

GOOD GOVERNANCE

FOR OPENNESS AND
ACCOUNTABILITY IN POLITICS
AND GOVERNANCE

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Analysis of the Openness of the Judicial Bodies in Kosovo

Proposals for the improvement of the current state

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Introduction

In cooperation with partners from the regional network CSO "ActionSEE", Open Data Kosovo prepared a paper, where we analyze a level of transparency, openness and accountability of the judiciary system in Kosovo 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 Kosovo

The justice system in Kosovo has been systematically criticized for inefficiency, political partiality, and insufficient capacities at all levels, to name just a few causes for concern raised by local and international observers. According to the observers, progress has been achieved since the Law on the Disciplinary Liability of Judges and Prosecutors and the Law on Mediation were adopted. In addition to the advancement of openness of the judicial bodies is the introduction of the electronic case management system and publishing of the verdicts online by the courts. In this regard, the paper will analyze the openness of the Kosovo Judicial Council, Courts, Kosovo Prosecutorial Council, Public Prosecution and the Office of State Prosecution regarding their levels of accessibility, awareness, integrity and transparency.

Kosovo Judicial Council and Courts

The Kosovo Judicial Council alone scored 50% and was ranked third after Montenegro (79%) and Bosnia and Herzegovina (63%) of fulfillment of the set indicators. This is an advancement on ranking for the level of openness, whereas on the last measurement Kosovo Judicial Council was ranked second last in the region. All the countries in the region have had progress in increasing their level of openness of Judicial Councils, except Serbia, whereas from last year measurement has decreased its level on 10% of set indicators.

On the other hand the Courts scored 47% an increase of 4% of set indicators from last year's measurement but were still ranked third. Ahead remains Montenegro with 56% and Albania with 49% of the set indicators. Kosovo leaves behind Macedonia with 43% of scored indicators, Serbia with 26% and lastly ranked is Bosnia and Herzegovina with 25% of scored indicators.

With the new websites which have been presented among the courts in Kosovo, they have managed to increase their online presence and share information with the public. In order to be able to devise appropriate interventions aimed at increasing the accessibility, awareness, integrity and transparency. The institutions involved in the assessment are the Basic Court of Ferizaj, Basic Court of Gjilan, Basic Court of Mitrovica, Basic Court of Peja, Court of Appeals and the Supreme Court of Kosovo.

Accessibility

When it comes to Accessibility, the Judicial Council has scored 17% of indicators and the Courts scored 44%, thus Judicial Council is ranked last in the region, whereas courts are ranked third in the region. The Basic Court of Gjilan with a 59% score followed by the Supreme Court with a 55% score are the best examples regarding accessibility. On the contrary, the least accessible are the Basic Court of Mitrovica with a 25% score and the Judicial Council, which scored 17%.

Progress has been made regarding the establishment of a public affairs office and the publishing of the contacts of the person responsible for access to information of public importance on the website. However, based on the response received, all the public official responsible for communication highlighted that only one person responsible for communication is not enough, as it is responsible for all tasks including but not limited to conducting press releases, managing websites and facebook pages, publication of verdicts, maintaining official court email etc.

Furthermore, there is an electronic database of the court verdicts and a direct online communication channel available at the website through which citizens can raise concerns, complaints and make appeals. Courtrooms are also easily accessible for all citizens including people with reduced mobility. Yet, most judicial proceedings are not conducted in public, and neither are judicial decisions published along with rationales. In addition, the records from the hearings are not published by the courts, with only the exception of the supreme court. Although the public is rightfully always banned from observing cases against juveniles, the anonymised verdicts against them are not published yet on the website. Nor is any information for which free access is approved in accordance with the FOI requests.

A plan is being developed to give citizens access to their case through the website in order to see at which stage their case is. However such access is yet to be granted. We would recommend the council and the courts to provide information on their websites such

as telephone hotlines, publications etc, in order to be more accessible by citizens. A good practice developed by the Basic Courts of Kosovo is their presence on Facebook, which they use to interact more with the public. Furthermore, if all institutions conducted training for the civil servants on the concept of open data as well as instructions for using and publishing that data would help raise the score significantly.

