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**OPENNESS OF THE JUDICIARY IN THE REGION AND MONTENEGRO**

**Recommendations for improvement based on the Regional Openness Index**

**Authors: Dragan Koprivica, Milena Gvozdenović and Biljana Papović**



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**Introduction**

In cooperation with partners from a regional network of NGOs “Action SEE“, the Center for Democratic Transition (CDT) prepared the policy paper in which we analyze a level of transparency, openness and accountability of the judiciary in the Western Balkans region.

The policy paper is a result of research, based on scientific methodology, developed by the Action SEE members during the previous years. In preparing this document and measuring the openness that was the basis for its preparation, we have used innovative and improved success indicators.

The aim of our activities is to determine the current state in this area through an objective measurement of openness of the judiciary in the region and to make recommendations for improvement. Also, the aim is to improve compliance with good governance principles, in which the openness has a significant place.

The policy paper, with accompanying analyzes, is the second such document. Action SEE members made recommendations for improvement of institutional openness even last year, following the research conducted. Based on the results of the research carried out in 2016, analyzes have been carried out to provide an overview of the situation in the institutions of Montenegro and the region, including the observed shortcomings and good practices in this area. Based on these analyzes, last year, recommendations and “road maps” were made to improve the specific areas covered by the research.

The members of the Action SEE network, after basing their work on the findings and results of last year's monitoring, started to improve and adapt the research methodology and its indicators. The aim of using new and improved indicators is to add new value to research and to make a more effective contribution to enhancing the openness of the institutions of the region.

According to this year's research, the courts in the region meet almost 42%, and the prosecutor's offices 31% of the openness indicators. Challenges of ongoing reforms of these bodies across the region, as well as a low level of transparency, do not indicate that concrete efforts are being undertaken to promote openness and transparency. Openness is not only the goal of the executive and legislative power, but also the need for the judiciary to gain insight into ways in which the rule of law and democracy can be improved.[[1]](#footnote-1)

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

Our policy paper is addressed to decision-makers in courts and prosecutors' offices of the countries in the region. It may also be of benefit to representatives of international organizations, as well as to colleagues from the NGO sector dealing with these issues.

We remain open to all suggestions, well-meaning criticisms and discussions regarding the policy paper.

OPENNESS OF COURTS AND PROSECUTOR’S OFFICES IN THE REGION

Openness of courts and prosecutor’s offices in the region is not at a satisfactory level. Courts in the region meet on average 42%, and prosecutor’s offices 31% of the openness indicators. We noted significant differences in the level of openness between judicial bodies in the countries of the Western Balkans.

It should be noted that this year's research included and advocated a higher degree of openness of institutions compared to the last year, adding new indicators that measure this openness. We believe that such a stricter approach partly affected the weaker performance. On the other hand, the results and the analyzed data show that judicial institutions did not generally work on the overall development of openness, so the new indicators did not prevail in the weaker results.

Judicial bodies in the region are in the process of reform, and are faced with a series of changes in the upcoming period. Through our research we identified several critical points in the work of judicial bodies in the region, to which all countries should pay special attention in order to reach international standards of openness.

**Courts in the region**

Most of the courts in the region have their website, but given their content, citizens still face barriers to finding certain public information.

Courts in the region meet on average 39% of the indicators in the field of transparency of work. A significant number of courts from the region do not publish basic information about their work, which includes plans and work programs, work reports, strategies, data on earnings of judges...

In this respect, of particular concern in the most countries is not publishing court judgments and explanations of verdicts.

Courts in the region meet on average almost 40% of the indicators in the area of accessibility. One of the particular issues is accessibility of courtrooms for people with difficult mobility, although there are laws obliging public institutions to adapt the infrastructure of their facilities in order to facilitate access to wheelchair users.

About half of courts in the region have no updated Guidelines for free access to information (FAIs) on their websites, and nearly a third of them do not have the contact persons responsible for acting on requests for free access to information.

