



GOOD GOVERNANCE
*for Openness and
Accountability*

Authors: Aida Ajanović

OPENNESS OF JUDICIAL BODIES IN THE REGION AND BOSNIA AND HERZEGOVINA

ZaštoNe?

 **ActionSEE**



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Authors: Aida Ajanović

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Proposals for the improvement of a current state

THE VIEWS EXPRESSED IN THIS DOCUMENT ARE AUTHORS' AND
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INTRODUCTION

In cooperation with partners from the regional network CSO “ActionSEE”, “Zašto ne” 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 indicators. 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.

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 impartiality , 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.

Publishing of information and decisions¹

The analysis has shown that almost 30% of regional courts does not have active websites². 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 justice. When the transparency of the work of courts is consistently applied, it can help combatting 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 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.

¹Magna Carta of Judges, Consultative Council of European Judges (CCJE), Strasbourg, 2010.
Available at: <https://goo.gl/PCNBkW>
Accessed: 01.06.2017.

²The 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.

If we analyze 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 programs.

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 work 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 proceedings³, 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 investigation⁴.

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.

³Declaration 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.

⁴Association 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.

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.

OPENNESS OF THE JUDICIARY IN BIH

(selected courts, prosecutor's offices, High Judicial and Prosecutorial Council of BiH)

The judiciary in BiH **has 56 % of the openness indicators met in comparison to other countries in the region** and it takes second position, right after Montenegro.

The judiciary system in BiH has significantly more complex structure than ones in the countries in the region, which required special methodological approach to the comparison of the results. Regarding the fact that there is no single judiciary system at state level which would be equivalent to the judiciary systems of the countries in the region, subject to our research were selected courts and prosecutor's offices at the state and entity level, and High Judicial and Prosecutorial Council of BiH. Total number of 31 institution was subject to this research.

The principle of **accessibility** in the bodies of the judiciary in BiH was met by 48% of the indicators, where the highest score was achieved in the area of access of information with 73% of the indicators met, whereas the poorest score was in the area of public access to the proceedings with 39% of the indicators met.

Practice of unpublishing the court rulings and transcripts of the proceedings before the court is widely spread among the courts in BiH. On the other hand, there is a number of judiciary institutions which do not publish the registers of information in possession, and in many cases the person responsible for the requests for access to information is not listed.

Freedom of access to information must be additionally enforced by strengthening the legal framework through establishment of stronger mechanisms of supervision over the implementation of the Law on Freedom of Access to Information, including the independent body whose decisions would be legally binding.

Court rulings and transcripts of the proceedings are not published. It is necessary to establish consistent practice of publishing the court rulings and transcripts from the proceedings on official web sites, in accordance with the legal limitations.

The principle of **efficiency** in the judiciary bodies in BiH was met by high 78% of the indicators. by Hence, 83% of the indicators were met in the area of monitoring and evaluation of activities by responsible institutions.

Judiciary system in BiH has established system for unbiased distribution of cases in courts and prosecutor's offices. The system of annual reporting of the courts and prosecutor's offices to the High Judicial and Prosecutorial Council (HJPC) has also been established and followed.

It is necessary to make the content of the reports on activities more specific in the manner that they contain information on the number of disciplinary proceedings against judges and prosecutors as well as the measures taken upon the completion of the proceedings, in line with international standards in the area.

In terms of **integrity** of the judiciary in BiH, 66% of the indicators are met.

Even though there is Ethical Code for judges and Ethical Code for prosecutors, only in rare cases are they published on the web sites of courts and prosecutor's offices.

Ethical codes should be made publicly available by publishing on official web sites of courts and prosecutor's offices.

In terms of the principle of **transparency** of the judiciary in BiH, close to 50% of the indicators are met.

Institutions of the judiciary are not transparent enough in terms of reporting on their agenda and its implementation. Information on the internal structure of the courts and prosecutor's offices, contact information of judges and prosecutors and lists of other employees of the court are also not on the satisfactory level.

It is necessary to establish consistent practice of publishing the agenda and reports on the activities of all the judiciary bodies.

COURTS IN BIH

Courts in BiH⁵ **have only 51% of the openness indicators met**, and in comparison to other countries in the region it takes the third place after Montenegro and Macedonia.

Principle of **accessibility** is met by 42% of the indicators where the score of 17% was achieved in the area of publishing the court rulings on official web sites. Out of all the courts which were part of this research, only Court of BiH, Supreme Court of RS and Cantonal Court in Široki Brijeg publish their rulings. None of the courts which were subject to this research publishes the records of transcripts from proceedings before the court, with respect to the legal limitations.

The low percentage of indicators met was also found in the area of freedom of access to information. Only 39% of the courts publish the register of information in possession whereas even lower percentage (28%) of them publish the contact information of the person responsible for acting on request for access to information on their official web sites.

⁵Total number of 18 courts from entire BiH were subject to this research.

It is necessary to establish consistent practice of publishing court rulings together with explanations behind the verdicts as well as the transcripts from hearings on official web sites, with respect to legal limitations. Freedom of access to information must be additionally strengthened through stronger provisions of the law and through establishment of stronger mechanisms of supervision over the implementation of the Law on Freedom of Access to Information, including the independent body whose decisions would be legally binding.