Awareness

On the principle of Awareness, the Kosovo Judicial Council has scored 82% of indicators and the Courts scored 48%. Montenegro and Albania leads with a score of 60% of awareness component of Court Councils, while for the Courts Kosovo manages to rank itself third on the regional ranking. Kosovar best-practice examples on Awareness include the Basic Court of Gjilan, which scored 81%, the Court of Appeals, which scored 71% whereas on the other hand, the Court of Ferizaj scored only 0%, since it did not answer the questionnaire sent to them for giving information for awareness. Nevertheless, there has been significant progress considering last years placement. Mostly due to the fact that all courts and the council have cases assigned to judges through an impartial system in order to protect against “judge shopping”.

In addition the Basic Court of Gjilan, the Basic Court of Peja, the Supreme Court as well as the Court of Appeals all submitted their reports on time to the competent authority. The Court of appeals and the Judiciary Council also included information about disciplinary measures as well as complaints towards judges on their annual report. Yet, this is not practiced by the rest of the institutions and therefore influenced the score negatively. The Council additionally reported the problems in the work report. This is achieved thanks to the law on courts, which specifies the content and form of work reports submitted to Court Council. Specifically, the court administrator, who works in cooperation with the President of the Court and in coordination with the Council Secretariat, shall oversee the drafting of the court reports and ensure that these are accurate and timely prepared. Courts may improve by publishing statistics on volumes of cases received, clearance rates and duration of the pending cases both by courts as well as by judges. Furthermore, the inclusion of safeguards against delays such as performance standards or normal

times specified for various stages of judicial proceedings would be a step towards better organisation of work. This practice is implemented momentarily only by the judicial council.

Integrity

On Integrity, the Kosovo Judicial Council scored 69% and Courts scored only 15%, thus placing themselves second to last and leaving behind only Serbia, which scored 15%. Considered separately the Kosovo Judicial Council scored 69% and the Basic Court of Mitrovica scored 50%, thus making them the highest scoring institutions in Kosovo within this category. On the contrary, the Basic Court of Ferizaj, Basic Court of Peja and the Supreme Court all scored 0% due to not responding to the questionnaire neither offering information online about the ethics. This year's score reflects a drop from last year's measurements and is mainly due to the fact that none of the institution has an integrity plan or any other internal anti corruption policy in place, which would entail measures for prevention and elimination of various forms of corruption and unethical behaviour within the institution. Nor did they conduct trainings for its officers on topics such as conflict of interest or preventing corruption or whistleblowing.

Although there is a Code of Ethics for judges, it is currently under revision from the Judicial Council and is not published on the court websites, with the exception of the Basic Court of Mitrovica and the Court of Appeals. Furthermore, only the Basic Court of Mitrovica answered positively regarding the Code of Ethics for court personnel, which is crucial for the functioning of an independent judiciary.

The Kosovo Judicial Council is, in accordance with the Constitution, a fully independent institution in the performance of its functions. The Council also has its own budget, which it shall draft in accordance with the Law on Public Financial Management and Accountability. Moreover, the Council is responsible for recruiting and proposing candidates for appointment and reappointment to judicial office, as well as for the transfer and disciplinary proceedings of judges. The Judicial Council also has administrative control over the Supreme Court since it supervises the operation of the courts of the Republic of Kosovo and establishes policies and strategies for efficient and effective functioning of the courts.

Yet, there is a mechanism in place for monitoring the Codes implementation. In case of complaints the Disciplinary Committee is responsible for receiving them and their administration. However, the Kosovo Judicial Council does not conduct surveys about citizen trust in the judicial system, thus it does not have an overview to gain citizens trust of the system. For better results regarding the principle of Integrity, we recommend institutions to conduct ethics training for judges and court personnel, which is currently not mandatory.

Transparency

On the principle of Transparency, which prescribes that organizational information, budget and procedures of public procurements are publicly available and published, the Kosovo Judicial Council has scored 45% placing Kosovo fourth in the region. While Courts scored 61%, placed first place in the region in Transparency domain. This score on the regional ranking, has demonstrated the country's significant progress from last years second-to-last position. Considered separately, the most transparent is the Basic Court of Ferizaj with a 74% score. Still, most of the institutions scored above 50%, with the exception of the Judicial Council (45%) and the Basic Court of Mitrovica (49%).

Similar to the previous year, Kosovo continues to struggle with the publication of organisational structure for the court personnel mostly, programs and plans of individual basic courts. Furthermore to name just some of the missing information there are no contact information on judges or salaries to be available on the website. Moreover, KJC still has not adopted any policy in place that will deals with its openness and transparency, which would directly increase the citizens trust in the judicial system.

