

INTRODUCTION

CA “Why not?” in cooperation with partners from the regional network of NGO ActionSEE, has prepared a document analyzing the level of transparency, openness and accountability of the judiciary in the Western Balkans region.

The aim of our activities is to, through objectively measurement of the openness of the judiciary in the region, determine the real situation in this area and make recommendations for its improvement. The aim is also to promote respect for the principles of good governance, in which openness plays an important role.

This practical policy proposal is the third in which we give an overview of the state of openness of institutions and recommendations for improvement. After the first survey, which was done in 2016, we started to improve and adapt the research methodology and its indicators, basing our work on monitoring findings and results. This year’s research was conducted on the basis of indicators that give an accurate picture of how judicial institutions have worked to improve their openness over the past year.

The results show that the level of openness of judicial institutions is almost the same as in the previous year. Courts in the region on average meet 41.5% of the openness criteria, and prosecutors’ offices 31.26%. As we have pointed out earlier - the challenges of the ongoing reforms of these bodies across the region, as well as the low transparency score, do not indicate that concrete efforts are being made to promote openness and transparency. Openness is not only a goal of the executive and legislative branches of government, but also of the needs of the judiciary, to gain insight into ways in which the rule of law and democracy can be promoted.

Concrete and urgent steps need to be taken to improve the openness of the judiciary in the region, thereby contributing to building public confidence in the judiciary.

Our policy proposal is addressed to decision-makers in the courts and prosecutor’s offices of the countries in the region. It can be of benefit to representatives of international institutions as well as to colleagues in the NGO sector dealing with these issues.

We remain open to all suggestions, well-meaning criticisms and discussions about our proposal.



OPENNES OF COURTS AND PROSECUTOR'S OFFICES IN THE REGION

This year's research confirmed that we still do not have a satisfactory level of judicial openness. Courts and prosecutors' offices in the region on average meet less than half of the openness indicators. It is not encouraging that this result is almost the same as last year. On the contrary, it indicates that the issue of openness is still not on the list of priorities of these institutions. Most of our findings and recommendations from last year remain unchanged.

Citizens face numerous difficulties in finding public information held by the courts. A large number of courts in the region do not have their own websites, while a considerable number of them have a limited set of data on their websites. As a further restriction on access to information, many courts do not disclose the contact of the person charged with handling requests for free access to information, although this is a legal obligation.

About half of the courts in the region did not provide us with the answers to the questionnaire we had sent them in order to explore more thoroughly their level of openness. This in itself is an indicator of the openness of an institution and its commitment to working with civil society organizations on these issues. As a rule, court proceedings in the region are open to the public. However, accessibility to courtrooms for people with reduced mobility is still a problem, despite laws that oblige public institutions to adapt the infrastructure of their facilities.

The random allocation of cases is essential to the independence and impartiality of the judiciary. In this section, we recognized the need for concrete steps and interventions that should lead to the full establishment of this principle. In this measurement, too, we have noted problems with the publication of reasoned court judgments.

Neither do the prosecutor's offices provide sufficient opportunities to access information that should be made publicly available. It is worrying that there are still a significant number of prosecutors' offices in the region that have not created their websites. The results of our research show the low level of organizational transparency of those prosecutor's offices that have their own websites.

A significant number of prosecutors' offices do not publish basic information about their work, such as employee lists, contacts, programs and reports, etc. Often, information on disciplinary proceedings against prosecutors and their outcomes is not available.

As we have pointed out last year, a large number of prosecutors' offices have not yet adopted any kind of guidelines or guidelines on cooperation with the media and the manner of reporting, although it is more than necessary to prevent the flow of proceedings and investigations.

JUDICIARY IN BOSNIA AND HERZEGOVINA

The judiciary structure in BiH differs significantly from its regional equivalents. Consequently, comparing BiH institutions' results with the institutions from the region requires a special methodological approach.

Due to the specific state structure, Bosnia and Herzegovina does not have a unique judicial system on state level as is the case in other countries of the region, so the topic of the research in Bosnia and Herzegovina were the chosen courts and prosecutors' offices on state and entity levels, along with the High Judicial and Prosecutorial Council of Bosnia and Herzegovina.

Prosecutors' offices

A total of 11 prosecutors' offices were included in this year's research: four cantonal prosecutors' offices (FBiH) four district prosecutors' offices (RS), Prosecutor's Office of FBiH, Prosecutor's Office of the Brčko District and the Prosecutor's Office of Bosnia and Herzegovina.