In terms of the principle of efficiency, courts in BiH have high 83% of the indicators met.

Process of distribution of cases is performed by independent information system, Case Management System⁶. Automated system of distribution of cases distributes the cases between judges or an expert associate for a claim in accordance with the principle of balanced random distribution based on certain criteria such as specialty and percentage of participation of a judge in distribution.

Annual reports on the activities of the courts should contain the information necessary for establishing the efficiency of the court such as statistical data on number of cases, duration of proceedings and rate of completed cases before the court. Courts are in legal obligation to deliver reports to the competent body within a deadline.

It is necessary to establish consistent practice of regular annual publishing of the data on efficiency of individual courts, bearing in mind the statistics on number of cases, duration of proceedings before the court and the rate of completed cases.

In terms of **integrity** of the courts in BiH, 61% of the indicators are met.

There is an ethical code for judges, but none of the courts which were subject of the research had it published on their official web site.

Ethical code should be available for public – published on official web sites of the courts.

⁶Rulebook on case management system in courts – LINK:
http://www.pravosudje.ba/vstv/faces/docservlet?p_id_doc=19944

In terms of the principle of **transparency**, 45% of the indicators are met at the courts in BiH.

The research results showed the trend of insufficient dedication to informing the public on the activities of the courts with the public and highly inconsistent practices among the courts. Only 11% of the courts which took part in the research publish their agenda (for the past three years). The only court which publishes the agenda for the period of past three years is Cantonal Court in Novi Travnik.

On the other hand, reports on the implementation of the plans of activities have slightly higher percentage; 38% of the courts publish them for the period of past three years.

Only 40% of courts publish the contact information on the judges on their official web sites. None of the courts publish the information on monthly income of the judges. However, almost all the courts publish the information on names and positions of other court employees.

It is necessary to establish consistent practice of publishing the agenda and reports on activities of all the courts in continuity for the period of past three years. Official web sites should contain publicly available information on the names of judges and their contact details, and information on their monthly income in line with limitations prescribed by law.

PROSECUTOR'S OFFICES

Prosecutor's offices in BiH⁷ have **64% of the indicators met in the area of openness in comparison to other countries in the region** and it is on the second position, right behind Montenegro.

Principle of **accessibility** in the prosecutor's offices in BiH is met by 73% of indicators.

All the interested parties have free access to the prosecutor's offices.

⁷Eleven prosecutor's offices from the territory of entire Bosnia and Herzegovina were subject to this research.

Almost 73% of the prosecutor's offices which were subject to this research publish the registers of information in possession. On the other hand, only 36% indicate the person responsible for the requests for access to information on their official web sites.

It is necessary to ensure consistent application and implementation of the Law on Freedom of Access to Information in order to increase the responsibility of the prosecutor's offices and employees responsible for informing and proceedings on requests for access to information.

In terms of the principle of **efficiency** the prosecutor's offices in BiH have 72 % of the indicators met.

All the prosecutor's offices which were subject to this research delivered their reports on activities within the legal deadline to the competent body for the previous year. The shortcoming is the fact that in the report there are no measures taken nor the complaints against prosecutors.

Case management system for automatic distribution of cases in the prosecutor's office was established⁸. The system automatically distributes the cases between the prosecutors and expert associates and in line with the decision of the general attorney.

It is necessary to determine the more specific details to be incorporated in the reports on the activities of the prosecutor's offices in the manner that it contains the information on the number of the disciplinary actions against the prosecutors and measures taken in line with international standards.

In terms of **integrity** of the prosecutor's offices in BiH, 55% of the indicators are met.

Although there is an Ethical Code for prosecutors, only one out of 11 prosecutor's offices which were subject to the research had it published on official web site.

⁸Rulebook on the Case Management system in the prosecutor's Offices (TCMS) – LINK: http://www.pravosudje.ba/vstv/faces/pdfservlet?p_id_doc=12794

It is necessary to make the ethical code accessible to the public – publish it on official web site.

Principle of transparency in prosecutor's offices in BiH has a bit over half indicators met, 53%.

Only 6% of the prosecutor's offices publish their annual plans of activities for the period of previous three years. Out of 11 prosecutor's offices monitored only the Prosecutor's Office of BiH and the Prosecutor's Office of Brčko District had one agenda for the period of previous three years published.

Better percentage of the indicators met is in the area of reporting on the implementation of the agenda for the period of past three years, although the level is still not satisfactory; it is published by 48% of the prosecutor's offices.

Only 45% of the prosecutor's offices publish the contact details of the prosecutors on their official web site. None of them publish the information on the monthly income of the judges. The situation is not much better with the names and positions of other employees of the court where only 68% of the prosecutor's offices publish the data.

It is necessary to establish the consistent practice of publishing the agenda and reports on the activities of all the prosecutor's offices. Official web sites of the courts should contain the information on the names of prosecutors, their contact details, and information on their monthly income in line with limitations prescribed by law.

