fulfill only 9% of the indicators in the sub-area of public procurement. Around 43% of the ministries in BiH hasn't published the public procurement plan for the past year. The monitoring showed that only 60% of the ministries publishes calls and decisions on public procurements.

Although there is a separate portal for public procurements, which unifies the process of public procurement on all the administrative levels, the standards of transparency dictate that all the financial documents of the institutions, including those in the area of public procurement, should be published on the institutions' web pages in order to provide the public with information and secure full transparency in public procurement procedures.

Only 11% of the ministries have budget data available on their websites (average score for the past three years), while over 80% of the ministries hasn't published a single budget document for the past three years. This trend of nontransparent spending of public money requires a systematic approach and a far stronger efforts of both the public institutions and the civil society in order to change this practice.

The ministries in BiH aren't dedicated enough to providing the public with information on their work. In a lot of cases, the search of the ministries' web pages doesn't provide information on either their plans or the results of their work in the past year.

Around 54% of the ministries doesn't publish basic information on their employees, while the information on the public officials' salaries is not shared on any of the ministries' websites.

In a lot of cases, the information on the ministries' websites are not systematically organized, they contain sections which are empty of content or not updated, with limited search options. The poor organization of data often makes the official websites look like labyrinths which hide even the information which are uploaded on the websites.

The principle of open data is not respected and there is no consistent approach to updating and using the existing social network profiles of the institutions.

All this considered, along with additional findings which are omitted here due to the limited space, it is clear that the ministries need to change the approach to openness fundamentally to align it with the principles presented in the introductory part of this analysis.

Other executive institutions in BiH

This research covered 45 of the executive institutions in BiH, which meet the modest 35% of the indicators.

The awareness criteria is met with 62% of the indicators. Only 27% of the institutions publish their work programs on their websites, while work reports are found in 33% of the websites. The list of civil servants and their positions in the institutions are published in 27% of the administrative bodies, while 38% contains such data on public officials.

Nearly 68% denies the public basic information on their executives, their contact information and salaries.

The official web pages of executive administrative bodies are often not up to date and are not fully searchable in 65% of the cases.

The transparency of the administrative bodies on state and entity levels is at only 32%. Almost 90% of the institutions don't publish their budgets. Adding to that an even weaker result in publishing final budget accounts and semi-annual reports on budget execution, we get the full scope of the low budget transparency in these institutions.

About 50% of the institutions don't publish the public procurement plans, while 65% doesn't publish the calls and decisions on public procurements. Only 35% publishes some information on results of the conducted public procurement procedures.

When it comes to the access to information and interaction with the citizens, the executive administrative institutions meet only 34% of the indicators for this criteria.

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

Džemala Bijedića 309,
Sarajevo

info[at]zastone.ba
www.zastone.ba tel/fax +387 (0) 33 618 461