

Freedom of Information in the
Western Balkans in 2020:

CLASSIFIED. REJECTED. DELAYED.

Challenging Institutional
Transparency during Global
Pandemics

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Introduction

This report presents findings on governmental transparency and accountability in the Western Balkans (Albania, Bosnia and Herzegovina, Kosovo, Montenegro, North Macedonia and Serbia), and ranks selected institutions from the region from best to worst practices in terms of granting access to freedom of information, focusing on response to journalists' requests.

Faced with the global COVID-19 pandemic, Western Balkan countries did not make freedom of information a priority. On the contrary, many countries restricted access to information, especially during declared states of emergency¹. Besides that, the monitored countries continue to struggle with implementation of Freedom of Information (FOI) laws, and are not succeeding in becoming more transparent and accountable to their citizens. When evaluated and ranked by international media watchdogs, the region still shows signs of regression when it comes to the implementation and practicality of FOI laws.

European Commission reports for 2020² for the Balkan countries criticized the low level of institutional transparency and expressed concerns about legal mechanisms not functioning in general.

In addition, they said access to information about procurement contracts, audits and salaries of officials should be made fully available and that judiciaries need to increase their efficiency in handling administrative dispute cases to support citizens' right to administrative justice. Administrative silence remains a major issue for the region. Public authorities are failing to properly

1 Central and Eastern Europe Freedom of Information Rights 'Postponed' <https://balkaninsight.com/2020/04/06/central-and-eastern-europe-freedom-of-information-rights-postponed/>

2 European Commission Strategy and Reports https://ec.europa.eu/neighbourhood-enlargement/countries/package_en

act on the citizens' information requests, by not answering FOI requests at all. And, enforcement of the decisions taken by freedom of information officers must be ensured.

Furthermore, the European Commission reports for the region for 2020 strongly emphasized that the roles of these officers should be strengthened and they should be given more power to issue sanctions; decisions taken by freedom of information officers must be ensured; in some countries, their decisions are not binding on public officials.

In addition, Freedom House's press freedom scoring on political rights and civil liberties ranks all six countries selected only as 'partially free'. Most of the countries recorded a decline in rankings last year. Based on the Freedom House report for 2020, "Freedom in the World 2020",³ Serbia, Montenegro and Albania actually went backward, scoring less points than before, while Bosnia and Herzegovina remained the same (53), and Kosovo and North Macedonia scored higher, though only a few points higher than the year before (2019).

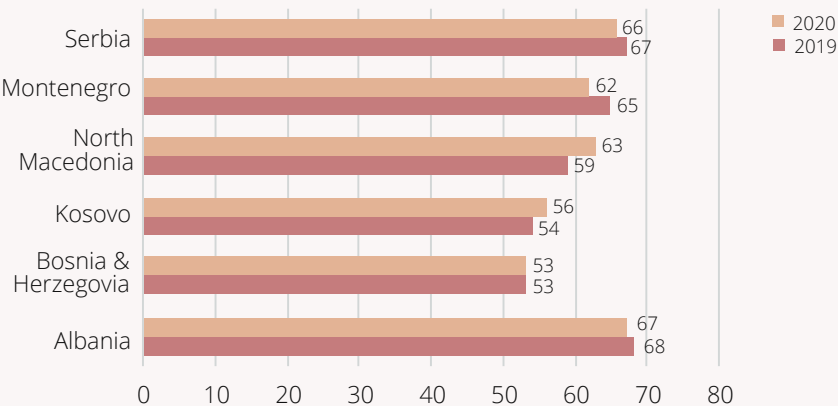


Table 1: Freedom House Scores⁴

3 Freedom in the World 2020 - https://freedomhouse.org/sites/default/files/2020-02/FIW_2020_REPORT_BOOKLET_Final.pdf

4 Freedom House Countries and Territories 2020 <https://freedomhouse.org/countries/freedom-world/scores>

Moreover, Freedom House in its “Nations in Transit 2020”⁵ report classified Serbia and Montenegro for the first time as “hybrid regimes,” accusing them of falling democratic standards. The report noted that, “years of increasing state capture, abuse of power, and strongman tactics employed by the President in Serbia and the President in Montenegro have tipped those countries over the edge – for the first time since 2003, they are no longer categorised as democracies in Nations in Transit”.

The report covered 29 countries in Southeastern Europe, classifying them into five categories: consolidated democracies, semi-consolidated democracies, transitional or hybrid regimes, semi-consolidated authoritarian regimes and consolidated authoritarian regimes.⁶

In the cases of Montenegro and Serbia, it noted that both countries have long had weak institutions and that degradation has been gradual. For Montenegro, the report noted negative developments related to judicial independence, media freedoms and corruption. In Serbia, the report noted “a years-long deterioration under the President, with attacks on the media, lack of effective prosecution for corruption, and diminishing space for local government”. Importantly, the report highlighted several attacks in Serbia during 2019 against journalists, including an editor of BIRN among other investigative media outlets.⁷

The other global freedom and democracy watchdog, Reporters Without Borders⁸, in its “World Press Freedom Index” ranks countries based on their level of freedom, such as journalists’ freedom, media independence, quality of

5 Freedom House, Nations in Transit 2020, Dropping the Democratic Facade https://freedomhouse.org/sites/default/files/2020-04/05062020_FH_NIT2020_vfinal.pdf

6 Freedom House: Serbia, Montenegro, Hungary ‘No Longer Democracies’ <https://balkaninsight.com/2020/05/06/freedom-house-serbia-montenegro-hungary-no-longer-democracies/>

7 Freedom House: Serbia, Montenegro, Hungary, ‘No-Longer Democracies’ <https://balkaninsight.com/2020/05/06/freedom-house-serbia-montenegro-hungary-no-longer-democracies/>

8 Reporters Without Borders <https://rsf.org/en/ranking>

the legal framework, etc. Surprisingly, on this table, Bosnia and Herzegovina scored a positive move upwards during last year. Montenegro, meanwhile, scored worse than the maximum worst score, with 105; the index ranks the countries from 0 to 100, with 0 being the best possible score while 100 is the worst score.

Serbia and Albania were given lower scores for 2020, while North Macedonia and Kosovo improved their scores slightly.

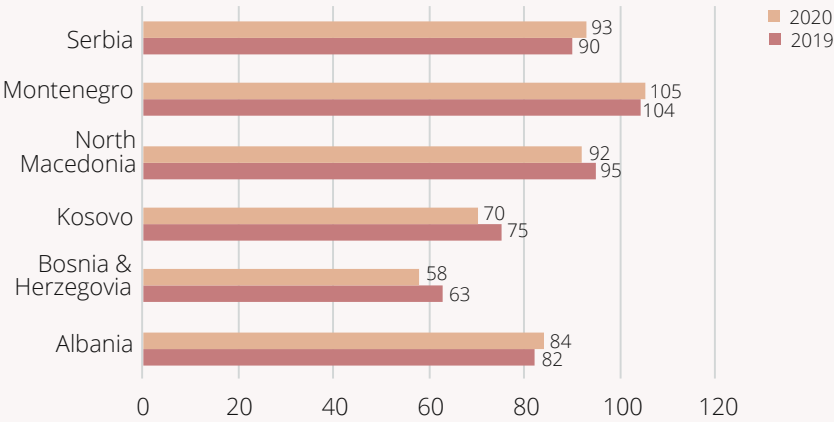


Table 2: World Press Freedom Index⁹

Serbia's lower scores followed a turbulent year marked by police brutality and attacks on journalists during the 2020 rallies in Belgrade against COVID restrictions. In the midst of these protests, journalists were attacked, at first by some protesters, then by police. The Ministry of Interior of Serbia is investigating the attacks.¹⁰

9 Reporters Without borders https://rsf.org/en/ranking_table

10 Serbian Police Attack Journalists on Second Night of the Clashes, <https://balkaninsight.com/2020/07/09/serbian-police-attack-journalists-in-second-night-of-clashes/> and Serbia 'Still Investigating' Police Attacks on Journalists at Protests <https://balkaninsight.com/2020/10/27/serbia-still-investigating-police-attacks-on-journalists-at-protests/>

Freedom of Information

Summary

During 2020, FOI laws throughout the Balkans mainly remained the same. Only a few countries modified their regulations to restrict transparency or mark more responses “classified” (Serbia and Montenegro), during the global pandemic.

On paper, these FOI laws are all very similar and meet all European and international requirements. However, implementation varies enormously. Some public institutions in a few of the countries publish some data and documents online, trying to embrace the concept of open data. Others lag behind. Surprisingly, well-tailored and ratified laws with some strong performances in some countries in releasing data do not always lead to a transparent and easily accessible FOI system.

The right to information and the right to access public documents is protected in the constitutions and laws of all democratic societies. The legislation in place in Albania, Bosnia and Herzegovina, Kosovo, Montenegro, North Macedonia, and Serbia guarantees the public’s right to access official documents. However, as part of its work testing transparency, BIRN has discovered that practice often falls short of the legislative framework. Many requests sent by BIRN journalists to access public documents were rejected, ignored or required repeated interventions on the part of the journalists to secure a response (often partial or technical data only). In a few instances, BIRN journalists only received the requested documents after complaining to the Commissioners’ office – and only after the Commissioners’ office ordered the public institutions to release the requested documents was full access granted as in the examples of the Republic Property Directorate in Serbia, the Ministry of Interior Serbia, and Ministry of Justice Albania.

It is important to note that during 2020, some countries restricted the right to information by extending the amount of time state bodies had to respond to freedom of information requests, while others “solved” FOI requests by applying the “classified” category to the requested information – with no concrete explanation.

During the year of the global pandemic, media regulations across the region tightened under states of emergency¹¹ and, in some cases, journalists could no longer exercise their right to access information. For example, Serbia’s authorities could now refuse to respond to a FOI request not related to the pandemic. In some other countries, authorities could respond with an extended delay, until after the state of emergency was lifted. Other countries might not have had any pandemic-related measures, but in practice, institutions still became less responsive to FOI requests, mainly for technical reasons. Most countries could not provide full access to a record in an original electronic copy because many of their public sector officials now worked from home. That led to extensions of delays for requesters to receive any answers.

While conducting ongoing investigations, between **February and December 2020**, BIRN journalists submitted **359** FOI requests in the six selected countries to access public documents that would otherwise remain hidden. BIRN has used the responsiveness of these institutions to evaluate and assess their transparency and check the level of implementation of regional FOI laws. These requests were also used for investigations and other in-depth long reads¹² and news that BIRN journalists published as part of its ongoing “A Paper Trail to Better Governance” project.

11 Central and Eastern Europe Freedom of Information Rights ‘Postponed’ <https://balkaninsight.com/2020/04/06/central-and-eastern-europe-freedom-of-information-rights-postponed/>

12 Paper Trail Investigations <https://balkaninsight.com/paper-trail-investigations/>

	February - December 2020
Number of requests SUBMITTED	359
Number of requests APPROVED	173
Number of requests PARTIALLY APPROVED	15
Number of requests REJECTED	11
Number of requests NOT ANSWERED	160

Table 3: BIRN 2020 FOI Requests Submitted

Of the **359** submitted official requests to access public documents, only **173** were approved, **15** were partially approved (only technical information provided, or it was said they would answer more, once the state of emergency is lifted). Another **11** were rejected (with no clear legal reasoning behind the rejections; other than in two cases, as classified or as official secrets). Another **160** were not answered at all, even after repeated follow-ups from journalists.

To better understand the challenging circumstances of accessing public documents in the Balkans, BIRN compared the ratings, scores and rankings on FOIs from freedom of information officers' complaints, Open Government Partnership initiative commitments, and the Global Right to Information ratings, for all of the six countries.

After closely monitoring the public institutions and their level of transparency, the following are the three best and worst institutions, based on their performance when BIRN journalists requested access to freedom of information:

Best:

1. Office of the Acting President of Kosovo;
2. Office of the President of North Macedonia;
3. Courts and Prosecutors' Offices in Serbia.

Worst:

1. Ministry of Health, Albania;
2. Ministry of Interior, Serbia;
3. Telecom of Kosovo.

The three best institutions responded to FOI requests on time, sometimes right away, even before the legal deadline to do so had expired. They also provided full disclosure of the requested documents, like expense receipts, contracts or memorandums signed with foreign countries, and legal records or court hearings sessions.

In the case of the three worst institutions, it can be noted that they rejected FOI requests even when the issues in question were certainly in the public interest - in cases when they tried to hide information that would otherwise pinpoint serious breaches of the law. Clearly, when the political will (and atmosphere) within a particular institution is more pro-transparency, FOI requests are answered on time and in full.

Laws on Free Access to Information – Developments, Challenges, and Concerns

All Balkan countries have ratified and claim to have successfully implemented laws on free access to information. Serbia and Albania have laws that have even been ranked among the best top 10 laws on FOI in the world (RTI ranking that analyses the quality of the world's access to information laws). However, implementation of the laws continues to face challenges and difficulties, as public institutions remain silent, do not answer or deny requests, and categorize more and more information as “classified”.