In addition, there is a lack of mechanisms and information at the regional level for informing citizens more closely about their rights and available legal remedies or about manners of filing complaints or objections to the work of courts. In addition, few courts in the region have published Code of Ethics on their websites.

Our research has shown that integrity plans or some other complementary document (which would imply measures for prevention and elimination of various forms of corruptive and unethical behavior within the institution) are not available on the websites of a large number of courts in the region. Moreover, courts in the region should be more committed to organizing or participating in training in anti-corruption policies, bearing in mind that a significant number of courts responded that they did not participate in such trainings.

**Prosecutor's offices in the region**

Prosecutor's offices should have a more proactive approach when it comes to availability of information of public importance.

Two thirds of prosecutor's offices in the region have no official website, or have the websites which have not been updated for more than six months.

If we analyze the content of the existing websites, prosecutor's offices generally do not publish plans and work programs, work reports, and current strategies. Although in the countries of the region there is a Code of Ethics for Prosecutors, it is not available on a significant number of prosecutor's offices websites.

Exercising the right to free access to information is limited in the situation where a quarter of prosecutor's offices do not publish contact details of the person responsible for free access to information. In addition, there is a practice of not publishing the guideline and databases with information that has already been granted access.

The most common problems in media reporting on criminal proceedings concern privacy breaches, violations of the presumption of innocence, “information leakage”... Although this remains a challenge in the region, a large number of prosecutor’s offices have not yet adopted any kind of guidelines or instructions on cooperation with the media and media reporting. This is more than necessary in the upcoming period, in order to prevent jeopardizing the flow of proceedings and investigations.

Finally, the judiciary system as a whole failed to build an on-line system which would monitor the flow and progress of indictments. Even in those countries of the region where such a system exists, it is not functional enough.

COURTS AND PROSECUTOR’S OFFICES IN MONTENEGRO

The Strategy for the Reform of the Judiciary 2014-2018 recognizes the need to strengthen citizens' trust in the judiciary through access to information held by judicial institutions, but our research has confirmed that there is still a significant space for enhancing the openness of judicial institutions.[[2]](#footnote-2)

The courts in Montenegro meet on average 56.5%, while prosecutor’s offices meet 65% of the openness indicators.[[3]](#footnote-3) These are the best results in the region, evidencing the low level of openness of the courts and prosecutor’s offices in the region.

Although this year's result of the openness of judicial institutions in Montenegro needs to be seen in the context of introducing new and more strict indicators, the fact is that these institutions have not worked enough to develop the openness policy during the last year. In addition, compared to the last year, a smaller number of judicial institutions have provided answers to the questionnaires, which are sources for assessing individual indicators. The unwillingness to provide answers is by itself an indicator of openness of these institutions.

Below we present key findings and recommendations for improvement of openness.

COURTS

**Availability of information on the work of courts**

Courts publish most of the administrative information such as scope of work, regulations, trial schedules, lists of civil servants and employees with their titles...

However, the websites of most courts are not being updated with press releases or current events.

Information on judges and their biographies are also available on court websites, but no contact information is published. Moreover, publishing information on earnings is also not a practice.

Courts published plans and work programs for 2017, which was not a practice in previous years. Namely, 2016 and 2015 plans are not available on websites of most courts.

Courts also have the practice of publishing work reports, but not all three work reports from previous years are available on the websites of quarter of courts. Around a fifth of courts published periodical work reports during 2017, containing a general overview of the quality of work of the court.

On the other hand, courts have to improve the quality of annual work reports so that they can be easily understood by the general public. Reports contain court statistics, so they need to be supplemented with other information relevant for the manner the court operates and functions. Reports should contain information on work problems and their causes, with conclusions and recommendations for their resolution.[[4]](#footnote-4)

**Publicity of the trial**

The principle of publicity of the trial is generally respected, but in some courts there are still some space limitations that can lead to limitation of this right[[5]](#footnote-5). In addition, not all courts are accessible to wheelchair users.