Regarding the subdomain of public procurement there is great lack of transparency from every institution. The annual budget for the judicial system in the Republic of Kosovo is drafted by the Council. The courts' budget includes only the annual budget allocated for building maintenance, operation and costs as well as that allocated for the salaries. Yet, it does not include the budget allocated for legal aid, computerization, investments in new buildings or conducting training and education of judges.

Moreover, none of the decisions, contracts or annexes on public procurement procedures are publicly available on the website. When it comes to the Council's online showcase/presence they are consistent at updating the official website. The search engine as well as the homepage phrase search work very well. The website also contains a description of Court Council's competence, the CV of the Chief of Institution and the decisions of the court council. Yet, with the exception of the annual work reports, no annual work plans, programmes or current judiciary strategies are to be found on the website. In order to improve, we recommend the KJC to implement a policy that would tackle directly the problems regarding openness and transparency.

Prosecution

Prosecution is a central jigsaw in the puzzle of rule of law institutions that ensure impartial, equal and correct application of law, a check on lawlessness, criminality and abuses of power. The state of prosecutorial institutions therefore impacts profoundly the state of rule of law in a country. This section examines the accessibility, awareness, integrity and transparency of the Prosecutorial Institutions. Part of the evaluation (conducted through the questionnaire and desk research) where the Kosovo Prosecutorial Council, the Public Prosecution, which includes the Appellate Prosecution, the Basic Prosecution of Gjilan, the Basic Prosecution of Prishtina, the Basic Prosecution of Prizren, the Special Prosecution of the Republic Kosova and the Supreme State Prosecution Office respectively the Office of the Chief State Prosecutor. On these principles Kosovo's Institutions scored 48% and as such arriving third within the regional ranking, behind Bosnia and Herzegovina (49%) and Montenegro (57%).

Prosecutorial Council of Kosovo

Kosovo's Prosecutorial Council ranks at the regional average, remaining relatively unchanged from the previous year's performance. It scored 43% on the measured indicators compared to last years measurement whereas it scored 48%, but still thus itself third in regional ranking.

The Kosovo Prosecutorial Council is followed by the council of Serbia, which scored 42% and Macedonia, which scored 31%. Yet, it falls behind Montenegro, which leads with 66% and Bosnia and Herzegovina with a score of 59%. Albania failed to be part of the measurement due to non functioning of the Prosecution Council. Compared to last year measurement, all the states of the region have had a decrease achievement of the set indicators thus alarming the level of openness of prosecution councils in the region.

Accessibility

On the principle of Accessibility the Prosecutorial Council of Kosovo scored only 11% in a tie with Macedonia, with both countries ranking last in the region. The Council published all their decisions on the website, where they are also categorised by the year. However, there is no contact available on the website of the appointee who is responsible for access to information of public importance. The information for which free access is approved in accordance with the FOI is not published. Nor is there a direct online communication channel available at the website through which citizens can raise concerns, complaints or make appeals.

The PC owes its low score to the failure to make available the above mentioned reasons, moreover the failure to establish a public complaint mechanism regarding the work of the prosecution, and lack of guidelines that regulate media reporting and that enable prosecution employees to assess information and undertake their obligations under the RTI law. Therefore it is recommended that the Prosecutorial Council to begin with the organisation of yearly trainings for its civil servants on the concept of open data, instructions for using and publishing that data as well as on the field of access to public information.

In addition the implementation of guidelines or strategies regarding cooperation with media and their reporting on the work of Prosecutorial Council would help towards fulfilling the indicators and make the council more accessible for the citizens. However, is it recognized the adoption of the Strategy for Communication 2018-2020.

Awareness

Regarding Awareness the Prosecutorial Council of Kosovo scored 46%, placing second to last and leaving behind only Serbia which scored 17%. On the other hand Bosnia and Herzegovina leads on the regional ranking with an ideal score of 100%. Although there is no change in ranking the Kosovo Prosecutorial Council experienced a drop of 4% on the score in comparison to last years measurements. Similar to last year's results/predicaments there continues to be a lack of regulations that specify the content and form of work reports submitted to Prosecutorial Council. In addition, the Prosecution Office did not report the problems that occur in the work report. However, there is an obligation for the Prosecution Council to submit a report on its work. The obligations and deadlines for the reporting are defined by law, which foresees that the annual report includes disciplinary measures and the complaints made towards the prosecutors. However the annual report for 2018, is still not published or other previous years, just the one of 2017.