The Law on Access to Information in **Albania**¹³ has been on the country's statute books since 1999. In 2014, it received a legislative upgrade, providing greater public access to official documents as well as imposing concrete penalties on public officials who refuse to make information available. Now, by submitting a FOI request, a journalist in theory can gain access to most public information, documents and data in Albania.

The new law includes several novel concepts, including the possibility of

13 Law on the Right to Information in Albania (2014) http://www.qkr.gov.al/me-dia/1307/119_2014-anglisht.pdf https://www.legislationline.org/download/id/7982/file/Albania_Law_right_information_2014_en.pdf and Law on the Right to Information over Official Documents (1999) <http://www.legislationline.org/documents/action/popup/id/6492>

reclassifying secret documents, the release of partial information and the use of information technology to make information held by public institutions more available to the public.

The law also obliges public institutions and authorities to appoint coordinators for access to information and also has established the institution of a Commissioner for the Right to Information, an appeals body in cases where institutions refuse to answer FOI requests or hand out only partial information.

In short, Albania's Access to Information Law is widely deemed excellent. However, implementation remains inadequate. The authorities continue to deny journalists access to documents of legitimate and essential public interest – especially those related to public contracts, bids and concessions – and use delaying tactics with the result that when journalists do finally receive information, it is often no longer relevant.

As a democratic country seeking EU membership, **Bosnia and Herzegovina** was one of the first countries in the Balkan region to adopt a Freedom of Access to Information Act, first at the state level in 2000, and then in 2001 at the levels of both entities. However, experts agree that the law requires amendments to address various shortcomings that have been identified.¹⁴ Furthermore, Bosnia and Herzegovina remains the only country in the Balkans that does not offer access to public records in electronic form.¹⁵

Bosnia lags far behind in institutional transparency, more concretely in terms of publishing information on official websites. Proactive transparency has still not been laid down by FOI acts in Bosnia, and information is by and large accessed reactively – by submitting a request to the institution that possesses the

14 Analitika, Centre for Social Research - Towards Proactive Transparency in Bosnia and Herzegovina Policy Memo (2013) http://analitika.ba/sites/default/files/publikacije/proaktivna_transparentnost_policy_memo_eng_4juni_web.pdf

15 Analitika, Centre for Social Research, Proactive Transparency in Institutions of Bosnia and Herzegovina: good practices (2016) http://www.analitika.ba/sites/default/files/publikacije/primjena_standarda_eng.pdf

desired information.¹⁶ In that respect, FOI legal acts in Bosnia and Herzegovina are outdated and do not meet the needs and expectations of the digital age.

In addition, the European Commission's 2020 report¹⁷ notes that the right to access public information remains uneven due to shortcomings in statutory deadlines for replying to public information requests, with an incoherent system to submit requests, incompleteness of information provided by the authorities, barely accessible information to the public and the poor use of a comprehensive public interest test to justify a refusal to grant access to information.

In short, access to information in Bosnia and Herzegovina is hampered by legal provisions that are still interpreted in a way that protects private rather than public interests. There is a lack of effective institutional mechanisms for supervising implementation of the laws or sanctioning violations.

In **Kosovo**, the Law on Access to Public Documents came into force in 2010,¹⁸ aiming to improve governmental transparency. But its implementation still lacks necessary mechanisms.

On paper, Kosovo has a remarkable legal framework when it comes to accessing information. However, the law requires a thorough revision to address its challenging and fragmented implementation.

Acting on the suggestions of civil society, the European Union and media watchdogs, Kosovo changed the Law on Access to Public documents, with

16 "Freedom of Access to Information Act for Bosnia and Herzegovina", Official Gazette of BiH 28/00, 45/06, 102/09, 62/11 and 100/13; "Freedom of Access to Information Act for the Federation of Bosnia and Herzegovina", Official Gazette FBiH 32/01; "Freedom of Access to Information Act for the Republika Srpska", Official Gazette of the RS 20/01. <https://www.legislationline.org/legislation/section/legislation/country/40/topic/3>

17 European Commission 2020 report for Bosnia and Herzegovina https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/bosnia_and_herzegovina_report_2020.pdf

18 Law on Access to Public Documents (2010), Republic of Kosovo <http://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=2724>

parliament adopting and ratifying a new law in May 2019¹⁹, ensuring citizens' right to access public information.

The changes established a Commissioner as an independent body appointed by parliament. The Commissioner was added as head of the new Information and Privacy Agency to supervise implementation of legislation for personal data protection and access to public documents. However, the Kosovo Assembly has failed to elect a Commissioner three times in a row. The first time, in April 2019, none of the candidates qualified; the second time, in May 2019, the election failed due to the dissolution of the Assembly. At the third time, in June 2020, none of the candidates managed to get the necessary votes²⁰.

In **Montenegro**, Access to information is guaranteed by the constitution. The Law on Free Access to Information was first adopted by the country's parliament in 2005. In 2012, a new law entered into force, providing a better standard of protection for freedom of information than the previous act.²¹ This law was amended in 2017, requiring agencies to publish governmental information proactively. The latest proposed changes to the law in 2019 seem to put access to information at risk.

Although the amendments to the law on access to information were expected to speed up proceedings for obtaining information, there are concerns about authorities' increasing tendency to declare information classified.

Article 1 of the Law on Free Access to Information, which contains a series of exclusions that are not in line with international standards, or with the country's constitution,²² remains a concern.

19 New Law (July 2019) on Access to Public Documents, https://mapl.rks-gov.net/wp-content/uploads/2017/12/LAW_NO_06_L-081_ON_ACCESS_TO_PUBLIC_DOCUMENTS.pdf

20 'Failures of the Assembly in Functionalizing the Information and Privacy Agency' Levizja FOL <http://levizjafol.org/wp-content/uploads/2020/12/Failures-of-the-Assembly-in-Functionalizing-the-Information-and-Privacy-Agency.pdf>

21 MANS - Freedom of Information in Montenegro <http://www.mans.co.me/en/wp-content/uploads/fai/FreedomOfInformation-Internship.pdf>

22 Law on Free Access to Information, Montenegro 2012 - 2017 <http://www.katalogpropisa.me/wp-content/uploads/2016/11/Zakon-o-slobodnom-pristupu-informacijama-1.pdf>

Without proper assurance that classified information will be reviewed on receipt of a request, the door may be opened to abuse of the classification system to hide information that is simply politically inconvenient rather than likely to cause harm to a legitimate interest (like national security or international relations).

Another concern in the new proposed version of the Law on Free Access to Information is the introduction of exclusions related to business secrets and intellectual property. Under international standards, protection of commercial and business interests is a legitimate concern but must be subject to a harm and public interest test. Tracking the activities of public bodies and their relationships (financial and other) with private bodies is clearly in the public interest. Also, intellectual property is not grounds per se for refusing access, even if it may limit the use and reuse of certain information.

The latest concern with the new proposed changes of the law by the government is that it also removes controls over the ways in which state bodies declare information classified. Civic organisations, media groups and opposition parties have insisted that the amendments are not in line with the Montenegrin constitution, or with international agreements that the country has signed up to.²³

The latest changes of the law, suggested by the government, would:

- add broad blanket exclusions on the right of freedom of information;
- allow authorities to reject what they define as “unreasonable” requests;
- narrow the right to cover only information that is of apparent “public importance”;
- include exceptions that are not permitted under international law;
- add exceptions where the harm test will not be applied.²⁴

23 Montenegro Urged to Delay Law Change Debate in Pandemic <https://balkaninsight.com/2020/04/09/montenegro-urged-to-delay-law-change-debate-in-pandemic/>

24 Access Info – Right of Access to Information at Risk in Montenegro <https://www.access-info.org/blog/2019/10/31/right-of-access-to-information-at-risk-in-montenegro/>

The Law on Free Access to Public Information in **North Macedonia** was adopted by the country's parliament in 2006.²⁵ However, in 2010 the law was subjected to significant changes, which resulted in an improved legal framework that guarantees the right to information and is more aligned with international and European standards. Although the legal framework was then assessed as satisfactory, implementation remains partial, however.

A new Law on Free Access to Public Information was adopted in May 2019 and authorizes the new Agency for Protection of Free Access to Public Information (formerly known as the Commission for Protection of the Right to Free Access to Information of a Public Character) to monitor compliance with the rules on proactive disclosure of information and reduce the grounds on which requests for public information can be refused. The new law shortened the waiting period for receiving a decision on requested information from 30 to 20 days. The new changes also make political parties' financing accessible. Although the law has a good legal basis, it has not been fully implemented by all public institutions and departments.

For several years in a row, European Commission reports for North Macedonia have urged the government to oblige ministries and all other public institutions to publish more information on websites and make more sets of information accessible to the public.

The law renamed the Commission for Protection of the Right to Free Access to Public Information as an Agency, tasked to promote, monitor and keep track of implementation of the law by all public institutions. The Agency has faced a great challenge, however, as the number of complaints has been high, and the responses of public institutions low. The performance of the Agency has been deemed "silent".

The Agency's capacity to implement the new law needs to be strengthened. Being without a director from May 2018 until January 2020, it did not respond

25 Law on Free Access to Public Information, North Macedonia (in English): http://arhiva.mioa.gov.mk/files/pdf/en/LAW_ON_FREE_ACCESS_TO_PUBLIC_INFORMATION.pdf

to appeals during that period, leading to an increase in unanswered requests for public information from public information providers. A director and a deputy director were finally appointed in January 2020. But the COVID-19 crisis led to further delays in responding to requests for public information by many institutions.

Serbia adopted the Law on Free Access to Information of Public Importance in 2004.²⁶ The presumption of the law is that all information possessed by public institutions should be available to the public, and that the right to request information is guaranteed to everyone, including foreigners.

The law established an independent body, the Commissioner for Information of Public Importance and Data Protection, in charge of free access to information, as a stand-alone public authority, independent in its exercise of its powers and with the main tasks of protecting that right.

But the Commissioner, in deciding on appeals, whenever the right has been denied, has no power to rule on denials made by the highest institutions of the state. He or she also does not possess any powers to enforce his or her decisions. Also, while the law contains punitive provisions for misdemeanors, the Commissioner is not empowered to initiate misdemeanor proceedings.

Finally, the fines are so low that even paying the fine may be worth it in the minds of public bodies that don't wish to reveal certain information. In practice, fines are also paid by the public budget of the institution in charge, so public officials do not worry much about the fines, and in some cases prefer to pay it and not release the information.

Importantly, the latest report from the European Commission²⁷ notes that the law on Free Access to Information of Public Importance needs to be further amended. The authorities previously drafted amendments including

26 Serbian Law on Free Access to Information: https://www.paragraf.rs/propisi/zakon_o_slobodnom_pristupu_informacijama_od_javnog_znacaja.html

27 European Commission 2020 Report Serbia https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/serbia_report_2020.pdf

provisions aimed at improving the enforcement of decisions laid down by the Commissioner for Information of Public Importance. The law also included provisions limiting access to information of public interest related to equity-based companies with shares owned by the state. However, as it ensures the equal position of all companies (that are entirely privately funded and companies with shares owned by the state), the drafting of such provisions would leave a loophole to arbitrarily deny requests for access to information of public interest.

The current attempts to change the law will be discussed in greater detail in the coming chapters.

FOIs during the COVID-19

Pandemic

Governments in general bypassed FOI requests under the excuse of COVID-19

Most Balkan countries did not consider FOI laws when declaring a state of emergency for a certain period during 2020. As a result, the states of emergency led to huge piles of FOI requests, unsolved complaints by independent bodies and no urgency from public authorities to publish data online.

In Serbia, Montenegro and North Macedonia, the pandemic was used as an excuse to possibly postpone FOI requests for as long as possible.

On the other hand, Albania, Bosnia and Herzegovina and Kosovo did not make changes to FOI laws and practices, but the pandemic still had an impact. It led into delays from public authorities in responding to FOI requests, or to them completely ignoring the requests, or keeping “silent”.

Serbia postponed FOI rights due to the state of emergency. In March 2020, the government declared a state of emergency due to the pandemic and FOI regulations were postponed as well. The government extended the deadlines for public authorities to respond to requests²⁸ by 30 days after the state of emergency was lifted. For several months, public institutions mostly remained silent to FOI requests, and started answering them after the state

28 Central and Eastern Europe Freedom of Information Rights ‘Postponed’ <https://balkaninsight.com/2020/04/06/central-and-eastern-europe-freedom-of-information-rights-postponed/>

of emergency was lifted, which was the case for many FOI requests BIRN journalists sent.

Montenegro was looking forward to a public debate on the draft FOI law changes during the global pandemic. The government was obviously more interested in having the new changes adopted faster. Civil society organisations and journalists reacted immediately to the government's call for public debate to be postponed after the state of emergency.²⁹ More importantly, it was crucial for civil society and media experts to take part in possibly re-drafting or changing the proposed amendments, as the promised government changes to the law appeared to be the most restrictive in the region.

North Macedonia's government insisted that the state of emergency and the pandemic measures would not affect the public's right to information. In practice, public institutions became less responsive to FOI requests³⁰. With less public servants going physically to work at public premises, it became almost impossible to even know when a request could be answered. Those requesting information had to constantly follow up and chase the authorities.

