Authors: Aldo MERKOÇI – Executive Director, MJAFT! Movement; Sara MALOSMANI - Project Assistant, MJAFT! Movement

Analysis of the Openness of the Judicial Bodies in Albania and in the region

Proposals for the improvement of the current state

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Author: Aldo MERKOÇI & Sara MALOSMANI
MJAFT! Movement

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Introduction

In cooperation with partners from the regional network CSO “ActionSEE”, MJAFT! Movement prepared a paper, where we analyze a level of transparency, openness and accountability of the judiciary system in Albania with a view on the region of the Western Balkans. During the previous measurement for the year 2017, the judicial bodies of the Western Balkan countries did not perform satisfactory results regarding openness. Most of the basic indicators of performance were not met by regional courts which have scored (37%) and public prosecution offices (24%).

For this year’s measurement, members of the ActionSEE network continued improved last year’s research methodology and its indicators thus enabling direct comparison between states and judicial bodies. The openness of judiciary in the region of Western Balkan for this year’s measurement meets 35% of set indicators compared to last year’s performance where it was 36% of the indicator’s performance. This result that shows a decreasing performance of judicial bodies is an alarm bell to the transparency, openness, and accountability of the administrative activity of these institutions. The challenges of the ongoing reform all over the region for these bodies, as well as the low score on transparency, do not give the perception that concrete commitments are being taken to promote transparency, citizens’ empowerment, and anti-corruption actions. Open government is not only a goal for the executive and legislative powers, but it is also a need for the judiciary, to understand what it can do to improve government, society, and democracy.

We believe that such tightening approach to the research added up to the fact that the results show a decrease in openness of the judicial bodies. On the other hand, the results and analyzed data show that the judiciary has not made any effort to develop openness since the publishing of the previous results, so new indicators are not of crucial importance for a general decline in the openness. Concrete and urgent steps should be taken to improve the performance of this power to rebuild the public trust in the judicial bodies. 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 these issues. We remain at your disposal for all suggestions, benevolent critics and discussion regarding our policy paper.
Courts and Prosecution Offices in the Region

Courts in the region

The results of the conducted research show a decrease in the performance of courts in effectively fulfilling the indicators of openness. Courts in the region seem to have a low score when it comes to access in information and in conflict of interest prevention. Around half of the courts in region have not responded to the questionnaire send out to them, which confirms the low score of the access to information. Even that by law the courts have a designated person which deals with FOI, still the information for the contact person is not available online in the website. On the other hand the degree to which regional courts are opened to the citizens, according to four basic principles, are as following: transparency 41%, awareness with 39% of the fulfilled indicators compared, accessibility 34% and integrity 34%. Except for the principle of transparency, which performed 1% higher, others scored negatively compared to 2017 measurement. The situation appears better when it comes to regional court councils, where the principles of the Regional Openness Index performed better than previous results.

Principle of random assignment of cases

The random assignment of cases in courts is in the regional level. Comparing to previous year’s results, this result of the indicators keeps remaining approximately the same, thus there is no increase in level from all courts. Since the random assignment of the cases is fundamental for judicial independence and impartiality, concrete action steps and interventions are important in developing and improving this principle. The non-increase of the performance from the previous year’s result means that are not being any efforts being made in completing the legal frame to prevent corruption development in the judiciary, but yet, there is still a lot more to be done due to the constantly public trust eroding in this system.
Publicity of trials

Judicial proceedings are opened for the public, with limited exceptions when it comes for juvenile cases for example. This is a satisfactory result when it comes to respecting the basic conditions of the trials’ fairness. This is a lower result compared to last year’s measurement where the score was 92%. Even in this year’s measurements, it is noticed violence of this principal, due to the results of the courtroom’s accessibility of people with disabilities. Most of the courts in the region fail in providing the opportunity to the citizens to access their offices, even though there are legal acts according to which it is an obligation to all the public institutions to adapt the infrastructure of their buildings to facilitate the access of this marginalized group.