Courts publish judgments with explanations, but publishing minutes of trial is still not a court practice. Moreover, courts do not publish dissenting opinions of panel members, which is an important standard of court transparency.[[6]](#footnote-6)

**Public relations**

Courts should improve the mechanisms for communicating with the public. Our last year's findings pointed to the need for improvement of courts’ communication policy with the media and the public, through the training for spokesman and development of a Communication Strategy. Although there is a person or public relations service in most courts, a large number of courts have no practice of publishing press releases, which would make the public aware of the news; also other methods of communication are not being actively used. In addition, the courts have informed us that they have no guidelines for cooperation with the media regarding their reporting on the work of the court. However, according to the Supreme Court's Work Plan, in the first half of this year, development of a Communication Protocol for the courts in Montenegro, which could solve these challenges, is planned. The Communication Protocol should improve the transparency of courts and strengthen cooperation with the media[[7]](#footnote-7). The Supreme Court pointed out that the protocol is in the process of drafting, but there is still no information on when it will be officially completed and adopted.

Courts should also improve their capacities to apply the Law on Free Access to Information. More than half of courts (55%) who provided the answers to the questionnaires informed us that they had not participated in any of the free access to information trainings in the previous period.

It should also be added that 23% of courts do not have published updated Guidelines on their websites, and 92% do not publish a database with information granted access upon request.

**Codes of Ethics**

On the websites of 31% of courts there is no published Code of Ethics of Judges, and 38% did not publish the Code of Ethics of Civil Servants and Employees, which defines the standards and rules of conduct of the employees of the court. Most courts publish complaint forms. They are not available on 15% of the websites.

On the other hand, there is no information on filed complaints in court work reports, as well as violations of the Code of Ethics of Judges or disciplinary responsibility of judges. This information is available in documents of the Commission for the Code of Ethics.

There are no mechanisms (such as leaflets, publications, telephone lines ...) on the websites of 23% of courts intended to inform vulnerable groups about their rights and adequate legal remedies.

PROSECUTOR’S OFFICES

As indicated last year, the prosecutor’s office website, although it contains a lot of data, is technically inadequate - there is no functional search, it is not transparent for use and is limited for further improvement of content.[[8]](#footnote-8) Therefore, the last year's recommendation for creation of a new website which would be adjusted to the number of institutions and the amount of information remains unchanged.

In addition, publishing the news and press releases is still not the practice of the state prosecutors' offices. Such information is only available on the website of the Supreme State Prosecutor's Office.

Prosecutor’s offices generally respect the principle of proactive access to information. They publish lists of prosecutors and their earnings as well as lists of civil servants and employees with their names. However, a large number of prosecutor’s offices do not publish the contact details of prosecutors and employees. Furthermore, prosecutors' biographies are not available.

Prosecutor’s offices publish only current programs and work plans, and a large number of them publish only the latest work reports. On the other hand, on the website of the Supreme State Prosecutor's Office, work reports for the previous years are also available.

Reports of prosecutor’s offices contain a full overview of the work but do not contain information about violations of the Code of Ethics or disciplinary procedures and measures.

The Guidelines for free access to information and contact persons are available on the websites of prosecutor’s offices. Prosecutor’s offices generally publish decisions, but not the very information that has been granted access upon request.

JUDICIAL AND PROSECUTORIAL COUNCIL

When it comes to transparency of the Judicial and Prosecutorial Council, key recommendations for improvement of the situation in the previous measurement remain unchanged.[[9]](#footnote-9)

The Judicial and Prosecutorial Council should strategically plan annual activities within a specific work plan and program.

The councils publish annual work reports[[10]](#footnote-10), and on the Judicial Council website there is half-year report which provides an overview of court proceedings in the first half of 2017.

These councils should improve their financial transparency.

No public procurement information - plans, calls, decisions and public procurement procedures are available on the Judicial Council website. When it comes to the budget, it is published only as an integral part of the annual work report.