Albania, Bosnia and Herzegovina and **Kosovo** also saw delays in responding or meeting the legal deadlines on FOI requests. As in other countries from the region³¹, with declared state of emergencies, long mandatory curfews and, with public servants working from home, long lists of pending FOI requests, as well as complaints, were created.

29 Montenegro Urged to Delay Law Change Debate in Pandemic <https://balkaninsight.com/2020/04/09/montenegro-urged-to-delay-law-change-debate-in-pandemic/>

30 North Macedonia's State of Emergency Weakens Institutions' Transparency <https://balkaninsight.com/2020/04/24/north-macedonias-state-of-emergency-weakens-institutions-transparency/>

31 Governments Continue to Undermine Right to Information Under Cover of COVID-19 <https://balkaninsight.com/2020/09/28/governments-continue-to-undermine-right-to-information-under-cover-of-COVID-19/>

Analysis of Submitted Requests - Rankings of Institutional Transparency and Accountability

Top 20 institutions ranked based on their responses to FOI requests sent by BIRN journalists

Last year, BIRN journalists from the six selected Balkan countries submitted requests to different institutions to access public records, not only to measure their transparency but for the sake of ongoing investigations. The list below ranks the 20 institutions from good (top) to worst (bottom) performance, in Albania, Bosnia and Herzegovina, Kosovo, North Macedonia, Montenegro and Serbia. Their responsiveness is ranked on the type of answers received, for example, full answers, partial (only technical details), no answer, “silence”, or simply a rejection.

INSTITUTION:		ANSWER:
1	Office of the Acting President of Kosovo	Full
2	Office of the President of North Macedonia	Full
3	Courts and Prosecutors' Offices, Serbia	Full
4	Ministry of Finance, Kosovo	Full
5	Parliament of Albania	Partial
6	Ministry of Education, North Macedonia	Partial
7	Ministry of Trade, Serbia	Partial
8	Institute for Public Health, Serbia	Partial
9	Federation's Ministry of Displaced Persons and Refugees, Bosnia and Herzegovina	Partial
10	Ministry of Justice, North Macedonia	No answer
11	Ministry of Justice, Albania	No answer
12	Government of Serbia	No answer
13	Ministry of Health, Kosovo	No answer
14	Political parties in North Macedonia	No answer
15	Political parties in Bosnia and Herzegovina	No answer
16	Ministry of Health, Albania	Rejected
17	Ministry of Interior, Serbia	Rejected
18	Geodetic Authority of Serbia	Rejected
19	Telecom of Kosovo	Rejected
20	Customs Administration of Montenegro	Rejected

Table 4: Top 20 Institutions Ranked on Responsiveness to FOI Requests Sent by BIRN Journalists

As indicated above, the best FOI performances during 2020 in the region were recorded with the Office of the Acting President of Kosovo, the Office of the

President of North Macedonia, and the Courts and Prosecutors' Offices in Serbia.

In Kosovo, the record of the Office of the previous President was the complete opposite; FOI requests were not answered at all or were rejected despite polite reminders of its legal obligations with FOI requests. Since November 5, 2020, when Vjosa Osmani was appointed Acting President of Kosovo, all FOI requests from BIRN journalists (like expense receipts, financial records, or meeting minutes) have been fully disclosed, and in a record time, even before the legal due date.

The Office of the President of North Macedonia ranks second, as this office also fully disclosed the requested documents, such as the Memorandum of Understanding, MoU, the government signed with China.

Local and higher courts and prosecutors' offices in Serbia are also ranked the highest for good performances when asked to release public documents. Almost 80 per cent of the FOI requests BIRN journalists sent to local and higher courts in Serbia were answered within the legal deadline. The remaining 20 per cent were also answered but with slight delays (not meeting the legal deadline).

However, prosecutors' offices in Serbia are ranked among the top four as responsive on FOI requests only when it comes to meeting the legal deadline. Otherwise, they often refuse to disclose or give any data, invoking the alleged "interest of the process" or official secrecy; they also often respond by saying they do not have the requested data.

The Ministry of Finance in Kosovo is also among the top transparent institutions. It released the requested documents in full and on time.

The second category combines institutions from all countries that in some way answered BIRN's FOI requests. In most cases, those institutions only released technical parts – or disclosed a copy of a document that was not requested but somehow covered the mentioned topic/area or problem.

For example, the parliament of Albania refused to release the full copy of the requested documents on the new Media Authority's board members and chairman's election. Under the data protection excuse, it saw no legal obligation to release the document containing important public information (and black out the private data section). It just responded with a brief notification of the general terms of the election. Thus, it partly answered the FOI request but said nothing on the concretely sought information.

The Ministry of Education in North Macedonia, when asked to release lists of enrolled and graduated students from 2014 to 2019 from specific universities, only issued a few. It found it sufficient to just release a few parts of the request and never released all the requested details from the same request.

The Ministry of Trade in Serbia (copy on arms sales and exports requested), and the Federation Ministry of Displaced Persons and Refugees in Bosnia and Herzegovina (copy of a financial report on certain donations) answered the requests partially.

In their responses, they claimed that they would release the requested documents after the state of emergency was removed. However, even months later, the Ministry of Displaced Persons and Refugees in Bosnia did not issue any further documents. On the other hand, the Ministry of Trade in Serbia did answer the request, but only partially. Likewise, the Institute for Public Health in Serbia answered partially when it was asked to issue COVID-19 related data.

Under the third category are institutions that **"ignored"** FOI requests and did not answer at all. Even after several reminders and follow-ups, none of them answered. The Ministries of Justice of Albania and North Macedonia are ranked the worst in this category (requested copies of contracts, and donations), followed by the government of Serbia and the Ministry of Health, Kosovo. Over the year, when BIRN journalists asked the government of Serbia and the Ministry of Health of Kosovo to disclose certain COVID-19-related regulations, statistics, and updates, they remained totally silent, not responding at all.

In addition, the new changes to FOI laws in North Macedonia include political campaign finances as public data, which obliges all political parties to make their lists of donations and contributors open to the public. When BIRN tested the new legal change, and asked all the political parties about their campaign finances, not one answer was received. Only the main opposition party in North Macedonia, VMRO-DPMNE, answered the request – refusing to disclose any of the requested financial statements, however.

In the worst category of the transparency rankings are the Ministry of Health in Albania, the Ministry of Interior in Serbia, the Geodetic Authority of Serbia, Telecom of Kosovo, and the Customs Administration of Montenegro. Even though none of BIRN's requests to them contained any national security details or any personal data, they were simply rejected. In Albania, the Health Ministry was asked to disclose procurement contract copies. Serbia's Ministry of Interior was asked about a wanted war criminal and an international arrest warrant. After their rejections, given under the pretext of secrecy and private protection data, BIRN complained to the Commissioner's office. Finally, after the Commissioner's office ordered that the request be answered, and told the Ministry to release the requested information, the Serbian Interior Ministry answered in full. But the entire process to obtain the public records and work on an investigation took months.

In Kosovo, Telecom of Kosovo, a public enterprise, ranks among the worst and the most difficult institutions when dealing with FOIs. It continuously rejected requests, often after claiming for long that it had not received any requests. It also regularly invited the requesters to unjustifiable meetings, with an aim of delaying the process and not granting access to the requested document.

Montenegro Customs for several years in a row remains at the bottom of the list as the worst regional institution when dealing with FOIs. When BIRN journalists requested a copy of the shipper's note, it was rejected; apparently those are classified or official secret files.

Due to their bad experience with Montenegrin institutions when it comes to sending FOI requests and their usual reluctance to provide information, and restrictive laws, our journalists often use sources and other connections to get the documents they need. However, with the recent shift of the political power, there is hope things may change for the better. The new government has promised to change the FOI law, which appears to be the most restrictive in the region.

In brief, the political willingness in the country, starting from the top, plays a major role in setting the ground and the atmosphere when it comes to making FOI practices more applicable and widely respected. There is a trend within certain institutions, for example, in the Interior Ministry in Serbia³², to constantly refer to privacy concerns or confidentiality in order not to disclose information about alleged and convicted war criminals to journalists. However, most of the case files and evidence from war crime trials in Serbia are also not easily accessible to journalists, researchers and the public³³.

In **Albania**, the FOI law might be the oldest, and the Commissioner might be the most active in the region on monitoring and criticizing the public authorities, but legislative institutions are still not acting and performing in a transparent way.

During the last year in Albania, no request submitted by BIRN was fully answered. However, **45 per cent** were partially answered; **22 per cent** were rejected; and the remaining **33 per cent** were not answered at all.

The worst institution was the Ministry of Health, for refusing to disclose copies of contracts, and for not answering requests on time. The table below presents

32 Serbian Commissioner Backs BIRN in Info Requests on War Crimes Fugitive <https://balkaninsight.com/2020/12/25/serbian-commissioner-backs-birn-in-info-requests-on-war-crimes-fugitive/>

33 Access Denied: Most Balkan War Crimes Case Files Not Public <https://balkaninsight.com/2020/09/28/access-denied-most-balkan-war-crimes-case-files-not-public/>

the public authorities or institutions, the requested FOI documents, and the answers received. In total, BIRN journalists submitted nine FOI requests to the following authorities:

INSTITUTION:		REQUESTED DOCUMENT:	ANSWER:
1	Parliament of Albania	New Media Authority Board Members and Chairman's election documents	Partially answered
2	Tirana Court	Court decisions on defamation cases	Partially answered
3	Appeal Chamber	Court papers related to an administrative investigation	Partially answered
4	High Inspector of Justice	Documents related to an administrative investigation	Rejected
5	Authority for Management of Former Secret Services Files	Statistical reports on number of spies and subjects spied on for 1980-1990 period	No answer
6	Ministry of Justice	Copies of contracts	No answer
7	Ministry of Health	Copies of contracts	Rejected
8	Special Anti-Corruption Office (SPAK)	Information about secret tenders conducted during the emergency period in Albania	No answer
9	Ministry of Infrastructure and Energy, Albania	Documents, contracts and MoU on several Chinese investments in Albania	Partially answered

Table 5: Institutional Ranking in Albania Based on FOI Responsiveness

In **Bosnia and Herzegovina** BIRN submitted five requests. The only institution that answered BIRN's requests for information was the Federation's Ministry of Displaced Persons and Refugees. However, its answer did not reveal the

requested information, so it was a partial answer only.

Most of the submitted FOI requests were not answered (**80 per cent**); the remaining **20 per cent** were only partially answered.

BIRN requested access to – and received no answer from – all the political parties on financial reports on donations from abroad. Based on analysis of the submitted requests in Bosnia, the table below highlights the requested document type and the answers received from the institutions:

INSTITUTION:		REQUESTED DOCUMENT:	ANSWER:
1	Federation Ministry of Displaced Persons and Refugees	Financial report on donations from abroad	Partially answered
2	Party of Democratic Action (SDA)	Financial report on donations from abroad	No answer
3	Croatian Democratic Union of Bosnia and Herzegovina (HDZ)	Financial report on donations from abroad	No answer
4	Alliance of Independent Social Democrats (SNSD)	Financial report on donations from abroad	No answer
5	The Court of Bosnia and Herzegovina	Decision on termination of custody and imposition of prohibitive measures	No answer

Table 6: Institutional Ranking in Bosnia and Herzegovina Based on FOI Responsiveness

In **Kosovo**, over last year, BIRN submitted 248 FOI requests to different government institutions, public enterprises and local authorities.

The requested documents included tax declarations, board members’ selection process details, COVID-19 related policies, expenses (receipts), financial reports,

meeting minutes, and public procurement details. Most of the requests were fully answered (**52 per cent**), however, most of them were answered late (after the legal deadline) and **40 per cent** were not answered at all. Only **8 per cent** were rejected.

The table below ranks the responsiveness and transparency of the institutions, the requested document type and the official answer received:

	INSTITUTION:	REQUESTED DOCUMENT:	ANSWER:
1	Kosovo Tax Administration	Contracts, tax declarations, test results	Full answers
2	Kosovo Central Bank	Board members, new policies, Insurance Bureau	Full answers
3	Ministry of Finance	Expense receipts, decisions	Full answers
4	Ministry of Economy	Expense receipts, contract details	Full answers
5	President's Office (last quarter)	Expense receipts	Full answers
6	Ministry of Health	Committee lists, expenses	No answer
7	Police	Decisions, case details	No answer
8	Prime Minister's Office	Meeting minutes, expense receipts	No answer
9	University of Prishtina	Contracted professors' lists	Rejected
10	Telecom of Kosovo	Contracts and public procurement details	Rejected

Table 7: Institutional Ranking in Kosovo Based on FOI Responsiveness

In **North Macedonia**, BIRN submitted 41 requests to the Office of the President, ministries, municipalities, courts, the judicial council, museums, public prosecutor's office, public defender's office and political parties.

Most submitted FOI requests were fully answered (**47 per cent**); another **10 per cent** were partially answered; **3 per cent** were rejected; and the remaining half of the requests were not answered at all (**40 per cent**). The rejected requests were from the party in opposition.