In total, the Prosecutors' offices in BiH meet 40% of indicators and are ranked third in the region, behind Montenegro (54.21%) and Kosovo (50.79%). If we consider the average regional score, the Prosecutors' offices in BiH are well above the regional average of 24.11%. Compared to the research of 2017, the Prosecutors' offices in BiH mark a 1.08% decrease in the openness category.

When looking at the institutions individually, the Prosecutor's Office of the Brčko District has the best result, having met 65.22% of set indicators, while the lowest-rated is the Cantonal Prosecutor's Office of West Herzegovina Canton with 25.38% of indicators met. The conducted research observed the institutions through the prism of four main principles: accessibility, efficiency, transparency and integrity.

When it comes to the principle of accessibility, the prosecutors' offices in Bosnia and Herzegovina meet 64.72% of set indicators, which is the highest recorded percentage regarding the prosecutors' offices' openness principles.



It is notable however, that the prosecutors' offices publish neither the information for which the request for access to information was approved, nor the information register in their possession. Furthermore, information that does get published on the official websites is not in an open data format.

The prosecutors' offices meet 54.09% of the efficiency principle. Considering that the indicators in this category are predominantly regarding performance, it has been observed that the reports are not delivered to the appropriate destinations in a timely manner, and that the annual reports should include information on disciplinary measures and appeals against a prosecutor.

The prosecutors' offices in BiH meet 44.32% of integrity indicators, with the main recorded problems being in relation to nonexistence of integrity plans and the failure to publish codes of ethics by the majority of the 11 prosecutor institutions analyzed.

In the category of transparency, the prosecutors' offices in BiH meet 38.12% of set indicators. What is positive in this category is the fact that almost all the prosecutors' offices regularly update their websites' content, and that more than half of the prosecutors' offices make the prosecutors' names and contact information available on said websites.

Many oversights were still noticed during the monitoring. Information on prosecutors' salaries and current implemented strategies are not disclosed on the websites. Furthermore, most of the prosecutors' offices do not publish annual agendas or organograms.

It is commendable that all prosecutors' offices, except for the Cantonal Prosecutor's Office of West Herzegovina Canton responded to this year's questionnaire, which indicates that certain institutions are ready to be open and to deliver the requested information.

Courts

A total of 18 courts from all levels of governance were included in the research: four basic courts in Republika Srpska, two cantonal courts in the Federation of BiH, eight municipal courts in the Federation of BiH, two commercial courts in Banja Luka, district court in Doboje, the Supreme Court of Federation of BiH and the Court of Bosnia and Herzegovina.

In total, the courts in BiH meet only 25.66% of openness indicators – an almost identical result as in the previous research (25.92%). This result puts Bosnia and Herzegovina in last place. The best-ranked country in this category is Montenegro whose courts meet 56.79% of openness indicators. The courts in Bosnia and Herzegovina are below the regional average of 37.24%.

The best ranked court included in the research is the Court of Bosnia and Herzegovina, meeting 68.40% of set indicators, while the Municipal court in Kalesija was the worst ranked with only 10.19% of indicators met.

As was the case with the prosecutors' offices, the courts were also observed through the prism of four main principles: accessibility, efficiency, transparency and integrity.

The latest research shows that the courts in Bosnia and Herzegovina meet 22.12% of accessibility indicators - a decrease compared to 24.02% in the previous year's research. The courts included in the research meet only 6.94% of indicators regarding the access to information.

The problems noticed are in reference to not publishing court rulings with explanations, not publishing information for which the request for access to information was approved, nonexistence of special public relations departments, nonexistence of electronic databases containing court rulings, and not publishing information in an open data format. The Court of Bosnia and Herzegovina has the best results in the category of accessibility, with 77.78% fulfilled indicators, while the municipal courts in Bugojno, Cazin, Kalesija and Kiseljak were the worst-rated ones, with only 8.33% of fulfilled indicators.

The judicial institutions in Bosnia and Herzegovina meet 27.06% of efficiency indicators overall. The key problems are in reference to lack of information on disciplinary measures and appeals against judges, not publishing statistics on total number of cases, process duration and the number of rulings reached etc.



An additional problem is the fact that reports are not sent to appropriate institutions in a timely manner. Basic Court of Sokolac, Cantonal Court in Bihać and the Municipal Court in Orašje meet 81.71% of indicators in this category, and are the best-rated ones, while 11 courts have scored 0%.

Courts in BiH meet 34.44% of the integrity indicators. The biggest problems in this category are the nonexistence of integrity plans which would regulate the exact prevention measures regarding corruption and unethical behavior, as well as the lack of a published Code of ethics for judges.

