

Parliament openness in the region and Serbia

Proposals for the improvement of a current state



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Index of openness of institutions is a part of the project funded by NED - National Endowment for Democracy



This project is co-funded by the European Union. The Index of openness of institutions is funded by the European Union.

Views and opinions stated in the document represent authors' opinions and they do not necessarily reflect donors' views

Introductory

In cooperation with partners from a regional network NGO "ActionSEE" Center for Research, Transparency and Accountability (CRTA) prepared the the index of openness of institutions in which we analyze a level of transparency, openness and accountability of parliaments in the Western Balkans region.

The index represents a result of research, based on scientific methodology, developed by ActionSEE members during the previous months. The aim of our activities is to determine a real condition in this area and to make recommendations for its improvement through an objective measurement of regional parliaments' openness. Also, the aim is to improve respecting principles of good governance, in which the openness occupies a significant place.

All regional parliaments must ensure a full openness of their work and thereby demonstrate a political accountability and respect of basic principles of democracy. Through ensuring all relevant information parliaments must provide unimpeded insight into their work. Only open and accountable institutions may work on creating democratic society all regional countries strive to.

Declaration on Parliamentary Openness defines parliaments' obligations in the best way suggesting that a parliament must ensure that citizens have a legal aid while exercising their right on access to parliamentary information. An obligation of a parliament to encourage openness and share examples of good practice with other parliaments in order to increase openness and transparency is emphasized. Further, cooperation with non-governmental organizations which deal with monitoring of parliamentary work and citizens is affirmed in order to ensure that parliamentary information are complete, accurate and oportune.

Taking into account all stated items, it is necessary that all regional parliaments, which have not done it, sign the Declaration on Parliamentary Openness as well as to work on its implementation.

Our index is addressed to decision-makers in the parliaments of the regional countries. It may also be useful for representatives of international organizations and colleagues from NGO sector dealing with these issues.

We are at your disposal for all suggestions, benevolent critics and discussions regarding the policy.

1. Openness of legislative power in the region

Regional parliaments meet on average 63% of openness criteria. This result is not satisfactory, taking into account that we talk about bodies which are directly elected and accountable to citizens.

Parliaments have a key role in democratic system and thus they should be bearers of a process which will enable citizens a more effective monitoring of institutions' work. However, as it is the case with executive power, the highest legislative regional bodies do not have a strategic approach to openness policy. Requirements of openness may be indirectly taken from the Constitution, Rules of Procedure and other acts and as such they are a subject of different interpretations and mood of a parliamentary majority.

Information regarding parliamentary work belong to public¹ and thus it is necessary to constantly improve an existing level of culture of parliamentary openness. Openness policy should be developed by following information and communications trends, using new technologies and publishing data in machine-readable format. This is supported by data indicating that regional parliaments are not dedicated to publishing data in open format and thereby use value of published data is minimized.

Insufficient transparency of organizational and financial information

It is defined by monitoring that parliaments are mostly not transparent when it comes to publishing data from sessions of parliamentary committees. Majority of parliaments does not publish voting records and list of MPs who attended boards' sessions. In addition, in most countries committee sessions are not transmitted.

Majority of regional parliaments has to affirm a principle of financial public and openness. Parliaments mostly do not meet even a minimum of international standards of budgetary transparency² which impose availability of financial documents to the public. On official websites of most parliaments citizens cannot find budgets for the all previous three years. Additionally, a huge majority does not publish final accounts. Parliaments should conduct control of public expenditure during the year and to publish midyear reports on budget spending.

Insufficiently developed communication with citizens and possibility of their participation

Regional parliaments should strengthen their representative function through establishing communication with citizens and including them in the process of policy creation. The parliaments should pay a special attention to development of electronic services.

Parliaments should be available for citizens and expect a possibility of establishing communication by telephone or e-mail, it is necessary to initiate innovative channels for two-way communication with citizens. Also, it is necessary to more actively use existing mechanisms for communication, especially social networks. Monitoring defined that the majority of parliaments does not have accounts on social networks or they do not use it actively. Additionally, monitoring recognized the need for strengthening capacities for a complete and consistent implementation of Law on Free Access to Information³.