The table below ranks the responsiveness and transparency of the institutions, the requested document type and the official answers received:

	INSTITUTION:	REQUESTED DOCUMENT:	ANSWER:
1	President of North Macedonia	MoU signed with China	Full answer
2	Ministry of Defence	MoU on donation from China	Full answer
3	Ministry of Health	Copy of a donation contract	Full answer
4	Judicial Council of Macedonia	Case details	No answer
5	Archaeological Museum of Macedonia	Amounts used for reconstruction of the building from 2014 to 2019	No answer
6	Parties in North Macedonia/VM-RO-DPMNE	2020 election campaign costs	No answer/ Rejected
7	Public Defender's Office	List of companies and amount of tax exemptions for 2018-2019	Partial answer
8	Court of Appeal	Case details	Partial answer
9	Ministry of Culture	Amounts used for reconstruction of the national theater from 2014 to 2019	Full answer
10	Public Prosecutor's Office	Annual report for 2019	No answer

Table 8: Institutional Ranking in North Macedonia Based on FOI Responsiveness

By law in **Serbia** (Section IV, Paragraph 22), no complaint can be filed to the office of the Commissioner against the decisions of the National Assembly, the

President, the Government, the Supreme Court of Cassation, the Constitutional Court and the Republic Public Prosecutor. Thus, in practice, the government of Serbia usually rejects, or does not answer, journalists' requests.

The table below summarises institutional transparency on BIRN's requests during last year. It is important to note that the majority of the requests were answered, and that most of the rest were not answered at all. In 2020, BIRN submitted 55 FOI requests to different institutions in Serbia. Of those **53 per cent** of the requests were answered; **11 per cent** were partially answered; **5 per cent** were rejected, and **31 per cent** were not answered at all.

It is important to note that most of the answered requests came from the courts and prosecutors' offices. However, the prosecutors' offices did not score highly on the transparency scale as they answered only technically, notifying the requester (BIRN journalist) that they did not possess the requested document. And when the public was eagerly seeking updates on COVID-19 developments, important health institutions in Serbia, including the government, which was managing the crisis, did not answer at all.

The table below ranks the responsiveness and transparency of the institutions, the requested document type and the official answers received:

	INSTITUTION:	REQUESTED DOCUMENTS:	ANSWER:
1	Government of Serbia	COVID-19 data/Financial incentives for Serbs in Montenegro	No answer
2	National Health Insurance Fund of Serbia	COVID-19	No answer
3	Institute of Public Health of Serbia	COVID-19	Partial answer
4	Higher Courts	Foreign war zones	Full answer

5	Prosecutor's Office for Organised Crime, Serbia	Case details	Full answer
6	Ministry of Trade, Serbia	Arms exports	Partial answer
7	Prosecutor's Office for War Crimes, Serbia	Case details	Full answer
8	Republic Property Directorate	State property sales contract details	No answer
9	Republic Geodetic Authority, Serbia	State property sales contract details	Rejected
10	Interior Ministry, Serbia	International arrest and war criminal wanted documents	Rejected

Table 9: Institutional Ranking in Serbia Based on FOI Responsiveness

Open Government Partnership - Challenges and Ratings on Institutional Openness: Albania, Bosnia and Herzegovina, Montenegro, North Macedonia, and Serbia

Open Government Partnership, OGP, is an initiative that stands for more open and transparent governments. By joining it, governments agree to set commitments to become more transparent to serve their citizens better

To evaluate government openness in Albania, Bosnia and Herzegovina, Montenegro, North Macedonia and Serbia and their alignment with OGP, BIRN analysed the set commitments and published reports where applicable.

All Balkan countries, except for Kosovo, have joined the initiative that aims to secure concrete commitments from national and subnational governments to promote open government, empower citizens, fight corruption, and harness new technologies to strengthen governance.

To join OGP, countries should endorse the Open Government Declaration, which means acknowledging, recognising, accepting and upholding the values of openness and engagement with citizens to manage public records and embrace transparency.

As a second stage, OPG members develop National Action Plans. A National Action Plan is usually prepared by a public institution that the government has delegated to oversee the OGP process. In consultations with the civil society, the leading institution plans for and presents concrete commitments over a two-year period to a wider group of different public institutions and civil society to finalize the commitments. All five countries from the Balkans have set concrete commitments in their National Action Plans, with appointed lead ministries.

According to OGP Accountability definition, for countries to remain a member in good standing and active status, they should produce periodic self-assessment reports that are evaluated by an Independent Reporting Mechanism (IRM) – which produces reports that assess the design and implementation of the commitments adopted by OGP participating governments in their country Action Plan.

For the 2018-2020 reporting cycle, only Albania³⁴ and Serbia³⁵ have published end-of-term self-assessment reports. Both countries published the reports in December 2020. Bosnia and Herzegovina, Montenegro, and North Macedonia are expected to have the reports published. And, so far, only Serbia and Albania have published their new Action Plans for 2020-2022.

By accession to OGP, member states express the following criteria, on which this report reflects on the differences, challenges, progress or inactivity:

- Access to information
- Civic participation
- Freedom of expression, association, and assembly
- Transparency and accountability.

Some of the commitments each state has proposed in its Action Plan (2018-2020) are related to open data, anti-corruption, public procurement, developing e-governance, adopting laws to support transparency of public institutions, etc. But, despite their promises to be more transparent and open, these countries are still struggling to meet the commitments.

BIRN has also closely compared, analysed and evaluated the stated commitments from the National Action Plans, the involved institutions, the findings from the IRM reports, and the end-of-term self-assessment reports (for Albania and Serbia). For each commitment at least one institution was delegated to perform the objectives and achieve the goal. BIRN has listed 20 institutions, four per country, on their best-to-worst progress or in terms of fulfillment of the commitments.

34 OGP Albania, End of Term Self-Assessment Report 2018-2020 https://www.open-govpartnership.org/wp-content/uploads/2020/12/Albania_End-of-Term_Self-Assessment_2018-2020_EN.pdf

35 OGP Serbia, End-of-Term Self-Assessment Report 2018-2020 https://www.open-govpartnership.org/wp-content/uploads/2020/12/Serbia_End-of-Term_Self-Assessment_2018-2020_EN.pdf

Nr.	Country:	Institution:	Commitment:	Fulfillment:
1	Albania	Ministry of Finance and Economy	Commitment 1: Open governance to increase government reporting transparency and improve access to information	Minor
2	Albania	National Agency of Information Society (NAIS)	Commitment 2: Open governance to modernize public services and governance, E-Gov	Moderate
3	Albania	Department of Development and Good Governance by the Prime Minister's Office	Commitment 3: Open governance for better regulation	Minor
4	Albania	Ministry of Justice	Commitment 4: Open governance for the creation of safe communities	Minor
5	Bosnia and Herzegovina	Public Procurement Agency of Bosnia and Herzegovina	Commitment 1: Open data on public procurement	Moderate
6	Bosnia and Herzegovina	Agency for Statistics of Bosnia and Herzegovina	Commitment 4: Increase availability, openness and use of official statistical data	Minor
7	Bosnia and Herzegovina	Ministry of Justice of Bosnia and Herzegovina	Commitment 5: Involvement of civil society organisations in policy making	Minor

8	Bosnia and Herzegovina	Ministry of Finance and Treasury of Bosnia and Herzegovina	Commitment 7: Drafting of budget for citizens	Minor
9	Montenegro	Ministry for Public Administration (MPA)	Commitment 1: National identification document	Minor
10	Montenegro	The Secretariat General to the Government of Montenegro	Commitment 3: Proactive publication of information	Minor
11	Montenegro	Ministry for Public Administration; Ministry of Interior	Commitment 4: Efficient collection of administrative fees	Minor
12	Montenegro	Ministry of Finance, Tax Administration	Commitment 5: Electronic delivery of property tax returns	Minor
13	North Macedonia	Commission for Protection of the Right to Free Access to Public Information (CPRFAPI)	Commitment 1 (theme): Access to Information. Proactive publication, promotion of electronic access and increased awareness of citizens on their rights to free access to public info	Moderate

14	North Macedonia	State Commission for Prevention of Corruption	Commitment 2: Integrity and good governance: advanced mechanism for monitoring the property status of the elected and appointed officials	Minor
15	North Macedonia	Ministry of Finance	Commitment 3: Fiscal transparency: Possibility for publishing basic information on public procurements on institutions' websites	Minor
16	North Macedonia	Ministry of Justice	Commitment 6 (theme): Access to justice: Access to justice development; improving access to justice for marginalized groups	Moderate
17	Serbia	Ministry of Finance	Commitment 1: Publishing of the Law on Budget of the Republic of Serbia in a machine-readable format	Minor
18	Serbia	Office for Cooperation with the Civil Society	Commitment 2: Development of an e-calendar of public calls for financing of projects and programs of civil society organisations from budget funds to public administration bodies of the Republic. [E-calendar for financing civil society]	Minor
19	Serbia	Ministry of Environmental Protection	Commitment 3: Publish data on environmental protection Funds	Minor

20	Serbia	Ministry of Public Administration and Local Self-Government Office for Information Technologies and e-Government	Commitment 4: Opening data from public calls for financing work of associations and media development	Minor
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Table 10: 20 OGP Institutions³⁶

Albania became an OGP member in 2011, and has since been shifting the OGP leadership from one institution to another, failing to fully implement its own commitments, such as fiscal transparency, public services, access to information, public administration, and anti-corruption.

In the Fourth Action Plan (2018-2020), Albania committed itself to addressing public administration reforms that are relevant to the country's European Union (EU) integration process. Notable activities include creating an open data portal (Commitment 2) and encouraging citizens to use online platforms for reporting corruption (Commitment 4). Civil society was largely absent from the development of the commitments, and its contribution to the final Action Plan was limited. Albania could also consider including commitments to improve the transparency of public procurement and the judiciary in the next Action Plan.

The Fourth Action Plan³⁷ was led by the Department of Development and Good Governance under the Prime Minister's Office. Overall, civil society in Albania was not offered the opportunity to propose commitments or prioritize certain policy areas. The absence of a dedicated multi-stakeholder forum significantly limited the opportunities for civil society to engage in the OGP process and led

36 20 OGP Institutions ranked and analysed by BIRN.

37 Open Government Partnership, Albania Action Plan 2018-2020 https://www.opengov-partnership.org/wp-content/uploads/2019/01/Albania_Action-Plan_2018-2020_EN.pdf

to a lack of civil-society interest in the Fourth Action Plan.

The four commitments in the Action Plan are derived from existing strategic documents on good governance and public administration reform. The commitments mainly seek to improve public finance transparency, access to public services and the regulation of public administration. Notably, Commitment 4 aims to strengthen Albania's anti-corruption bodies, create an online asset-declarations system for public officials, and encourage citizens to use online platforms to report corruption.³⁸ However, based on Albania's end-of-term self-assessment report³⁹, only Commitment 1 was partially implemented; the remaining three are listed as fully completed.

Commitment 1:	Open governance to increase government reporting transparency and improve access to information
Commitment 2:	Open governance to modernize public services and governance E-Gov
Commitment 3:	Open governance for 'better regulation'
Commitment 4:	Open governance for the creation of safe communities

Table 11: Albania's Commitments from the Fourth Action Plan (2018-2020)

According to the End-of-Term Self-Assessment Report⁴⁰, Albania claims to have completed three out of four commitments. However, Commitment 1 still requires a lot of work on seeing concrete end results in terms of any governmental transparency.

38 Open Government Partnership Albania, Design Report 2018-2020 <https://www.opengovpartnership.org/documents/albania-design-report-2018-2020/>

39 OGP Albania End of Term Self Assessment 2018-2020 https://www.opengovpartnership.org/wp-content/uploads/2020/12/Albania_End-of-Term_Self-Assessment_2018-2020_EN.pdf

40 OGP Albania Self-Assessment Report 2018-2020 https://www.opengovpartnership.org/wp-content/uploads/2020/12/Albania_End-of-Term_Self-Assessment_2018-2020_EN.pdf

Bosnia and Herzegovina was the last to join the partnership in 2014. Its complex institutional set-up and political system has affected its engagement in OGP since it joined. The First Action Plan was developed with civil society input and published in 2019. Commitments are related to ongoing projects rather than new initiatives and include access to open data, public procurement transparency, public consultations, and integrity plans in public institutions.⁴¹

From the Action Plan, some commitments are already in progress while others build on wider government initiatives or plans, providing continuity – such as opening datasets, streamlining integrity plans and improving participation mechanisms with civil society.

Furthermore, the Action Plan contains seven commitments. Particularly important commitments with moderate potential impact address public procurement transparency and involving civil society in improving participation in policy-making processes. Others with minor potential impact address issues of open data, proactive transparency of Bosnia and Herzegovina’s institutions, and for the first time, producing a budget for citizens. From the current set commitments, Bosnia is showing very little progress on meeting the set deadlines and objectives. Although the Action Plan committed Bosnia to improve transparency and accessibility of procurement data, measures are needed to strengthen monitoring and sanctions to prevent and tackle public procurement corruption.