HIGH JUDICIAL AND PROSECUTORIAL COUNCIL OF BOSNIA AND HERZEGOVINA

Unlike the countries in the region which have separate judicial and prosecutorial component in their judiciary systems, Bosnia and Herzegovina has a single body competent for ensuring the unbiased, independent and professional judiciary in Bosnia and Herzegovina, and that is the High Judicial and Prosecutorial Council (HJPC). In order to make the research results comparable to the countries in the region, the methodological approach demanded the use of separate indicators relating to courts and prosecutor's offices through the competencies of HJPC on their behalf.

HIGH JUDICIAL AND PROSECUTORIAL COUNCIL OF BOSNIA AND HERZEGOVINA THROUGH THE COURT INDICATORS

Observing the court indicators, HJPC has **63,49% of the openness indicators met in comparison to other countries in the region** and it takes the third place, right after Montenegro and Serbia.

Principle of **accessibility** is met by 42% of the indicators. Representatives of the media have free access to the sessions of HJPC with prior announcement. On the other hand, there are no clear guidelines for the media which clarify the aims and interests of the courts and the media and direct the attitude of courts towards the media.

HJPC does not publish the register of information in possession and in relation to that, there is no dedicated person competent for requests for access to information.

Complaints against the judges and prosecutors are promulgated by the law and legislation and are consistently implemented.

It is necessary to ensure consistent implementation of the Law on Freedom of Access to Information in order to increase the responsibility of HJPC towards the citizens. It is also necessary to establish a system of guidelines for the media on reporting on the activities of the courts as well as their education, introducing them to the terminology and phrases used in the proceedings before the court. The courts are also expected to clearly define the procedures and attitude towards the media.

Principle of **efficiency** is met by 100% of the indicators set. HJPC inspects all the reports on the activities of the courts. Activities, obligations and deadlines for delivering the reports are clearly determined for those purposes.

In terms of **integrity** of the HJPC, 69% of the indicators are met.

HJPC has its own budget. It is an independent body and its decisions are legally binding. Appointment of judges is performed in line with the law.

Ethical code for the judges exists, however no mandatory trainings or additional education in the area of ethics is available for the judges. Centers for education of judges and prosecutors should ensure professional education in the area of ethical standards for judges and prosecutors.

HJPC has 61% of the indicators met in the area of **transparency**.

HJPC has published agenda for the current year, although it is the international standard to publish it for the period of previous three years. On the other hand, it is possible to find the reports on activities of the Council for the period of past ten years.

HJPC does not have access to the budgets of the courts. Each court has its own budget and a level of integrity in access to funds. Other funds are spent with the authorization from the competent ministry. Budgets of the courts do not have funds allocated for legal aid, training and education of judges as well as computerization. On the other hand, funds are allocated for maintenance of the facilities, construction of new office buildings and salaries of judges and other employees.

It is necessary to strengthen the budget transparency of the council and the courts. Drafts and plans of the budget have to be available to the public through continuous and consistent practice which has to be established in all the courts. It is also the necessary to establish the consistent practice in publishing the agenda and reports on the activities of all the institutions of the judiciary.

HIGH JUDICIAL AND PROSECUTORIAL COUNCIL OF BOSNIA AND HERZEGOVINA THROUGH THE PROSECUTORIAL INDICATORS

HJPC has **67% of the indicators met in the area of openness in comparison to other countries in the region**, and it is in second position behind Montenegro.

Regarding the fact that it is a single body responsible for ensuring independent, unbiased and professional judiciary, certain number of openness indicators was evaluated and clarified in the previous section. In this part of the analysis the focus will be on the indicators relating to prosecutor's offices through the competencies of the HJPC.

Principle of **accessibility** was met by 73% of the indicators.

Guidelines for the media on what is allowed to be reported on the activities of the prosecutor's offices are very clear.

Principle of **efficiency** is met by 57% of the indicators.

All the prosecutor's offices must deliver the reports on their activities for the previous year within the deadline to the Council. The shortcoming is the fact that the reports do not contain the information on disciplinary measures and complaints against prosecutors.

It is necessary to specify the content of the reports in detail and include the information on number of disciplinary proceedings against the judges and the measures taken upon their completion, in line with the international standards.

Principle of **integrity** is met by 100% of the indicators.

Principle of **transparency** was met by 54% of the indicators.

HJPC does not have access to funds of the prosecutor's offices. Its role in forming the budget is advisory. Each prosecutor's office has its own budget and a level of integrity in allocation of funds. Other funds are spent with the authorization from the competent ministry. Budgets of the prosecutor's offices do not have funds allocated for legal aid, training and education of judges as well as computerization.

On the other hand, funds are allocated for maintenance of the facilities, construction of new office buildings and salaries of prosecutors and other employees.

It is necessary to strengthen the budget transparency in the prosecutor's offices. Drafts and plans of budget must be available to the public through the continuous and harmonized practice established at all the prosecutor's offices.

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: **transparency, accessibility, integrity and 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.

CA WHY NOT

Envera Sehovica 10/2,
71000 Sarajevo, BiH
tel/fax: +387 33 61 84 61
info@zastone.ba
www.zastone.ba