Publishing of information and decisions

The access to the public information of the courts in the Western Balkans does not reach more than 43% of the indicators, however, this is an increase of fulfillment of indicators considering last year’s measurement where this score was 30%. A large number of the courts in the region do not have websites, as and publish just a small number of the verdicts online. Moreover, in some websites of courts, the search engine does not function. Due to this, citizens face difficulties in finding public information or access the progress of their cases. Judicial decisions published along with rationales remain a concern referring to the measurements. Most of the decisions are not published in full or all in the regions of the opinions from the judges composing the proceedings, which raises the level of corruption perception or conflict of interest in these institutions.
Public Prosecution in the region

Prosecution as a general term includes the prosecution council, public prosecution, and state prosecution. The results for this year’s measurement research slightly the same in regard to the performance of the public prosecution in the region compared with last year’s results. In 2017 measurement prosecution scored 23% of set indicators of openness, while in 2018 they scored 24%. One the main reason for this low score in regional perspective comes from the states of Macedonia, Albania and Serbia, which has scored less than 20% of set Indicators. This low score, comes as a result that the target institutions do not have available websites or contacts to sent out the questionnaire. However in other states, a lot of work has to be done especially on the prevention of the conflict of interest and the reporting of the work as well as for the transparency of these institutions. The degrees to which regional prosecution offices are opened to the citizens, according to four basic principles, are as follows: accessibility with 28% of set indicators, awareness with 37%, and integrity with 34% and transparency with 24%. Transparency, accessibility, and integrity have had a slight decrease compared to last year’s measurement

Transparency and Accessibility of information related to work

Public Prosecution Offices in the region score low regarding transparency of the organizational information available to the citizens, with a score of 19% of set indicators. This low score has also reflected to the right on the access to information component in regional level, as very little information is available online.

Last year score was 23%, but this year’s measurements show an slight increase from 23% to 25%, however the public prosecution offices in the region, in general, are not providing opportunities to interested parties to have access to information that should be opened to the public and that these offices have failed to create a more transparent online system where all information should be visible. Most of the public prosecution offices do not offer any type of mechanism for direct communication with the prosecutors.
Moreover, prosecutions in the region on their websites do not offer adequate information on their website, or a part to raise concerns. The justice system as a whole failed to create an online system which will track online a indictments and how is moving forward, even that in some countries have established this online system still it fails to be functional. These issues are presented since last year, and the improvement it not high.

**Relations with media and public**

One of the most important components is also the relations with the media and public. Most of the public prosecution offices need to adopt regulations on the communication with media and how they present their work with the public. These regulations in line with guidelines to the staff in charge with cooperation with media will ease the way to communicate and increase collaboration with media and the public. Moreover, such a guideline is more than necessary to avoid jeopardizing the course of the proceeding and investigation. The most common problems, violating international standards and principles of reporting in criminal proceedings, 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 the investigation.

**Control of work of public prosecution offices**

Same as last year, two-thirds of regional countries have established a mechanism of control and monitoring of the work of public prosecution offices by higher instance. Moreover, another important mechanism adopted among public prosecution offices is one of the allocations of cases, which more than 80% of public prosecution offices have adopted and is a necessity the remaining ones to adopt it as well. However, the functioning of these two mechanisms in practice is still questionable. Most of the public prosecution offices have not published or made public the reports of disciplinary measures, complaints towards prosecutors or reports of the past year to the supervisor authority. The non-documentation and their publishing online make it impossible for interested parties to know if the mechanisms are working and actually having an impact.
**Judiciary in Albania**

Courts and prosecutions in the Republic of Albania have performed 31% of the institutional openness. It is almost the same percentage as last year, with a small difference of 1%, which shows that courts and prosecutions in the Republic of Albania still need a lot work to achieve satisfactory results and to become more transparent and accessible.

For the past years, the judiciary system of Albania has been one of the most discussed powers on the Albanian political debate, since having a judiciary reform and a vetting process is considered as a key component for the further opening of the negotiation of Albania and European Union.

On the other hand, the vetting process has affected the pace of setting up new judicial institutions. Such new bodies of the self-governance in the judiciary (the High Council of Justice, the High Prosecutorial Council, and the Justice Appointment Council) were created in December 2018 and have started their work on January 2019\(^1\), thus they are not included in the framework of this study.