In short, Bosnia should commit itself to ensuring the facilitation of inter-sectoral collaboration and development of institutional mechanisms to address deficiencies in monitoring and investigation of public procurement corruption.

Commitment 1:	Open data on public procurement
Commitment 2:	Development of a web platform for online drafting of integrity plans in institutions

41 OGP Bosnia and Herzegovina Design Report 2019-2021 <https://www.opengovpartnership.org/documents/bosnia-and-herzegovina-design-report-2019-2021/>

Commitment 3:	Development of online training modules for civil servants in the process of drafting and implementing integrity plans
Commitment 4:	Increased availability, openness and use of official statistical data
Commitment 5:	Involvement of civil society organisations in policy-making processes
Commitment 6:	Improved transparency in institutions
Commitment 7:	Drafting a budget for citizens

Table 12: Bosnia's Commitments from the First Action Plan (2019-2021)

Montenegro, which joined in 2012, is still facing difficulties in internal leadership in dealing with OGP and tracking the developments of already committed institutions. However, Montenegro's Second Action Plan (2018-2020) ended a prolonged period of OGP inactivity. The plan addressed budget transparency, public participation and electronic services. Most commitments derive from the country's ongoing Public Administration Reform and EU accession process. Most importantly, Montenegro needs to advance long-term strategic goals, and strengthen transparency in public spending, access to information, and public participation tools.

Activities included in the Second Plan were: expanding online public participation tools, improving budget transparency and a study on whistleblower protection. Other activities involve internal administration reforms such as the national identification document, fee collection and filing tax online; in this context, milestones are technical portal improvements or studies for recommendations.⁴²

The co-creation process was led by the Operations Team (OT), which served as Montenegro's multi-stakeholder forum. Civil society stakeholders had opportunities to participate and submit proposals during the OT meetings and

42 OGP Montenegro Design Report www.opengovpartnership.org/documents/montenegro-design-report-2018-2020/

through additional online consultations. However, the short timeframe of the plan's development prohibited greater engagement, an area for improvement in the future.

Mainly, Commitment 2 (E-Democracy: improving online tools for public consultation) included expansion of online public participation and e-petition tools. Commitment 6 (improved anti-corruption policies) involved developing visual presentations of the state and local budgets, and publishing citizen brochures, as well as conducting a comparative study on whistleblower protection.⁴³

However, almost none of the commitments have been met. Citizens still face difficulties in accessing data on local government services and tax spending; no action has been taken on improving anti-corruption policies, and no current data are being regularly published by public institutions' websites.

Commitment 1:	National identification document
Commitment 2:	E-Democracy, improving online tools for public consultations
Commitment 3:	Proactive publication of information
Commitment 4:	Efficient collection of administrative fees
Commitment 5:	Electronic delivery of property tax returns
Commitment 6:	Improved anti-corruption policies

Table 13: Montenegro's Commitments from the Second Action Plan (2018-2020)

North Macedonia joined the OPG in 2011 and is still struggling to become more open and achieve its set policy areas of focus. It also has the highest number of set commitments.

43 OGP Independent Report Mechanism (IRM): Montenegro Desing Report 2018-2020 https://www.opengovpartnership.org/wp-content/uploads/2020/06/Montenegro_Desing_Report_2018-2020_EN.pdf

The latest Fourth National Action Plan (2018-2020) aimed to focus on: open parliament; access to justice; subnational-level transparency. It included 23 commitments, 18 of which were part of seven main themes: access to information; integrity and good governance; fiscal transparency; open data; transparency at the local level; access to justice; climate change. In addition, the Action Plan includes five commitments under the Open Parliament initiative for the Assembly of the Republic of North Macedonia. These five were organised in three themes: accountability; improved ICT infrastructure; participation of citizens.⁴⁴

North Macedonia failed to establish a dedicated multi-stakeholder forum for OGP, and should prioritize themes such as open data, access to justice and beneficial ownership transparency.

During the Fourth Action Plan, North Macedonia's government focused on too many commitments, so failing to make progress in the most important areas, like fiscal transparency and access to justice.

In addition, the Fourth Action Plan continued to address major themes from previous Action Plans, such as access to information, fiscal transparency, open data and improving openness at the local level. The plan did include some new policy areas, such as access to justice and commitments from the Assembly of the Republic of North Macedonia. And the Ministry of Information Society and Administration (MISA) continued to lead the participatory process for the Fourth Action Plan.⁴⁵

Separately, the Assembly of North Macedonia held consultations to develop the Open Parliament commitments, which involved Assembly staff, civil society representatives and representatives from international organisations.

Most importantly, the Fourth Action Plan included the creation of an “open

44 Open Government Partnership, North Macedonia <https://www.opengovpartnership.org/members/north-macedonia/>

45 Open Government Partnership, North Macedonia Design Report 2018-2020 <https://www.opengovpartnership.org/documents/north-macedonia-design-report-2018-2020/>

finance” database (Commitment 3.1) with data on all transactions disbursed by the Treasury, as well as data on the budgets of local governments. But, according to BIRN’s observation, this was a minor development, and no up-to-date financial data is open and available to the general public. Also, commitments under Access to Justice (6.1) could significantly improve the legal framework and could help improve access to legal services (6.2) for marginalized and vulnerable communities – but no concrete services and mechanisms were identified of progress.

Theme:	Commitment:	
Access to Information (1):	Commitment 1:	(1.1) Proactive publication, promotion of electronic access and increased awareness of citizens on their rights to free access to public information
	Commitment 2:	(1.2) Basic data for registered entities in the Central Register of the Republic of North Macedonia should become publicly available and free of charge on the website of CRRM
	Commitment 3:	(1.3) Mapping homeless and socially endangered families and individuals
Integrity and Good Governance (2):	Commitment 4:	(2.1) An advanced mechanism for monitoring the property status of elected and appointed officials
	Commitment 5:	(2.2) Collaboration with the civil sector for anti-corruption assessments of legislation

Fiscal Transparency (3):	Commitment 6:	(3.1) Open Treasury
	Commitment 7:	(3.2) Possibility for publishing basic information on public procurements on institutions' websites (contracting authorities in public procurement)
	Commitment 8:	(3.3) Promoting transparency in the implementation of health programs and establishing a costs impact assessment mechanism from these programs on end-users through citizens' inclusion
	Commitment 9:	(3.4) Promoting transparency in the implementation of employment programs and establishing a mechanism for impact assessment of costs from these programs on end-users through citizens' inclusion
Open Data (4):	Commitment 10:	(4.1) Cataloging data sets in state institutions
	Commitment 11:	(4.2) Regional initiatives for cooperation in the field of open data
Transparency at Local Level (5):	Commitment 12:	(5.1) Establishing new tools for financial transparency improvement and accountability of LSGUs and social inclusion
	Commitment 13:	(5.2) Public service improvement by institutional cooperation between LSGUs and CSOs
	Commitment 14:	(5.3) An inclusive decision-making manner to encourage local and regional development
	Commitment 15:	(5.4) To resilient Skopje via data availability
Access to Justice (6):	Commitment 16:	(6.1) Access to justice development
	Commitment 17:	(6.2) Improving access to justice for marginalized groups of citizens
Climate Change (7):	Commitment 18:	(7.1) Achieving system changes by improving collective knowledge on climate change

Accountability in Assembly (I):	Commitment 19:	(1.1) Strengthening the Assembly's service so that it can meet increased responsibilities by filling vacant job positions and officials' training
	Commitment 20:	(1.2) Increasing the financial transparency of the Assembly of RNM
Improved ICT Infrastructure in Assembly (II):	Commitment 21:	(2.1) Better access to information
	Commitment 22:	(2.2) Fully functional Parliamentary TV channel
Participation of Citizens in Assembly (III):	Commitment 23:	Improving the participation of citizens in the Assembly's legislative and supervisory process

Table 14: North Macedonia's Fourth Action Plan Commitments (2018-2020)

Serbia, which was second-to-last to join the partnership in 2013, has also a high number of set commitments, next after North Macedonia. From a total of 15 commitments set in the 2018-2020 Action Plan, it failed to develop an IT system to support e-governance and failed to implement proposed amendments to laws that were supposed to improve governmental transparency.

The openness of Serbia's government has not changed considerably compared with previous years. Although the public administration has continued to make efforts toward opening data and digitalization, the problematic state of the rule of law and media freedom deterioration have affected the environment for open government. Two important laws were enacted to include better participatory mechanisms, but in practice, citizens have little opportunity to scrutinize government performance.

According to OGP, Serbia's multi-stakeholder process is inclusive, with government and non-governmental actors having equal rights to propose

commitments, set the agenda and participate in decision-making.

Although the Working Group conducted extensive consultations, some government bodies in charge of important policy areas, such as fiscal transparency, did not agree to take up commitments proposed by the civil society, limiting the overall ambition of the Action Plan. As a result, even those commitments on crucial topics, such as media ownership, focus on small technological improvements and are under-resourced for effective implementation. Some commitments were carried forward from previous Action Plans but were not clearly improved in a way to prevent the previous challenges from recurring.⁴⁶

In short, most of the commitments have had only a minor impact on opening up the government. However, in the self-assessment report, the government of Serbia assured that it had made good progress. In short, the report noted that out of the 15 commitments in total (14 commitments and one recommendation of the government), three of them (20 per cent) have been fully implemented, nine (60 per cent) have been significantly implemented, two (13 per cent) have been partially implemented, while the implementation of one commitment (7 per cent) has not been initiated. BIRN will continue to monitor the commitments from the new National Action Plan (2020-2022).

Serbia is the only country from the region currently implementing 12 commitments from its 2020-2022 National Action Plan.

46 Open Government Partnership Serbia Design Report 2018-2020 <https://www.opengov-partnership.org/documents/serbia-design-report-2018-2020/>

Theme:	Commitment:	
Open Data/ Fiscal Transparency	Commitment 1:	Publishing of the Law on Budget of the Republic of Serbia in a machine-readable format
	Commitment 2:	Development of an e-Calendar of public calls for financing of projects and programmes of civil society organisations from budget funds of public administration bodies of the Republic of Serbia
	Commitment 3:	Ensuring availability of data on planned and spent amounts within local funds for environmental protection
	Commitment 4:	Opening of data from public calls for financing the work of associations and co-financing of development of the media content of public interest
	Commitment 5:	Preparation of reports/indicators on CSOs (associations, foundations and endowments) in an open format
	Commitment 6:	Amending of the Bylaw on Documentation Enclosed for Registration of the Media with the Media Register and technical improvement of presentation of data in the Register

Government Integrity	Commitment 7:	Assistance with and monitoring of adoption of LAP
	Commitment 8:	Updating of electoral roll
Public Services	Commitment 9:	Simplification of administrative procedures and regulations – eP-APER
	Commitment 10:	Establishment of an e-Notice Board for all state administration and local self-government bodies
Access to Information	Commitment 11:	Improving proactive transparency – Information Booklet
	Commitment 12:	Amendments to the Law on Free Access to Information of Public Importance
Public Participation	Commitment 13:	Support to improved cooperation between public administration bodies and civil society organisations in the process of drafting, enactment and monitoring of application of regulations
	Commitment 14:	Creating legal basis and implementing an electronic system for e-civic engagement
The Government recommends that the National Assembly implement this activity:		Increasing transparency and participation at sessions of parliamentary committees of the National Assembly outside of its headquarters

Table 15: Serbia's Third Action Plan Commitments (2018- 2020)

All five countries from the region have failed to become more transparent and digitally accessible. Some set too many commitments (like North Macedonia), thus failing to make concrete progress in crucial sectors. Others were too ambitious to set high commitments and were not able to make any progress at all (like Bosnia and Herzegovina). Publishing latest updates on their websites, such as financial reports, ministry meetings minutes, or other current and important public documents, seems like too long a process ever to be fully implemented. Including civil society actors in the planning phases remains another challenge for most countries. Even those who did include civil society in the process failed to implement or include their recommendations and proposals. All five countries should commit to first setting clear and achievable commitments, set strict directions on how to achieve the commitments, and, at the end of each term, prepare self-assessment reports, so the work done is revealed in more detail.

Freedom of Information Officers, ‘Guarding’ Free Access to Public Information

Experiences and challenges with current laws and practices

Granted under Freedom of Information Laws, freedom of information officers are independent entities that should closely monitor implementation of the law, react to violations, issue disciplinary charges, and, most importantly, hold public institutions accountable for not having current, public data available on their websites.

To find out more about the challenges and obstacles they face, as well as to present preliminary results for 2020, BIRN conducted online interviews with employees in each of the offices in the six selected countries in the region.

Albania

As the Law on the Right to Information (Law No. 119/2014)⁴⁷ indicates, Albania has an established, independent authority that oversees the implementation of the law and addresses issues when information is not properly disclosed.

47 Law on the Right to Information Albania, https://www.idp.al/wp-content/uploads/2016/11/LAW_119-2014.pdf

When the original Law was amended in 2014, it included and extended the competences of the Commissioner for Right to Information and Protection of Personal Data. In Albania, the Commissioner may use disciplinary sanctions against those violating the requirements of the Right to Information Law.