Integrity

Kosovo scored 58% on the principle of integrity, placing itself third on the regional ranking after Montenegro (91%) and Bosnia and Herzegovina (71%). As granted by the Constitution, the Kosovo Prosecutorial Council is a fully independent institution in the performance of its functions in accordance with law. The Prosecutorial Council is responsible for recruiting, proposing, promoting, transferring, reappointing and disciplining prosecutors, in case of complaints, in a manner provided by law. According to the law on Kosovo Prosecutorial Council, the Council shall manage the annual budget for itself and prosecution offices independently, and is responsible for overseeing expenditures, allocation of funds, maintaining accurate and current accounts and financial audits.

Furthermore, there is a Code of Ethics for prosecutors and the staff which is available on the website of the Council. According to this Code ethics training for prosecutors is mandatory since a prosecutor shall maintain and improve the highest standards of professionalism and legal expertise, and, for that purpose, engage in continuing legal education and training whenever available

Yet, this Code fails to fully regulate issues on conflict of interest, use of state property, gifts and favours. The Prosecutorial Council also fails to conduct trainings or other educational activities for its officers on topics such as conflict of interest, preventing corruption or whistleblowing. Practices such as surveying citizens regarding trust in the prosecutor's office would help boost the score on this principle. In order to make more progress in this field we also recommend the implementation of an integrity plan or any other internal anti corruption policy, which would entail measures for prevention and elimination of various forms of corruption and unethical behaviour within the institution.

Transparency

On transparency the Prosecutorial Council of Kosovo fulfilled 49% of the given indicators. Since Montenegro also scored the same percentage, both countries were placed second to last, leaving behind only Macedonia (30%). The leader is Serbia, which scored 64%. This makes the Serbian Council the most transparent within the region, followed by the Council of Bosnia and Herzegovina, which scored 52%. Regarding transparency of organisational information the Prosecutorial Council of Kosovo scored 87% failing only on publishing information on salaries of Members of Prosecutorial Council, but is giving information on personnel such as, names, positions and contacts of prosecutorial council staff.

Nevertheless, the Prosecutorial Council is consistent on updating the official website. The website also contains the organogram, a description of Court Council's competence, the CV of the Chief of Institution and the decisions of the court council. Annual work programs, plans and reports are published on the website as well as current strategies. Information on Members of Prosecutorial Council, such as names and contacts as well as information regarding the selection process of prosecutors and the selecting criteria is also available. Of high relevance is the fact that this Council has implemented a regulation that deals with its openness and transparency. Still, when it comes to other areas/subdomains, there is a notable lack of efforts to maintain transparency. On the subdomain of public procurement, the Prosecutorial Council scored 0% since none of the plans, calls, decisions, contracts or annexes on public procurement procedures are publicly available on the website.

A similar unsatisfying result is given on the subdomain of budget transparency. The Prosecutorial Council fails again to publish budget plans or budget spending reports on the website. The prosecution budget includes neither the annual budget allocated for technical infrastructure such as, IT equipment and its maintenance, nor building maintenance, operation and costs. Furthermore, the budget fails to include the annual budget allocated for the training and education of prosecutors.

Public Prosecution

It is by the fact that public prosecution faces serious challenges on their work across the entire Western Balkan region. When it comes to openness of public prosecution Kosovo arrives second on the regional ranking. With a score of 50% it is surpassed only by Montenegro (54%). Included on the assessment where the Appellate Prosecution, Basic Prosecution of Gjilan, Basic Prosecution of Prishtina, Basic Prosecution of Prizren and the Special Prosecution of the Republic Kosova.

Accessibility

Accessibility is related to ensuring and respecting procedures for free access to information, improving the availability of information through a mechanism of a public debate, and strengthening interaction with citizens. On this principle Kosovo's Public Prosecution scored 39% and was ranked third of the Western Balkan countries, ranked behind Montenegro and Bosnia and Herzegovina. In Kosovo, the Basic Prosecution of Gjilan was assessed the most accessible, with a 64% score. It is followed by the Special Prosecution, which scored 52%. On the contrary, the least accessible institution is the Basic Prosecution of Prishtina with a 14%, which failed to respond to the questionnaire with information requested from FOI law.