**Courts**

This year, the courts in the Republic of Albania have completed 49% of the indicators that measure their institutional opening, which shows an improvement of 4% comparing with last year, and being very close to the region’s average and is among the Western Balkan’s country which has performed better in the opening of these institutions. Nevertheless, beside this improvement, still there is a lot of work for these institutions to be more transparent.

Through the research, it is noted that in this year, still the Mat’s Court has the lowest ranking with 10%, lowering from the last years observations as well, and same as last year, Tirana’s court has highest results completing 66% of the indicators.

Having the same results like last year, or even lowering than last year’s indicates that no action or very little action is taking over.

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**Transparency regarding decisions**

As in regards of transparency, this year’s institutional ranking was 42%. It appears that it is rather difficult to consult, find and access cases online, and this remains one of the biggest challenges. Organisational information fulfils 42% of set indicators, showing an increase of 6% comparing with last year; however, courts websites should be more active and updated with information, regarding structural and organisational information, since it is the citizen’s right to have such access and to be updated and to be appraised.

**Accessibility**

Accessibility for courts in Albania reaches 51% of institutional opening indicators. More specifically, access to information reaches 37% while last year reached 40%; access to justice reached 58% while last year reached 60% of the set indicators. In the Western Balkan region 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. Such problem still occurred in Albania. A very small proportion of them meet the accessibility criteria, but most report operating in older, pre-constructed and inaccessible buildings and other elements such as interpreters or Braille texts are almost completely missing. This is a violation of the right to equality, as the basic principle of the judicial system.

**Prosecutions**

Prosecutions in the Republic of Albania complete only 13,5% of the indicators of the institutional opening, result which is shown far from the regional average, even though the latter is in unsatisfactory value. In the case of Albania, all district prosecutors are listed within the official website of the General Prosecutor's Office, where the lack of detailed information on their institutional activity is very pronounced and explains the outcome of
the indicators designed to measure the institutional opening of the prosecutor's office.

This year, the lowest score was 6.3% of the completed indicators and several prosecutors, such as Appellate Prosecution of Serious Crimes, Korça Prosecution, Pukë Prosecution Office, Kukes Prosecution Office, Tropojë Prosecutor's Office, Permet Prosecution Office, Gjirokaster Prosecution Office and Dibra Prosecution Office. While the highest score is recorded by the Prosecution of Serious Crimes, with 24.7% of institutional filling indicators completed.

It can also be noted that for e.g. the highest ranking institution of last year’s was Durres Prosecution Office with 25% of filled indicators, this year had a decrease with 21.5% of the fulfilled indicators.

More specifically, for each category, Albania's prosecutors' offices have met 13% of accessibility indicators, 36.5% of awareness, 34% of integrity and only 2% of transparency, which seriously undermines public trust in this institution.

It is very concerning the fact that for the third year of this study, the Prosecution’s offices still show low results, especially in regards of transparency where it is considered almost insignificant.
Research methodology

Openness is a key requirement of democracy because it enables citizens to obtain the information and knowledge needed for equal participation in political life, efficient decision-making and holding institutions accountable for policies they implement.

Institutions around the world are undertaking concrete actions in order to increase their transparency and accountability towards citizens. With a view to determining the extent to which the citizens of the Western Balkans receive timely and understandable information from their institutions, the Regional Openness Index has been developed.

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

The principle of transparency implies that organizational information, budget, and public procurement procedures be publicly available and published. Accessibility refers to the provision of an abiding by procedures for free access to information and to the enhancement of the information accessed through the mechanism of public hearings and the strengthening of interaction with citizens. Integrity includes mechanisms for the prevention of corruption, the implementation of the Codes of Ethics and the regulation of lobbying. The last principle, awareness, concerns the monitoring and evaluation of policies implemented by institutions.

Following international standards, recommendations and examples of good practice, these principles are further elaborated through specific quantitative and qualitative indicators that are assessed on the basis of availability of information on official internet sites of institutions, the quality of the legal framework for individual issues, other sources of public information and questionnaires forwarded to institutions. Through more than 30 indicators per institution, we measured and analyzed the openness of all judicial bodies in the region and collected over 8000 data. The data collection was followed with data verification process which resulted in the standard error of +/-3%.
The measurement was conducted in the period from December 2018 to the end of March 2019. A set of recommendations and guidelines directed towards institutions was developed on the basis of research results.