(Un) ethical behavior of MPs

A consistent implementation of Codes of Conduct is of a fundamental significance for increasing a level of political accountability and citizens' trust in the parliamentary work. However, while some regional countries did not adopt Code of Conduct, other countries neither actively promote it, nor effectively

¹ Declaration on Parliamentary Openness. Available at: <https://goo.gl/NhTYvH>. Access: 27.03.2017.

² Best Practices for Budget Transparency, OECD, 2002. Available at: <https://goo.gl/qamVDW>; Guidelines for Parliamentary Websites, Inter-Parliamentary Union, 2009. Available at: <https://goo.gl/gD2Wg0>. Access: 27.03.2017.

³ Monitoring has shown that the majority of parliaments does not have an established training system or guidebook for civil servants and in that way civil servants would access data which are published according to the Law on Free Access to Information and assume other obligations envisaged by the Law.

implement it. Regional parliaments should establish clear mechanisms for monitoring of implementation of Code of Conduct of MPs and sanctions for each violation of prescribed ethical standards. Regional practice shows that violation of Codes of Conduct mostly does not result in sanctioning inappropriate behavior and it is usually a subject of political agreements. Also, it is necessary to establish rules which will oblige member of parliaments to publish documents of procedures regarding violation of Code's provisions. In that way a transparency of these procedures would be increased.

Insufficient effects of parliamentary control of other branches of power

Monitoring determined that a number of mechanisms for the parliamentary control of executive power is established in regional countries. However, their implementation is most commonly of formal nature. In practice visible effects of control are missing and thus examples which gave specific outcomes, related to defining accountability and sanctions for representatives of executive or other branches of power, are very rare.

Parliaments must not be places for uncritical adoption of proposals of executive power, but places for its review and effective control. Legislative obligations of members of parliament must not be a reason for neglecting control function, which represents one of the most significant guarantees of democracy.

All regional parliaments are obliged to take efforts for a full implementation of existing mechanisms and thereby contribute to increasing level of political accountability.

2. Openness of the legislative power in the Republic of Serbia

The legislative power of the Republic of Serbia fulfils 59% indicators of openness according to ActionSEE regional research regarding the institutional openness, which indicates the possibility to considerably improve the openness of this branch of power towards the citizens.

The analysis of openness of legislative authorities in Serbia has been defined by specificities of its constitutional order. The Serbian state government is restricted by the citizens' right to provincial autonomy so that this analysis comprises the National Parliament of the Republic of Serbia (hereinafter referred to as: the National Parliament), as the highest representative authority and the holder of a constitutional and legislative power, and the Parliament of the Autonomous Province of Vojvodina (hereinafter referred to as: the Parliament of AP Vojvodina) as an authority that performs normative and other functions in the Autonomous Province of Vojvodina.⁴ The total value of openness indicators of legislative authorities' represents a mean value of openness indicators of legislative authorities' of the National Parliament and the Parliament of AP Vojvodina. Methodological limitations of this analysis are reflected in the fact that in certain cases the mean value of indicators does not provide an objective and comparable picture of legislative authorities' openness and that is why these situations shall be explained in detail.

A legal framework that ensures the openness of legislative power towards citizens has been established and harmonised with international standards that the ActionSEE analysis of institutions' openness is based on. The publicity of the work of the National Parliament is ensured by television broadcasting and by the

⁴ This analysis does not comprise the Autonomous Province Kosovo and Metohija

Internet. However, legislative authorities do not use in a sufficient extent the possibility to communicate via social networks. What poses a particular problem is the cooperation between the National Parliament and independent state authorities. In the last two years, independent authorities' reports have not at all been considered at the National Parliament sessions. Such conduct influences the efficiency of the work of the National Parliament, the reputation of the Parliament and of independent authorities in public, but also the improvement of democracy and the rule of law. The public procurements transparency was highly ranked, but legislative authorities do not publish agreements nor annexes to the agreements with bidders, which is a problem diagnosed at other branches of power, too.

Transparency of the legislative power

The indicators of transparency of the legislative power refer to publishing and accessibility of organisational information, methods of creation, adoption and use of the budget, as well as to methods of public procurement conducting.