All institutions have the contact of the person responsible for access to information of public importance available on the website. With the exception of the Special Prosecution none of the institutions organised training of their staff in the field of access to public information or on the concept of open data and instructions for using and publishing that data. Nor are there guidelines in place for cooperation with media regarding their reporting on the work of your prosecution. An exception here makes the Appellate Prosecution and the Basic Prosecution of Prishtina.

Awareness

On the principle of Awareness, the Public Prosecution scored 71%, thus placing second after the leader Montenegro (72%). Considering the institutions separately the Appellate Prosecution, Basic Prosecution of Prizren and the Basic Prosecution of Gjilan all scored the optimal score of 100%. The Special Prosecution of the Republic Kosova 55% and the Basic Prosecution of Prishtina score 0% on all indicators, since it did not respond to the questionnaire. This satisfying score is reached due to the implementation of a mechanism for the allocation of cases. Additionally, the Prosecution Office sent a report on its work for the past year to the competent authority within a legal deadline with the exception of the Special Prosecution.

The work report includes indicators of performance of the activity of prosecution office such as the number of resolved cases, number of gained verdicts. The annual report, with the exception of the Special Prosecution, also includes information about complaints towards prosecutors and disciplinary measures.

Integrity

The overall score regarding the principle of integrity is 42%. Therefore the Public Prosecution comes third on the ranking within the region of western balkan. On the Institutions within this structure the Appellate Prosecution scored the highest, namely 62% whereas the Basic Prosecution of Gjilan, Prishtina, Prizren and Special Prosecution of the Republic Kosova all scored 37%. There is a Code of Ethics for prosecutors in place, which is also published on the website of the state prosecutor.

Yet, with the exception of the Appellate Court there is no integrity plan or any other internal anti corruption policy published, which entails measures for prevention and elimination of various forms of corruption and unethical behaviour within the institution. Furthermore, none of the institutions within the public prosecution conducted trainings for its officers on topics such as conflict of interest, preventing corruption and whistleblowing.

Transparency

The principle of transparency prescribes that organizational information, budget and procedure of public procurements are publicly available and published. Here the Public Prosecution of Kosovo is the leader in the region with a score of 53%. Observed separately, all the institutions within the structure fulfilled around 50% of the indicators. The Basic Prosecution of Gjilan reached the highest score of 56% making it the most transparent institution. On the other hand, the Special Prosecution of the Republic Kosovo has the lowest performance, with a 49% score.

The available website fulfils the legal requirement for publishing all necessary data on the website. It contains description of the public prosecution's competence and the CV of the Chief of Institution, as well as the annual work programs, plans and current strategies. In addition, its also publishes annual and last quarterly/semi-annually work reports. Kosovo is characterized by consistency in regularly updating of the official website. However, one setback concerns the search engine, which does not work optimally. Additionally, there is no access to online notice board on the front page. Furthermore, only the Basic Prosecution of Gjilan and the Basic Prosecution of Prizren published information on prosecutors as well as information on personnel such as names, positions and contacts of public prosecution staff on their website. Lastly, the institutions within the Public Prosecution does not have any document in place that deals with their openness and transparency. But now with the newly updated websites, these information are missing after the measurement.

Office of Chief State Prosecutor

The Office of Chief State Prosecutor in Kosovo scored overall 44% on the set indicators and thus places itself third. This is an increased level of openness from the Office of Chief State Prosecutor, as in the last measurement was ranked last in the region scoring only 30% of set indicators. The leaders on openness of the Office of Chief State Prosecutor are Albania, which scored 68% and Montenegro, which scored 63%. On this ranking Kosovo is leaving behind Serbia (30%) and Macedonia (22%). As, Office of Chief State Prosecutor, is the highest instance of State Prosecutor, and having the authority over the entire territory of the Republic of Kosovo, should set an example to other public prosecution offices.

Accessibility

Tied with Serbia, and ranking to second to last (surpassing only Macedonia), Kosovo scores 36% in accessibility. The highest score is attained by Montenegro (80%), followed by Albania (73%). Kosovo achieves this score via several practices: there is no name of the person responsible for access to information of public importance available on the website, however a general contact it is provided. A good practice provided by the Office of Chief State Prosecutor is that there are guidelines for cooperation with media and communication with the public regarding their reporting on the work of the prosecution. Yet, the institution failed to conduct training in the field of access to public information or on the concept of open data and instructions for using and publishing that data, in order to be able to improve the information and communication to the citizens. As such citizens are not aware of the kind of information should be available to them because the institutions, failed to publish lists of registers of the documents it possesses. In addition, there are no guidelines for raising concerns, complaints and making appeals available on the website. In addition to the guideline, the OCSP lacks of a direct online communication channel available at the website through which citizens can raise concerns, complaints and make appeals.