The proactive exercise of the right to information encourages transparency and accountability of public authorities as one of the main pillars of the rule of law. In 2020, the Commissioner's Office continued monitoring public authorities by the **transparency programmes** in both the state administration and at local level; by strengthening the right to **information coordinator role**, updating the registers with request and responses, reviewing complaints, carrying out administrative inquiries, hearing sessions, and making recommendations and decisions, among other things.⁴⁸

During 2019, the Commissioner's Office published the following figures regarding their three pillars of monitoring public institutions and tracking freedom of information:

246 Public Authoritites have made public the "Transparency programme"	236 Public Authorities have appointed a "Coordinator on the Right to Information"	189 Public Authoritites have published the "Request and responses register"
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Table 16: Commissioner's Monitoring Evaluations⁴⁹

For 2020, although the Commissioner has still not published its findings from its monitoring, BIRN has obtained preliminary data. According to the Commissioner, **421** public authorities are currently operational (with published

48 Information and Data Protection Commisioner Annual Report 2019 https://www.idp.al/wp-content/uploads/2020/03/Annual_Report_2019.pdf

49 Albania's Information and Data Protection Commisioner's Annual Report 2019 https://www.idp.al/wp-content/uploads/2020/03/Annual_Report_2019.pdf

data online), as compared to 417 in 2019⁵⁰.

Many institutions have acknowledged a **transparency program** and have published the program on their website. In 2019, 256 public authorities made public the Transparency Program. In 2020, **239** public authorities published the program. However, publishing the transparency program online does not mean that the public authorities have published any quality information or current contents.

A high number of public authorities seem to have appointed a **Coordinator on the Right to Information**. But by just appointing a coordinator, authorities did not always become more open. According to the Commissioner, many of the Coordinators require on-the-job training and need to be real mediators between the institution and the right to information. However, it remains a positive hope of the Commissioner that their role will keep strengthening. In 2019, 236 public authorities appointed coordinators. It was the same in 2020, when **236** public authorities appointed Coordinators (and published information about the role of the coordinator).

The third pillar from the Commissioner's monitoring seems to be the least efficient when it comes to monitoring the right to information in Albania. In 2019, a total of 189 public authorities published a **Request and Response Register**. In 2020, **137** public authorities had the register available online. However, after analyzing only 10 public authorities and institutions, BIRN observed that these registers do not contain any qualitative information or a complete copy of a document. The registers simply list the date of the request received, what was requested, and note that there was no financial fee for obtaining the requested information. No register contained any direct link or copy of the requested information (document, draft budget, meeting minutes, policy recommendations, etc.).

As in 2019, in 2020 Commissioner's Office found discrepancies between the

50 Online Interview with the Commissioner, Mr. Besnik Dervishi, conducted on October 29, 2020.

figures reported by public authorities and figures presented on the Requests and Responses Register of the public authority. They also concluded that in certain instances, public authorities registered requests for information, even citizens' requests for various services provided by the public authority, in the framework of functional duties.⁵¹

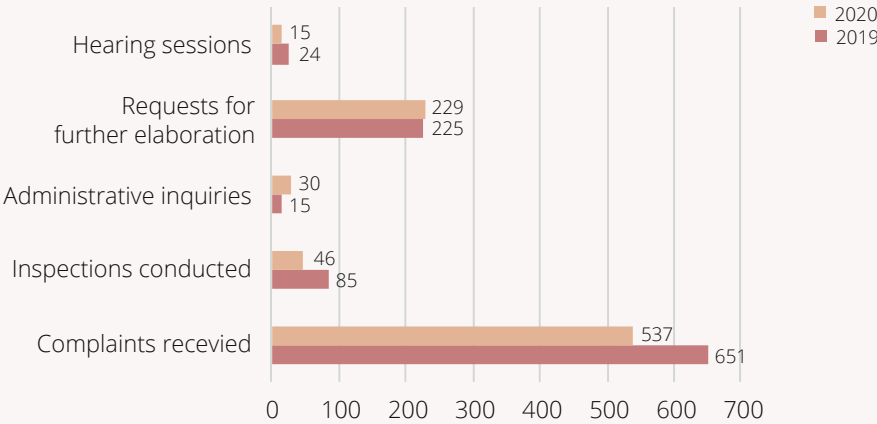


Table 17: Commissioner's Results, Annual Report 2019

According to the Commissioner's preliminary data, until October 2020, the Commissioner received 537 complaints in total. In 2019, only 651 complaints were received. A noteworthy comment for the Commissioner's observation during 2020 is the high number of requests for further elaboration received.

The Commissioner received 229 requests for further elaboration, which urged the public authorities to ensure that the requested public information from their institution be released. In 2019 this number was 225.

Even during the pandemic year, the Commissioner closely monitored freedom of information, by conducting **15 hearing sessions**; issuing **30 administrative**

51 Commissioner's Annual Report https://www.idp.al/wp-content/uploads/2020/03/Annual_Report_2019.pdf

inquiries and conducting **46 random inspections**.

The Commissioner’s concerns related to ministries’ transparency levels expressed in the interview with BIRN:

- **Transparency programs** are not up-to-date, and several documents are missing, which should have been published in accordance with Article 7 of the Law On the Right to Information. Specifically, information on the budget, on procurements and audit reports, has not been published yet.
- **Coordinators on the right to information** require more professional training and development on the right to access public information, as most of them do not have sufficient knowledge of the legal framework, which places the implementation of the law on an improper level.

The Office of the Commissioner received 72 complaints in total from journalists and media representatives (for the period from 11 March 2020 to 23 June 2020), of which 42 have been fulfilled during the review period of the complaint, while for three of them the Office of the Commissioner issued a decision. Meanwhile, administrative reviews for 27 other complaints were in process. The following table summarizes the complaints submitted by journalists and media:

Public Authority	Complaints received:
Airport ‘Nënë Tereza’	1
Public Procurement Agency	1
Territorial Development Agency	1
National Coast Agency	1
Alb Petrol sh.a	1
National Environmental Agency	6
Durres Port Authority	1

Albanian Road Authority	1
Bank of Albania	1
Municipalities	21
National Inspectorate of Cultural Heritage	2
Tirana Regional Council	1
Independent Qualification Commission	2
Central Election Commission	1
Parliament of Albania	1
Ministry of Justice	2
Ministry of Finance and Economy	1
Ministry of Health and Social Protection	9
Ministry of Culture	1
Ministry of Education, Sports and Youth	1
Ministry of Tourism and Environment	5
Ministry of Internal Affairs	1
Electricity Distribution Operator (OSHEE)	2
Tirana University Hospital center (QSUT)	1
University Hospital "Shefqet Ndroqi"	1
University Hospital Centre for Trauma	2
Water and Sewerage Agency	1
Tirana Prosecutor's Office	1
General Prosecutor's Office	1
Polytechnical University of Tirana	1

Table 18: Complaints the Commissioner's Office Received in 2020

Commissioner's experiences/concerns:

- Even after six years of having the law in practice, we still do not have the sufficient staff to be able to achieve all our obligations as foreseen by the law;
- It is not easy at all, as the mentality of the public administration in Albania it is not an open one. It was never an open one. We were facing a reality that every official document was considered a confidential document and a closed one. On the contrary, every official document shall be an open document. We are working hard on changing this old administrative mentality.
- There were cases when public authorities did not want to disclose information simply because they did not know their legal obligations or because of lack of professionalism.
- Most importantly, the appointments or selections of the coordinators on the Right to Information in each public institution should be based on professional competence; and the role of the coordinator should be better clarified with clear terms and responsibilities.

Bosnia and Herzegovina

In Bosnia and Herzegovina, the Institution of Human Rights Ombudsman of Bosnia and Herzegovina monitors and observes the right to access information. In accordance with the provisions of the Law on the Human Rights Ombudsman of Bosnia and Herzegovina⁵² and applicable laws on free

52 Law on the Human Rights Ombudsman of Bosnia and Herzegovina <http://www.legislationline.org/documents/id/6300>

access to information⁵³, he or she conducts investigations, and in case of violations of rights, sends recommendations to the responsible authorities, notifies the higher authority directly in case of non-implementation of the recommendation, and has the authority to draft and submit guides and general recommendations related to the implementation and application of laws in this area.

According to the Ombudsman's Special Report "on experiences in the implementation of legislation governing freedom of access to information in Bosnia and Herzegovina",⁵⁴ implementation of the Law on Free Access to Information by the public authorities is accompanied by obvious weaknesses, such as: delays in decision making; when making a decision, a lack of all elements required by the law (like introduction, disposition, reasoning, legal remedy); institutions usually granting no real access to information. In some cases, the Special Report of the Ombudsman notes that public authorities do not meet their legal obligations to act on a request for access to information received by a third party.

The Ombudsman ranks received complaints into two categories: those relating to the institutional flaws and those relating to gaps in legislation.

The total number of complaints received by the Ombudsman in 2019 related to violations of the right to free access to information was **275**, and the Ombudsman issued **57** recommendations. In 2020, the Ombudsman received **205** complaints and issued **64** recommendations.⁵⁵ Issued recommendations related to: the silence of the administration, or failure to act on requests for access to information and on appeals against first instance decisions; failures to provide information on available remedies in their decisions; claiming

53 Law on Freedom of Information in Bosnia and Herzegovina http://hea.gov.ba/pristup-info/ZOSPI_2000-2013_eng.pdf

54 Ombudsman Special Report, December 2019 https://www.ombudsmen.gov.ba/documents/obudsmen_doc2020020515415139eng.pdf

55 Figures received by the Institution of the Ombudsman, Ivona Raznatovic, Advisor for Communications and International Cooperation, via email correspondence, November 27, 2020

exceptions in situations when requested information does not constitute an exception; failure to carry out a public interest test or inadequate public interest test; failure to appoint information officers, and the like.

Complaints concerned public authorities at all levels of government in Bosnia, relating to: failures to issue a decision; failures to ensure the right to a legal remedy; inefficient reaction of inspections; and failures of competent authorities to comply with legal deadlines when deciding on parties' requests.

Article 19 of the Law on Access to Information obliges public institutions to appoint an Information Officer to ensure the processing of requests. The law also obliges public institutions to publish an Information Access Guide and maintain an Information Register Index. The Ombudsman expresses concerns, as, based on their analyses from 2019, even though all public authorities are obliged to publish a Guide to Access to Information and have an Index of Information Register, they have done nothing on content and on updating facts, by making those available to the general public. In general, public authorities do not make regular updates, especially when referring to the index of information register, given the changes in competencies, actions or other circumstances affecting the lists of information that should be made available to the public. Most public authorities do not submit statistical data on requests for access to information to legislative bodies and the Ombudsman Institution.

A summary of Freedom of Information obstacles by public authorities, as listed by the Institution of the Ombudsman, notes:

- High levels of uneducated staff in public bodies;
- Misunderstandings or misinterpretations of the law on freedom of access to information;
- Lack of understanding of the relationship between a public body and citizens vs public authorities and citizens' services;
- The structure of public law enforcement bodies has not been established, no guides have been adopted, no information indexes made,

and no information officer appointed, and they are often considered media relations officers;

- Poor reasoning for decisions made on requests for access to information;
- Failures to ensure a balance between the public interest and the protection of individuals' privacy interests;
- Failures to take decision within the deadlines set by law;
- Non-compliance with the legal provision on the form of decision-making;
- The decision act does not contain provisions on the possibility of appealing and the name of the second-instance decision-making body;
- Rejected requests for access to information often do not contain a statement of reasons for refusal or justification for a public interest test.

In short, the Institution of the Ombudsman in Bosnia and Herzegovina, with no legal power to issue sanctions, or hold accountable public institutions that do not obey the Law on Free Access to Information, can only recommend and train public institutions on how to be more legally responsive, and digitalize more data, so as to become more open to the general public.

Ombudsman's experiences/concerns:

- Issues related to free access to information are considered within the Department for Civil and Political Rights, which has seven employees and deals with all cases related to violations of civil and political rights.

- Pursuant to Article 15 of Law on Human Rights Ombudsman Ombudspersons are independent in their work. Ombudspersons do not receive any orders. Within their constitutional and legal powers, no Ombudsman receives instructions from the authorities. Ombudspersons act within the framework of constitutional and legal provisions and international legal documents on human rights and freedoms ratified by Bosnia and Herzegovina. Ombudspersons are obliged to adhere to the principles of justice and morality in their work, and there are no political or other pressures.

Kosovo

The newly adopted law in Kosovo on Access to Public Documents⁵⁶, as of mid-2019, designates the Information and Privacy Agency, as an independent body, responsible for ensuring the implementation of the Law on Access to Public Documents and Law on Protection of Personal Data, in order to protect the fundamental rights and freedoms of natural persons in relation to processing of personal data, as well as guaranteeing access to public documents.