When it comes to accessibility and publishing of the *organisational* information, the Parliament sessions are available to public thanks to broadcasting and the Internet. The sessions of the committees and of other work bodies of the National Parliament are broadcasted live on the Internet, with a possibility to view the course of the session later in the broadcast archives. This option has been adapted to users of different devices and operational systems (iPad, iPhone, Android). Moreover, on the National Parliament website, there are draft laws and other deeds submitted to the National Parliament, adopted laws, results of vote of plenary sessions, as well as stenographic notes of the sessions. The same principle has been noted at the Parliament of AP Vojvodina, although live streaming of plenary and committees' sessions on the internet is not possible, and stenographic notes remain unavailable.

However, on the National Parliament website, it is not possible to find texts of the submitted amendments, unlike the site of the Parliament of Vojvodina where there are amendments of the deeds analysed in the last six months. In both cases, materials that are discussed and prepared at the committee sessions remain unavailable, as well as the information about the deputies' activities and the results of vote at the committees. The National Parliament does not publish the information about the deputies' presence at plenary sessions, but does publish the work at the committees, whereas the Parliament of Vojvodina does the opposite. The information about the work of committees of the Parliament of Vojvodina have been available since August 2016. Although, both parliaments publish the agenda of the upcoming sessions, as well as annual reports on the work, this is not the case when it comes to the annual work plan of the legislative authorities.

The Information Booklets on the work of the National Parliament and of the Parliament of Vojvodina contain organograms and information about the structure and competences of the working bodies, as well as the data about pay grades. Curricula vitae and contacts of national and provincial deputies are available and regularly updated, as well as the information about the party affiliation, memberships in committees, groups and networks. Although the citizens know who their representatives are and have the opportunity to contact them, this only applies to employees in managerial positions (general secretary, heads of departments, chiefs, leaders of groups), and not to other employees of the National Parliament and of the Parliament of AP Vojvodina.

Transparency of the process of creation, approval and publication of the *budget* is at a very low level. The existing legal framework guarantees the competence of the legislative power in the consideration and adoption of national and provincial budgets, as well as the obligation to publish the budget and the annual

financial statement on the website. Nonetheless, the lack of transparency of the budget process and the almost total exclusion of the public, affect the level of transparency of the legislative authority in this process.

The Information Booklets on the work of the National Parliament and of the Parliament of AP Vojvodina contain the information about their annual budget, as well as the information about the annual financial statements that are not actually discussed. The Information Booklet on the work of the Parliament of AP Vojvodina comprises only the budget for the current year, whereas only financial overviews of budgetary executions are published for previous years, which makes it difficult for public to review and compare the planned and implemented activities. It convenes to mention that budgets, annual financial statements and periodic financial reports on budgetary execution of the Parliament of AP Vojvodina are available on the Internet page "Transparency of the budget of the AP Vojvodina" (<http://www.budzet.vojvodina.gov.rs>), but there is no link to the published budgets on the website of the Parliament of AP Vojvodina.

The budgets of Parliaments of the Republic of Serbia and of the AP Vojvodina are not presented to public in an easily comprehensible language that would allow citizens to understand the ways and purposes of the use of public resources (civil budget). They remain unavailable in an open format.

The legal deadline for submission of a draft Law on Budget of the National Parliament is not respected, while the issue regarding the adoption of the Law on Budget in the last minute has not been solved for the last 15 years. In the last three years, the proposal for the Law on Budget has been addressed to the National Parliament with one month delay in 2016 and 2017. In 2014, such delay was nearly two months. This situation leaves very little time, measurable in days, for the preparation of the national deputies and of a high-quality discussion about the budget proposal. Besides, the relation between the submitted and the adopted amendments to the draft Law on Budget for 2016 is another indicator of diminishing role of the legislative power in the budget adoption process. A mere 9 amendments were adopted out of 222 submitted ones.

During the evaluation of transparency in the area of *public procurement* process, it was determined that the National Parliament and the Parliament of AP Vojvodina fulfilled the majority of indicators. The public procurement plan of the National Parliament is explicated in the Information Booklet about the work, whereas the Parliament of AP Vojvodina has not made this plan available to public. Calls for submission of tender documents and decisions on attribution of agreements are published on both authorities' websites. However, agreements and annexes to the agreements on public procurements are not published by these Assemblies.