The Prosecutorial Council published public procurement plans and contracts, but not calls and decisions on public procurement procedures. Budgets and final accounts are not available on the website of the Prosecutorial Council.

The Judicial Council published an updated Guideline for Free Access to Information, contact person responsible for acting upon requests, but not a database with information that has been granted access. This information is available on the Prosecutor's Office website.

**Research methodology**

Openness is a key requirement for democracy as it enables citizens to obtain the information and knowledge necessary for equal participation in political life, effective decision-making and holding of institutions responsible for the policies they are implementing.

Institutions around the world undertake specific actions towards increasing their own transparency and accountability to citizens. The Regional Index of Openness of the judiciary is developed in order to establish to what extent citizens of the Western Balkans receive timely and understandable information from their institutions.

The Regional Openness Index measures the degree to which the institutions of the Western Balkans are open to citizens and society, based on the following four principles: (1) transparency, (2) accessibility, (3) integrity and (4) effectiveness.

The principle of transparency implies that organizational information, budget and public procurement procedures are publicly available and published. Accessibility refers to providing and respecting the procedures for a free access to information, and improving the availability of information through the mechanism of public discussions and strengthening of interaction with citizens. Integrity includes mechanisms for the prevention of corruption, conducting codes of ethics and regulation of lobbying. The last principle, effectiveness, concerns the monitoring and evaluation of policies being implemented.

Following the international standards, recommendationsand examples of good practice, these principles are further elaborated through specific quantitative and qualitative indicators, which are estimated on the basis of availability of information on official websites, the quality of legal framework for individual issues, other sources of public informing and questionnaires delivered to institutions.

In accordance with the Index Development Plan, after the measurements and analyzes and recommendations given to the institutions, each year we introduce new indicators i.e. standards of transparency. In this way we effectively measure how institutions meet our recommendations and how much they deal with the openness policy. This year's index is, thus, richer for several new indicators.

The measurement was conducted in the period from December 2017 until the end of March 2018.

The standard error of the total openness index is +/- 3%.

Based on the research results, this set of recommendations and guidelines, addressed to institutions, was developed.

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**CENTER FOR DEMOCRATIC TRANSITION**

Moskovska 153, 81 000 Podgorica, Montenegro

+382 20 331 227

cdtmn@t-com.me

[www.cdtmn.org](http://www.cdtmn.org)

1. Open Government Partnership, <https://www.opengovpartnership.org/stories/towards-open-judiciary-achieving-open-justice-through-citizen-participation-and-transparency>. [↑](#footnote-ref-1)
2. Strategy for the Reform of the Judiciary 2014-2018, <http://sudovi.me/podaci/sscg/dokumenta/5548.pdf>. [↑](#footnote-ref-2)
3. The sample covered 50% of courts and prosecutor’s offices. [↑](#footnote-ref-3)
4. CDT, *Openness of the judiciary in the region and Montenegro,* 2017, <https://www.cdtmn.org/dobroupravljanje/du-analize/otvorenost-pravosuda-u-regionu-i-cg/>. [↑](#footnote-ref-4)
5. *Ibid* [↑](#footnote-ref-5)
6. Rosa Raffaelli, *Dissenting opinions in the Supreme Courts of the Member States*, Policy Department C: Citizens' Rights and Constitutional Affairs, European Parliament, Brussels, 2012. [↑](#footnote-ref-6)
7. Work Plan of the Supreme Court of Montenegro 2018, <https://sudovi.me/podaci/vrhs/dokumenta/7126.pdf>. [↑](#footnote-ref-7)
8. CDT, *Openness of the judiciary in the region and Montenegro,* 2017, <https://www.cdtmn.org/dobroupravljanje/du-analize/otvorenost-pravosuda-u-regionu-i-cg/>. [↑](#footnote-ref-8)
9. *Ibid* [↑](#footnote-ref-9)
10. Annual Work Reports for 2013, 2014, 2015 and 2017 are available on the website of the Prosecutorial Council. [↑](#footnote-ref-10)