One setback concerns the search engine, which does not work optimally. Additionally, there is no access to online notice board on the front page.

Awareness

Kosovo ranks among the highest countries in the aspect of awareness, scoring 76% in a tie with Montenegro and Albania. Meanwhile Macedonia and Serbia failed to fulfill any of the requirements and therefore scored 0% of the set indicators. The Office of Chief State Prosecutor sent a report on its work for the past year to the competent authority within a legal deadline. These reports included indicators of performance of the activity of prosecution office, such as the number of resolved cases, number of gained verdicts and so on. Yet, the annual report did not include information about disciplinary measures, complaints towards prosecutors. Every year the Council of prosecution conducts oversight of the work of the Basic State Prosecution Office.

Integrity

Both Albania and Montenegro fulfilled all 100% of the requirements, followed by Kosovo which scored 50% of set indicators thus ranked third in the region. Kosovo made significant progress taking into consideration last year's score of 10% and ranked last in the region. There is a Code of Ethics for prosecutors and the staff, which is published on the website and there is a mechanism for the allocation of cases implemented. However, no Integrity plan or any other internal anti corruption policy (which entails measures for prevention and elimination of various forms of corruption and unethical behaviour within the institution) is published. Furthermore, there does not exist trainings/workshops or other educational activities for its officers on topics such as conflict of interest/preventing corruption/whistleblowing in case of irregularities. These limitations inhibit Kosovo's progress towards achieving higher integrity.

Transparency

Kosovo is ranked third regionally with a score of 40% when it comes to the transparency part. It is surpassed by Albania (58%) and Montenegro (44%), but places ahead of Serbia (39%) and Macedonia (34%). Kosovo's Office of Chief State Prosecutor's website fulfils the legal requirement for publishing all necessary data and information on the website.

It contains description of supreme state prosecution's competence and the CV of the Chief of Institution, as well as the annual work programs, plans and current strategies. In addition, its also publishes annual and last quarterly/semi-annually work reports. Kosovo is characterized by consistency in regularly updating of the official website.

Furthermore, information on prosecutors as well as information on personnel such as names, positions and contacts of public prosecution staff is available on the website, but not comprehensive nor exhaustive. Lastly, information on salaries of prosecutors is not published on the website.

One major limitation for Kosovo's Office of Chief State Prosecutor is that it has no policy in place that deals with its openness and transparency. Regarding the subdomain of public procurement and budget transparency, the State Prosecution scored 0%. This is due to the fact that no plans, calls, decisions, contracts nor annexes on public procurement procedures are publicly available on the website, and neither are the budgets plans or reports on budget spending.

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 determine 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 accessibility through the mechanism of public hearings and 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 websites of institutions, the quality of the legal framework for individual issues, other sources of public information and questionnaires forwarded to institutions.

Through 30-65 indicators per institution, we measured and analysed 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 February 2019. A set of recommendations and guidelines directed towards institutions was developed on the basis of research results.

Rreth ActionSEE

ACTION SEE (Accountability, Technology and Institutional Openness Network in the South East Europe region) is a network of civil society organizations that jointly work on promoting and ensuring government accountability and transparency in the region of South-East Europe, raising the potential for civic activism and civic participation, promoting and protecting human rights and freedoms on the internet and building capacities and interest within civil society organizations and individuals in the region in using technology in democracy promotion work.

The core members of the network are Metamorphosis from Macedonia, Center for Democratic Transition from Montenegro, Center for Research, Transparency and Accountability from Serbia and CA Why Not from Bosnia. ActionSEE works with partners from Albania MJAFT and from Kosovo Open Data Kosovo, well as partners from other countries in Europe and the world.

Open Data Kosovo is a nonprofit organization that believes in using civic-tech and digital humanitarianism to open government. This initiative promotes the idea that governance data should be made freely available for everyone to use and republished as they wish, without restrictions from copyright, patents or other mechanisms of control.

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