The Public Procurement Law stipulates the obligation to undertake the public bid with several bidders for all procurements exceeding 0,5% of GDP, whereby precise criteria are defined for specific procurements with one bidder regarding services for which there are no multiple suppliers. Reports on high-value public procurements undertaken by legislative authorities are publicly accessible on the Public Procurement Portal. The Public Procurement Portal has been established so that citizens can use it as a research tool and view all published reports on agreed high-value public procurements.

Accessibility

The accessibility relates to granting and abiding by the procedure of free access to the information of public importance and to reinforcing of interaction between public institutions and citizens. The legislative authorities' accessibility is of a vital importance because citizens realise sovereignty via their representatives.

There is much room for improvement of the legislative authorities' accessibility especially in the field of proactive transparency and the use of information technologies. The communication via internet and social networks ensures a simple and efficient interaction with citizens, but this means of communication remain insufficiently exploited.

Legislative institutions abide by the Law on the Free Access to Information but they do not undertake sufficient effort to improve accessibility in the area of *information accessibility*. Legislative authorities in Serbia must abide by the Law on the Free Access to Information of Public Importance and Commissioner for Information of Public Importance monitors the compliance with legal obligations by the said authorities. Legislative authorities prepare reports on the application of the Law on the Free Access to Information of Public Importance and publish them in the Information Booklet about the work that is regularly updated. Moreover, document registries they behold are also available. Legislative authorities in Serbia fulfil their legal obligations but undertake sufficient effort to improve the accessibility and to familiarise citizens with their work. The Law on the Free Access to Information of Public Importance does not oblige legislative institutions to proactively publish documents that are not object of a special request, so that proactive transparency of the legislative power is not at a high level.

The Law stipulates the obligation of legislative authorities to determine one or several officials to proceed following a request for free access to information of public importance. Legislative authorities partially fulfil this obligation, in relation to openness criteria, as the names of persons responsible for free access to information of public importance are not available to the public.

The National Parliament of the Republic of Serbia adopted a multi-year plan for communication development of the National Parliament for the period 2011-2015, but the period of validity of this document expired. In 2012, the National Parliament adopted the Instructions for publishing the information and contents on the Internet page of the National Parliament that define methods of publishing the information and contents regarding questions of the National Parliament jurisdiction. The contents of the Parliament of AP Vojvodina webpage are defined by the Instructions adopted by the general secretary of the Parliament.

Legislative authorities do not prepare training programs for the employees regarding the rights defined by the Law on the Free Access to Information of Public Importance and they do not organise training courses. However, employees who work at legislative institutions participate in training courses organised by the Commissioner for Information of Public Importance.

Legislative institutions are supposed to be the closest to citizens as they represent holders of national sovereignty. Nonetheless, legislative power in Serbia does not fulfil the majority of openness indicators when it comes to *interaction with citizens*. The National Parliament openness is at a somewhat better level than the Parliament of AP Vojvodina as the National Parliament has an organised centre for visitors. The information about the possibility for an organised visit of the National Parliament are available on this institution website. The Rule Book of the Parliament of AP Vojvodina foresees the possibility of group

visits of its premises. However, there are no information on this institution website as to how citizens can actually visit the Parliament.

Legislative power has not developed mechanisms for gathering data on the public opinion about draft laws that are introduced to the parliament and there is room for improvement of the interaction with citizens in law adoption procedure. In this case too, it was noted that legislative power did abide by the regulations but that it did not use opportunities to improve the legislative process quality by including the public. The participation of the public and of the civil society in the work of some Parliament committees is an example of a good practice but as it is rather rare, it cannot be characterised as a customary and usual manner of communication between legislative power and citizens.