The Information and Privacy Agency was established under the specific Law on Protection of Personal Data,⁵⁷ which stipulates that this agency is represented by the Commissioner, who is appointed by the Assembly of Kosovo and is responsible for ensuring the implementation of the Law on Protection of Personal Data and Law on Access to Public Documents. Among other things, this law regulates the procedures for administrative complaint, where the Agency serves as a second instance and is competent to impose

56 New Law on Access to Public Documents (July 2019), Republic of Kosovo https://mapl.rks-gov.net/wp-content/uploads/2017/12/LAW_NO_06_L-081_ON_ACCESS_TO_PUBLIC_DOCUMENTS.pdf

57 Kosovo Law on Protection of Personal Data http://assembly-kosova.org/Uploads/Data/Documents/Lawno06L-082_NBuSkkM44v.pdf

fines on public institutions and responsible officials. Whereas the competence of the Ombudsperson (Article 21 of the Law on Access to Public Documents) is to assist citizens in realization of their right for access to public documents pursuant to Constitution, Law no. 05/L-019 on Ombudsperson.⁵⁸

However, the country failed three times in a row to elect a Commissioner. Therefore, the Institution of the Ombudsperson continues to administer complaints on denied access to public documents.

Furthermore, the trend towards an increased number of complaints submitted to the Ombudsperson regarding allegations of denial of the right of access to public documents has drastically fallen during last year. In 2018 there were 61 complaints filed, 56 of which were initiated for investigation; in 2019 there were 106 complaints filed, of which 99 were initiated for investigation.⁵⁹ In 2020, according to the preliminary data received,⁶⁰ the Institution of the Ombudsperson, from January 1 to November 4, 2020, received 43 complaints of which 42 were initiated for investigation.

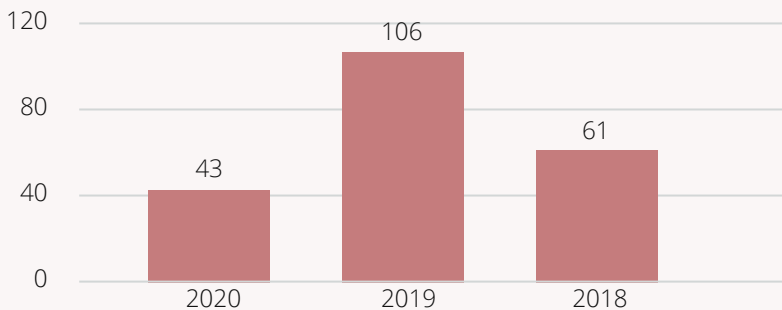


Table 19: Complaints Received by the Ombudsperson 2018-2020

58 Kosovo Law on Ombudsperson <https://www.oik-rks.org/en/2018/08/20/law-no-05-l-019-on-ombudsperson/>

59 Annual Report 2019, Ombudsperson of Kosovo <https://www.oik-rks.org/en/2020/04/02/godisnji-izvestaj-2019/>

60 Online Interview with Ms. Merita Gara, Legal Advisor monitoring the complaints on access to public documents, November 6, 2020

Most complaints received by the Ombudsperson during 2019 related to access to public documents, and were mainly against public institutions at central level. Some **43 per cent** were against Ministries; **24 per cent** concerned Municipalities, **8 per cent** the Police, **8 per cent** other, **7 per cent** Courts, **3 per cent** for the University of Prishtina, **3 per cent** for public enterprises; **2 per cent** the Kosovo Prosecutorial Council, and **2 per cent** the Kosovo Judicial Council.⁶¹

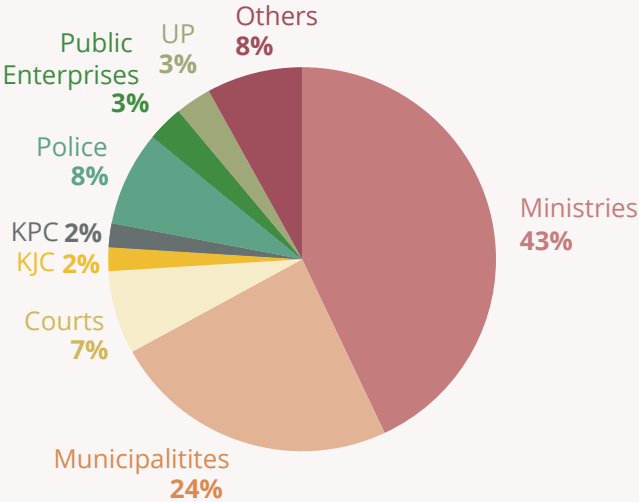


Table 20: Complaints Received by the Ombudsperson Only during 2019

61 Kosovo Ombudsperson Annual Report 2019 <https://www.oik-rks.org/en/2020/04/02/godisnji-izvestaj-2019/>

The complaints received during 2020 were against the following public institutions:

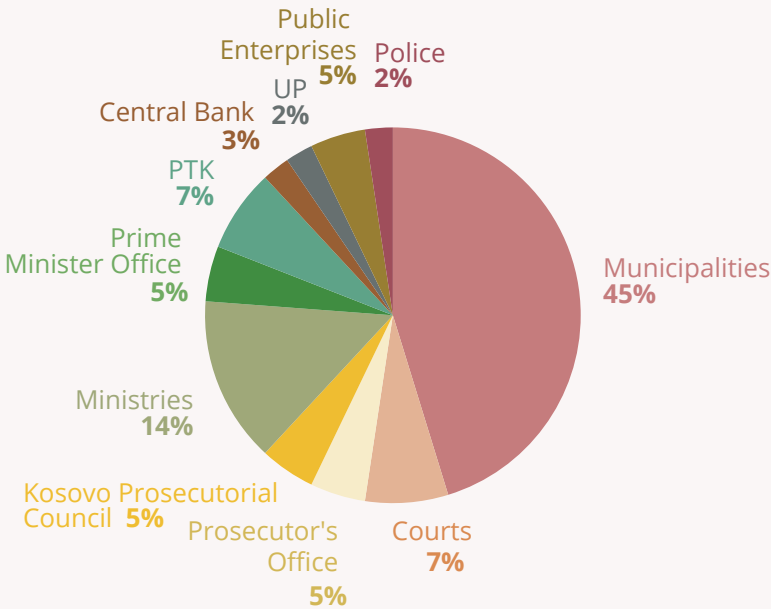


Table 21: Complaints Received by the Ombudsperson during 2020

During 2020, the Ombudsperson also issued two Letters of Recommendations to the responsible authorities on access to public documents. One institution, by November, had implemented the recommendation (the Municipality of Gjilan). The institution that did not implement the Recommendation was the Kosovo Prosecutorial Council.

According to the general observation of the Institution of the Ombudsperson (from the 2019 annual report and the 2020 interview), Kosovo's public institutions continue to refuse access or grant restricted access, and mostly fail to decide and provide valid reasoning for this based on the law. Even after receiving Ombudsperson's recommendations or investigations, institutions remain inactive. While it was expected that the establishment of the

Information and Privacy Commissioner would create new grounds for more proactive and transparent public institutions, it did not happen. Parliament also failed to elect a Commissioner for the Information and Privacy Agency, IPA. Without a Commissioner, Kosovo has no institutional mechanism to implement the Law on Access to Public Documents and the Law on the Protection of Personal Data.

Furthermore, the IPA remains unable to impose fines on bodies that violate the law due to the absence of certain internal acts that should be signed and submitted to the government by the Commissioner.

Ombudsperson's experiences/concerns:

- Public institutions must clearly refer to legal constraints when rejecting an FOI request, which is currently not happening - and not just issue a notification (answer) that the request is rejected.
- No public institution is referring to the Law on Classification of the information, where clearly only four categories are noted when an item of information cannot be fully disclosed. However, institutions can still cross out and black out the restricted parts, and disclose the rest.
- A Commissioner should be appointed as soon as possible, as the law grants the Commissioner power to issue fines when public institutions do not grant access to information as foreseen by the law.
- Fines should be applied, so public servants become more aware of their obligations.

Montenegro

The oversight body for the Law on Free Access to Information is the Agency for the Protection of Personal Data and Access to Information.

The Agency has many features in line with international standards. They include: receiving and deciding on appeals; running an information system for accessing information; maintaining a list of public bodies; checking that each body updates its “guide” (index) of information; checking for compliance with proactive publication provisions, and so forth.

However, there is concern that the Agency does not have the power to hear complaints when a refusal is based on refusal of information that is classified secret (Article 34).⁶²

In short, according to the European Commission’s report, implementation of the Law on Free Access to Information has not helped improve the accountability and transparency of public authorities. In 2019, the total number of requests for free access to information was 5,409 (while in 2018 it was 6,080) and 3,531 complaints were filed. (In 2018, the number was 3,248).

For 2020, the Agency received 49 Freedom of Information requests from journalists only. And only three complaints were received during 2020: two from journalists and one from the Association of Professional Journalists in Montenegro. The Council of the Agency rejected one complaint as unfounded, while the remaining two cases are still under review.

62 Analyses on the Law by Info Access and MANS <http://www.mans.co.me/wp-content/uploads/2018/06/AIE-MANSanalysis.pdf>

The Competences of the Agency for Personal Data Protection and Free Access to Information⁶³:

- Supervises the implementation of personal data protection in accordance with this law;
- Decides on requests for the protection of rights;
- Delivers opinions regarding the application of this law;
- Gives consent with regards to the establishment of personal data filing systems;
- Delivers its opinion in the case of doubt whether a set of personal data is considered a filing system within the meaning of this law;
- Monitors the application of organisational and technical measures for personal data protection and proposes improvements of such measures;
- Gives proposals and recommendations for the improvement of personal data protection;
- Delivers opinions on whether certain ways of personal data processing endanger the rights and freedoms of individuals;
- Cooperates with bodies competent for supervision over the personal data protection in other countries;
- Cooperates with competent state authorities in the process of preparing regulations on personal data protection;

63 Montenegro Agency for Personal Data Protection and Free Access to Information
<http://www.azjp.me/en/free-access-to-information>

- Puts forward proposals for assessment of constitutionality of laws, that is the constitutionality and lawfulness of other regulations and general acts governing the issues of personal data processing and
- Performs other tasks in accordance with this law. (Article 50 of the Personal Data Protection Law; Official Gazette of Montenegro 79/08 and 70/09).

Furthermore, the Council of the Agency, as a second-instance body, makes decisions on the procedure of filed appeals and complaints. Controllers in the Department for Free Access to Information perform inspections in the area of proactive publication of information on the websites of those obliged to apply the Law on Free Access to Information. However, BIRN will continue to monitor and request more data on Council's decisions, and test several websites of public authorities from Montenegro, in the next Regional Report.

Nr.	Institution:	Status of request:
1.	Ministry of Finance, Department of Public Revenues	Partially approved
2.	Ministry of Transport and Maritime Affairs	Partially approved
3.	State Audit Institution	Partially approved
4.	Administration for Inspection Affairs	Notice
5.	Ministry of Interior	Notice
6.	Municipality – Assembly Secretary	Notice
7.	Property Administration	Notice
8.	Environment and Protection Agency	Notice
9.	Ministry of Agriculture and Rural Development	Notice
10.	Ministry of Culture	Rejected
11.	Ministry of Finance, Department of Public Revenues	Rejected
12.	Municipality, Internal Audit Service	Rejected
13.	Ministry of Foreign Affairs	Rejected

14.	Ministry of Sports	Rejected
15.	Ministry of Finance, Customs Administration	Rejected
16.	Environment Protection Agency of Montenegro	Approved
17.	State Audit Institution	Approved
18.	Parliament of Montenegro	Approved
19.	Municipality-office of the mayor	Approved
20.	Municipality - Secretariat for General Administration	Approved
21.	Employment Agency Montenegro	Approved
22.	State prosecutor's office	Approved
23.	Ministry for Human and Minority Rights	Approved
24.	Ministry of Defence	Approved
25.	Ministry of Public Administration	Approved
26.	Ministry of Culture	Approved
27.	Ministry of Labour and Social Welfare	Approved
28.	Agency for Prevention of Corruption	Approved
29.	Ministry of Transport and Maritime Affairs	Approved
30.	Basic Court	Approved
31.	National Museum of Montenegro	Approved
32.	Government, State Archives of Montenegro	Approved
33.	Ministry of the Interior	Approved
34.	Ministry of Finance, Department of Public Revenues	Approved
35.	Ministry of Agriculture and Rural Development	Notice (institution asked for more information)
36.	Police administration	Forwarded
37.	Ministry of the Interior	Forwarded
38.	Municipality of Kotor, Tourist Organisation	Approved

Table 22: List of Requests Received during 2020⁶⁴

64 BIRN received the data directly from the Agency, no data was published/available online.

North Macedonia

The Law on Free Access to Public Information was amended in mid-2019, and the new law established a new Agency for the Protection of the Right to Free Access to Public Information. The Agency replaced the existing Commission for the Protection of the Right to Free Access to Information of Public Character (the Commission) and is defined as an autonomous and independent body of the state administration (Article 29).⁶⁵

The new Agency for Protection of the Right to Free Access to Public Information⁶⁶ finally resumed work in January 2020. Being without a director from May 2018 until January 2020, the Agency did not respond to any appeals during that period, and this led to an increase in unanswered requests for public information from public information providers. The director and deputy director were finally appointed in January 2020, and some 750 cases were resolved in February 2020.