Courts in Bosnia and Herzegovina have the best result in the category of transparency, meeting 27.28% of indicators. This is an obvious decrease compared to the previous year's 35.90%. Annual agendas of judicial institutions and the current strategic plans followed by the judiciary are not published, and there are no documents that ensure transparency. Judges' salaries and organograms are not published either.

High Judicial and Prosecutorial Council of Bosnia and Herzegovina

Unlike the regional states that have separate judicial and prosecutorial councils, Bosnia and Herzegovina has one body in charge of securing independent, unbiased and professional judiciary in BiH – the High Judicial and Prosecutorial Council of Bosnia and Herzegovina. In order to make the research results comparable to the regional ones, the methodological approach required an examination of separate indicators referring to courts and prosecutors' offices under the jurisdiction of the High Judicial and Prosecutorial Council of Bosnia and Herzegovina.

High Judicial and Prosecutorial Council of Bosnia and Herzegovina – court indicators

HJPC of BiH meets 63.65% of court indicators, ranking second among the regional institutions, behind Montenegro (79.72%), and is significantly above the national average of 56.73%

Comparing HJPC's results (court indicators) with the previous year's monitoring, a slightly worse result can be observed, considering that 65.43% of set indicators were previously met.

As was the case with other institutions, indicators from four principles were analyzed: accessibility, efficiency, transparency and integrity.

HJPC has the lowest result in the category of accessibility with only 44.83% of indicators met. There are several problems when it comes to access to information: neither information with access granted according to FOI nor an updated Guide on access to information is published. There are no guidelines for media collaboration when it comes to monitoring the Council's work.

HJPC meets 100% of efficiency indicators. Mechanisms for assigning cases have been established, and there are documents via which the content of the work report sent to the Council is determined.



The Council meets 74.46% of integrity indicators. This is a solid result; however the mechanisms for the Code of ethics implementation monitoring are not established, and neither are the procedures dealing with potential Code violations. As with the other judicial institutions, an integrity plan needs establishing.

HJPC meets 58.84% of set indicators in this category. The biggest objections have to do with the institution's budget, what with the budgets and the budget execution reports not being available and not being regularly published on the website respectively. The current Council strategies are not published, nor are the information on the salaries in the Council. Contracts on finalized public procurements are not published either.

High Judicial and Prosecutorial Council of Bosnia and Herzegovina – prosecutorial indicators

HJPC of BiH meets 58.84% of prosecutorial indicators, thus ranking second among the regional institutions behind Montenegro (64%), and scoring significantly above the regional average of 47.66%

There has been a slight decrease compared to the previous year's 62.08%.

HJPC meets 40.74% of accessibility indicators. The problems have to do with access to information, seeing as neither information with access granted according to FOI, nor updated Guide to access to information have been published. Additionally, guidelines for media collaboration concerning the monitoring of the Council's work need establishing.

HJPC meets 100% of efficiency indicators. Mechanisms for assigning cases have been established, the annual report includes information on disciplinary actions and appeals, and there are documents via which the content of the work report sent to the Council is determined.

HJPC meets 67.86% of integrity indicators. The mechanisms for the Code of ethics implementation monitoring and the procedures dealing with the violation of the Code need to be established. An integrity plan has not been established, as was the case the previous year. In the category of transparency 52.55% of indicators were met. As with the court indicators, the biggest oversights are regarding the publishing of budgets, budget execution reports and the transparency of the public procurement process, as well as the salary transparency regarding the employees of this institution.

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 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 institutions 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 implies that organizational information, budget and public procurement procedures are publicly available and published. Accessibility refers to providing and respecting procedures for free access to information, and strengthening interaction with citizens. Integrity includes mechanisms for the prevention of corruption, the implementation of ethical codes and the regulation of lobbying.

The ultimate principle, awareness, concerns the monitoring and evaluation of policies being implemented. Being led with international standards and recommendations and good practice examples, these principles are further elaborated through specific quantitative and qualitative indicators evaluated on the basis of the availability of information on official websites, the quality of the legal framework for individual issues, other sources of public information and questionnaires that were sent to the institutions.

Through more than 100 indicators we measured and analyzed the openness of judicial institutions in the region. The measurement was carried out in the period from December 2018 until the end of April 2019.

The standard error of the total openness index is +/- 3%. Based on the results of the research, a set of recommendations and guidelines addressed to institutions has been developed.





ACTION SEE is a network of civil society organizations that work together to promote and ensure the transparency and accountability of institutions in Southeast Europe, increase the potential for civic activism and participation, promotion and protection of human rights on the internet, and building capacity for the use of new technologies.