Legislative authorities do not have established mechanisms for electronic petitions, nor developed plans for promotion of mechanisms for electronic petitions via internet and social networks. The Law on Referendum and Civil Initiative does not recognise mechanisms for electronic petitions, which is one of obstacles for the introduction of such practice in the National Parliament. Legislative authorities do not use the possibility to establish the communication with citizens via social networks (Facebook, Twitter). The Parliament of AP Vojvodina has got an active Twitter account but not a Facebook page, whereas the National Parliament has deactivated its Facebook account and it has never had a Twitter account. Legislative power openness rate was in some sense improved by the fact that both institutions can communicate via email available at the official webpage.

Legislative authorities score low when it comes to *consultations with citizens*. The Law on the National Parliament and the Rule Book of the National Parliament provide a possibility that scientists and experts from different fields participate in the works of the Parliament committee, whereas the participation of civil society representatives is not precisely determined. The Law on the National Parliament provides that the Speaker of the National Parliament can call upon other persons to participate. The Rule Book of the Parliament of AP Vojvodina defines that upon a call, experts can assist the work of the committee. Regulations that stipulate the work of legislative authorities do not recognise civil society as a relevant participant in the work of the committee either at a national or a provincial level.

The only exception is the Board of environmental protection of the National Parliament as the Rule Book foresees the possibility of participation of citizens' and civil society representatives at the committee sessions. Representatives of civil society organisations can participate in debates, ask questions to deputies and Government representatives.

When exercising the oversight function, the National Parliament considers citizens' petitions and suggestions.

Integrity

There is room for improvement of legislative institutions' openness in the area of integrity, as well. The integrity indicators refer to mechanisms for corruption prevention, the implementation of the code of ethics and regulation of lobbying.

Although the *Code of Ethics*, defining integrity standards and standards of conduct for deputies, is a document crucial to raise the level of political accountability and public confidence in the work of the institutions, neither National nor Provincial Parliament adopted such Code. The work group for preparation of the Code of conduct for deputies of the National Parliament, created in 2014, defined the

text of the document on the model of the European Parliament Code of Conduct. However, it has not yet been introduced to the Parliament procedure.

In the area of *prevention of conflicts of interest*, legislative authorities fulfil the majority of indicators. What contributes to this result is the fact that data such as the deputies' property cards, income and sources of income can be found at the Anti-Corruption Agency's website in an organised and structured form. Property cards comprise data about income, movable and immovable property, deposits, and savings deposits in banks and other financial institutions, but do not contain data on loans and other debts, paid and unpaid work performed out of the public sector. The Law establishes criminal liability for officials who fail to report assets or provide faulty information, as well as misdemeanour liability of officials in case of declaration of assets outside the legally stipulated deadlines.

Lobbying is not legally regulated in the Republic of Serbia. The Lobbying Act has not yet been passed. The report on anti-corruption strategy implementation shows that there have been no advancements in regard of publicity of information concerning the attempts to influence legislative and executive power.

Efficiency

In the area of efficiency, there is room for significant improvements. The legislative power efficiency has been evaluated through indicators referring to monitoring, reporting and strategic planning.

In the area of *monitoring*, legal framework for undertaking of the surveillance and oversight functions of legislative authorities has been constituted, however obvious problems still persist regarding the implementation and the use of surveillance and oversight mechanisms over the executive government.

Independent state bodies are accountable to the National Parliament and file annual reports on their work. Competent Parliament committees consider independent state bodies' reports and submit their conclusions and recommendations to the National Parliament. Concerning the cooperation with independent bodies, there are substantial problems that influence efficiency and reputation of the National Parliament but also the role of independent bodies in the democratic order. As a matter of fact, the National Parliament has not examined in plenum independent bodies' reports for two years (Ombudsman, Commissioner for Information of Public Importance, Anti-Corruption Agency). Reports filed by the said institutions were considered at Parliament committee meetings.

The Parliament of AP Vojvodina elects and dismisses the Provincial ombudsman and he is held accountable to the Parliament. The ombudsman files regular annual reports stating all data about activities in the previous year. The Parliament of AP Vojvodina examined in 2016 the report submitted by the Provincial ombudsman for the year 2015. The Province Parliament does not adopt nor approve the Annual report by the Provincial ombudsman as it is a document prepared by an independent provincial institution in which it expresses its opinion about the condition of human rights in the Autonomous Province of Vojvodina.

The Parliament committees have the right to consult experts, as the Rule Book on the work of the National Parliament provides that scientists and experts can participate in the work of committees, upon call. The possibility to engage scientific institutions or experts is also provided in the Rule Book on the work of the Parliament of AP Vojvodina.

Public hearings were used 14 times in 2015 as an instrument to realise the oversight function of the National Parliament. There were seven public hearings in 2016. The information on performed public hearings are available on the National Parliament website. Those are basic information such as name and

date with the concomitant documentation (agendas and related documents) for two previous years. The Law on the National Parliament regulates the oversight function of the National Parliament over the work of the Government setting the parliamentary questions by submitting interpellation, a vote of no confidence in the Government or in a Government member and creating an Inquiry Committee.

The Government of the Autonomous Province of Vojvodina is accountable to the Parliament. The president, vice-presidents and members of the Province Government answer deputies' questions. The Parliament of the Autonomous Province of Vojvodina exercises oversight over the work of the Province Government through deputies' questions asked at sessions, information requests and through deputies' questions submitted in written form.

Audits are performed by the State Audit Institution (SAI), a separate and independent body accountable to the National Parliament. Governing bodies of the SAI are elected and dismissed by the National Parliament. The SAI files regular annual reports to the National Parliament.

In order to estimate *strategic planning*, it was measured to what extent the National Parliament and the Parliament of AP Vojvodina evaluated potential effects of the existing and future legal deeds (regulatory impact assessment), as well as whether regulatory assessments of the impact ensured participation, transparency and evaluation quality.

Unique methodological rules for drafting regulations that are to be adopted by the National Parliament establish the obligation of proponents of legislation to submit, together with proposals of regulations and amendment texts, an explanation that should contain a regulatory impact assessment. Should a proponent estimate that the explanation does not have to comprise the regulatory impact assessment, he is held to justify it. Furthermore, the Rule Book of the National Parliament of the Republic of Serbia stipulates that the explanation of the proposals of regulations can comprise the regulatory impact assessment. The Rule Book of the work of the Provincial Parliament does not have provisions defining the issue and obligations regarding the regulatory impact assessment. On the basis of monitoring, it was determined that laws proposed by the Parliament did not undergo a procedure that would indicate the impact that their implementation would have on the lives of citizens.

3. 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 parliamentary 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 parliaments are open for citizens and society based on the following four principles: 1. Transparency, 2. Accessibility 3. Integrity and 4. Effectiveness.

The principle of **transparency** includes the fact that organizational information, budget and public procurement are publicly available and published. **Accessibility** is related to ensuring and respecting procedures for a free access to information and strengthening interaction with citizens as well. **Integrity**

includes mechanisms for the prevention of corruption, conducting codes of conduct and regulation of lobbying. The last principle, **effectiveness**, is related to monitoring and evaluation of policies which are conducted.

Following the international standards, recommendations⁵ and examples of good practice, these principles are further developed through quantitative and qualitative indicators, which are estimated on the basis of information availability on official websites, legal framework's quality for specific questions, other sources of public informing and questionnaires delivered to institutions.

Through more than 100 indicators we have measured and analyzed openness of the regional parliaments and collected more than 1000 pieces of data.

The measurement was conducted in the period from October to December 2016. Based on the research results, this set of recommendations and guidelines, directed towards institutions, was developed.

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.

CRTA is an independent, non-partisan civil society organizations that advocates for accountability and transparency and improves the skills of citizens and the media to actively participate in the decision making process monitoring. In order to empower citizens, other NGOs and the media to hold public officials to account, CRTA use information and communication technology for exchanging data obtained by monitoring the work of public institutions, investigative and "data" journalism, researches and surveys. CRTA, also, develops ICT tools that enable citizens to do their own research and publish information as well as developing publicly available mechanisms for holding politicians and institutions to account. CRTA and its partners use the information, tools and mechanisms to encourage the public reaction to the abuse of public office and to exert pressure on institutions to improve existing procedures with regard to the concept of accountable behavior.

www.crtars.rs

⁵ Standards and recommendations of numerous international organizations (such as Access Info Europe, EU, IPU, OECD, OGP, SIGMA, WORLD BANK, etc.) were analyzed.