The new Law on Free Access to Public Information was adopted in May 2019. It authorises the Agency for Protection of Free Access to Public Information to monitor compliance with the rules on proactive disclosure of information and reduces the grounds on which requests for public information can be refused. However, the Agency's capacity to implement the new law needs to be strengthened. Also, the COVID-19 crisis has led to further delays in responding to requests for public information by many institutions.

According to Agency's Annual report⁶⁷, during 2019, 755 complaints were

65 Opinion on the Draft Law on Free Access to Public Information in the Republic of North Macedonia <https://www.osce.org/odihr/426002>

66 Agency for Protection of the Right to Free Access to Public Information <http://komspi.mk/>

67 Annual Report for 2019, Agency for Protection of the Right to Free Access to Public Information <http://komspi.mk/wp-content/uploads/2020/04/ГОДИШЕН-ИЗВЕШТАJ-2019-PDF.pdf>

submitted to the Commission against administrative and real acts of the first instance bodies, or against silence by the information holders. As many as 677 of the total number of complaints were filed due to the silence of the administration. Most of the complaints were submitted by legal entities, for example, by citizens' associations and foundations (621), and 134 complaints were submitted by individuals.

For 2019, the majority of complaints (411) were filed against **health organisations** by the same association of citizens; 130 complaints were filed against **state institutions**, 97 against **municipalities**, 43 against **public enterprises**, 38 against the **judiciary**, 20 against **legal and natural persons** exercising public authority, and 15 against **educational institutions**.

According to preliminary data BIRN received from the Agency⁶⁸, a total of 917 complaints were solved by October 30, 2020. Most of the complaints received (90 per cent) were against the silence of information holders. More concretely, 836 complaints were filed due to administrative **silence**. As in the year before, most of the complaints were submitted by legal entities, like citizens' associations and foundations (461), and 91 were submitted by individuals.

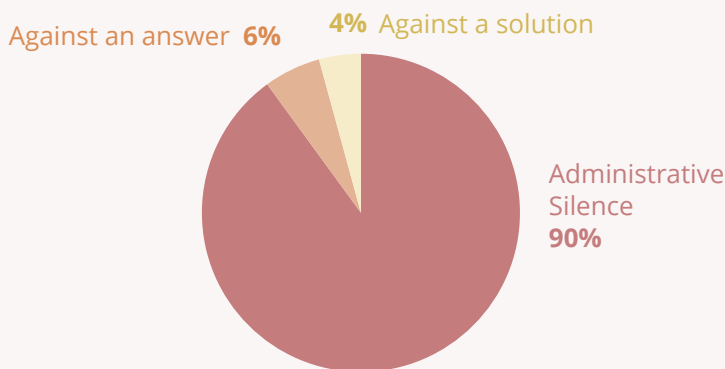


Table 23: Complaints Received in 2020

68 Online interview with Ms. Plamenka Bojceva, director of the Agency, and Mr. Blerim Iseni, deputy director, October 30th, 2020

According to the data for July and August 2020, the Agency received complaints against **ministries** (19), **municipalities** (11), **judiciary** (10), and 7 against **public entities**. The Agency will present the final totals in their Annual Report for 2020, to be published in the coming months.

Agency's experiences/concerns:

- The new changes to the law have granted more competences to the Agency, however, it is still functioning with minimal resources and staff.
- Some public institutions do not keep track of requests received, as obliged to by the law, so it is sometimes hard to track the responses or actions of those institutions.
- Sanctions for public servants, for not obeying legal obligations, should be strengthened and enforced.

Serbia

Serbia adopted the Law on Free Access to Information in 2004. Since then, this law was amended three times, in 2007, by tightening the conditions for the election of the commissioner, then in 2009 by amending the procedural and penal provisions and in 2010, when the competence for compulsory execution of the Commissioner's decision was determined. Since 2012, the Commissioner has been pointing out the need for further improvement of the law in the interest of the public's right to know and to strengthen a democratic and open society, and eliminate obvious obstacles in practice. The process of amending this law, which started then, was interrupted by parliamentary elections. It is still not complete.⁶⁹

69 Commissioner's Annual Report for 2019: <https://www.poverenik.rs/images/stories/dokumentacija-nova/izvestajiPoverenika/2019/ENIzvestaj2019.pdf>

Furthermore, the latest development of the law was a version of the draft law from 2019 containing a modified solution regarding state-owned companies in the sense that they are not completely exempted from the application of the Law on Access to Information, as additional reasons for possible restriction of public rights regarding information about their work are prescribed.

At the end of December 2020, Serbia's Ministry of Public Administration and Local Self-Government announced that work on amending the Law on Free Access to Information of Public Importance had started.⁷⁰ Both the Minister and the Commissioner declared their "readiness to fulfill the ambitious plan" to finish the work in the first three months of 2021.

Several NGOs gathered in an umbrella organisation, the Coalition for Freedom of Access to Information, urged⁷¹ the government to make the process more transparent by publishing the working group's working plan, and by including media representatives, experts and civil sector organizations in the work.

"Such a composition of the working group [with only state representatives], as well as the short deadlines to complete the process, may affect the quality of the proposed solutions and the public debate on the draft," the Coalition said on February 19.

Their concerns followed the government's first announcement about changing the law in 2018. Many NGOs deemed the proposed changes harmful because of the formal difficulties in procedures of obtaining information, when a public institution does not act on the request of the citizens, among other criticisms.

Commissioner Milan Marinovic, on the other hand, defended the changes

70 Započet rad na izmenama i dopunama Zakona o slobodnom pristupu informacijama od javnog značaja <http://mduls.gov.rs/saopstenja/zapocet-rad-na-izmenama-i-dopunama-zakona-o-slobodnom-pristupu-informacijama-od-javnog-znacaja/?script=lat>

71 Request to the government of the republic of Serbia with regard to the elimination of shortcomings in the drafting of the law on free access to information of public importance <https://www.yihr.rs/en/request-to-the-government-of-the-republic-of-serbia-with-regard-to-the-elimination-of-shortcomings-in-the-drafting-of-the-law-on-free-access-to-information-of-public-importance/>

in his interview⁷² towards the end of January 2021, arguing that they will enable improved rights to information, strengthen access to information, the proactivity of government bodies, and prevention of abuses and the competencies of the Commissioner.

According to the Commissioners' Annual report for 2019, requesters have had the most difficulty in obtaining information on the spending of budget funds, public procurement and other spending of public funds, records of public property and the like. This is why the number of complaints in these cases in 2019 almost doubled compared to the previous year, as well as the number of appeals regarding endangerment and protection of the environment.

In Serbia, it is common that, in a large number of cases, public authorities act on the request and submit information only after the applicant has submitted a complaint to the Commissioner, and after the Commissioner submits it to the authority for a statement. This leads to the suspension of the grievance procedure, but at the same time it causes unnecessary harassment of those seeking information and unnecessary spending of public resources in connection with the processing of grievances and the engagement of staff in the Office of the Commissioner. Giving information only after learning about the complaint shows that there were no essential reasons for not acting on the submitted requests, and that such an irresponsible and irrational attitude of the authorities towards citizens and public resources could have been avoided.

Basic obstacles in exercising the right to access information:

- Impossibility of administrative enforcement of the Commissioner's decision;
- Inadequate responsibility;
- Difficult implementation of the Commissioner's authority.

72 Poverenik: Uskoro izmene Zakona o slobodnom pristupu informacija od javnog značaja <https://www.danas.rs/drustvo/poverenik-uskoro-izmene-zakona-o-slobodnom-pristupu-informacija-od-javnog-znacaja/>

Typical cases of circumvention of the right to access information in 2019 and 2020:

- Failure to provide information related to the financing of the media and their assets;
- Failure to provide information on privatization procedures;
- Failure to provide information on spending public money;
- Information related to environmental protection;
- Denying and complicating access to information related to the control of the legality of the work of public authorities.

In 2019, the Commissioner resolved **5,188** complaints. The largest number of complaints, 4,604 or **88.74 per cent**, were filed due to the complete ignoring of the request of the information seeker or a negative answer, without making a decision containing reasons for rejecting the request and an instruction on legal remedy, as required by law. Such treatment was more present by almost 6 per cent (5.98) more cases compared to 2018. Only 584 complaints, or 11.26 per cent of the total number of resolved complaints were filed against the decision of the authorities rejecting the information seeker’s request as unfounded, but with an explanation.

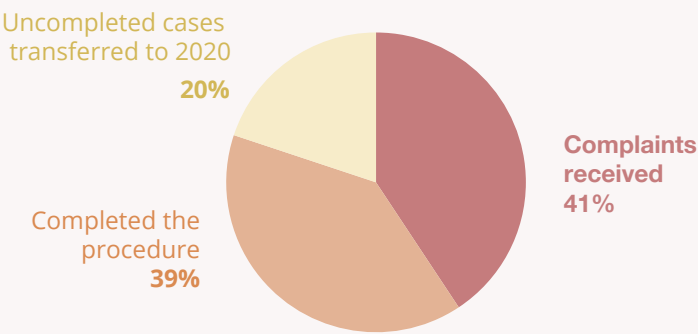


Table 24: Complaints Received by the Commissioner during 2019

In 2020, the Commissioner received a total of **3,286 complaints**⁷³. Of those, 278 were exclusively received from journalists.

Of that number, **159** were filed due so-called “administrative silence”, **44** were filed against the conclusions and decisions of public authorities rejecting or denying the request for access to information, and **75** were filed due to incomplete or inadequate responses.

From the **278** total complaints received from journalists, **205** were resolved, and **73** are still pending.

From the resolved cases, the Commissioner made the following decisions:

- In 49 cases, the Commissioner ordered the public authority to provide the requested information;
- In 13 cases, the Commissioner annulled the decision rejecting the request for access to information and ordered the information to be made available;
- One appeal was rejected as unfounded;
- In 39 cases, the decision revoking the request for access to information was annulled and the case returned for retrial;
- 10 appeals were rejected for formal reasons (irregular appeal or inadmissible appeal);
- In 93 cases, the appeal procedure was suspended because the information was made available to the appellant after the intervention of the Commissioner.

73 BIRN obtained preliminary data, email correspondence, Slavoljupka Pavlovic, Assistant Secretary General, Sector for Complaints and Enforcement – Access to Information, Office of the Commissioner for Information of Public Importance

	Public Authority:	Number of complaints filled:
1	City and municipal public authorities and local communities	53
2	Public services and other local government organisations	2
3	Local public companies	10
4	Ministries	74
5	Appeals against the highest bodies (National Assembly, Government of RS, President of the Republic, Supreme Court of Cassation, Constitutional Court of Serbia, Republic Public Prosecutor)	9
6	Independent state bodies and authorities	9
7	Provincial authorities	3
8	Appeals against judicial authorities (courts and public prosecutor's offices)	23
9	Republic public companies	4
10	Republic agencies, directorates, institutes, funds, etc.	46
11	Sports organisations	5
12	Primary and secondary education institutions	4
13	Social protection institutions	1
14	Scientific, cultural and information Institutions	2
15	Health care institutions	32
16	Higher education institution	1

Table 25: Filed Complaints during 2020 Against Public Authorities

Most of the requested documents in 2020 were for: financial details (like salaries, donations, sponsorships); public property records; public investments; public procurement; cadastral or public property records; information about the work of police and security services; work of judicial bodies; and environmental protection details.

Furthermore, out of 62 cases in which the Commissioner issued a decision ordering the public authorities to provide information to journalists, in 25 cases the Commissioner's decision was not executed (of which the Commissioner informed the Administrative Inspection). 21 decisions were executed, one decision was partially executed, and 15 orders are still pending.

The National Health Insurance Fund (5), the Higher Public Prosecutor's Office (2) and the City Administration of the Town of Pancevo (2) and the Ministry of Finance (2) have the most unexecuted decisions. Other public authorities have only one unexecuted decision of the Commissioner.

Regarding "administrative silence", most complaints are about the Ministry of Interior (8), the Ministry of Health (7), the Ministry of Finance (6), the National Health Insurance Fund (6), the Environmental Protection Agency (3), the Ministry of Defence (3), and the Ministry of Foreign Affairs (3). Other public authorities have one or two complaints of silence.

**Law on Free Access to Information of Public Importance⁷⁴
(Official Gazette of the Republic of Serbia, number 120/04 and
54/07):**

- Monitor respect of obligations by public authorities regulated by this law and report to the public and National Assembly thereof;
- Initiate the preparation or change of regulations for the implementation and promotion of the right to access information of public importance;
- Propose measures for public authorities to take to improve their work regulated by this law;

74 Law on free Access to Information of Public Importance <https://www.poverenik.rs/en/>

- Undertake necessary measures to train employees of state bodies and to inform the employees of their obligations on the rights to access information of public importance with the aim of their effective implementation of this law;
- Consider complaints against the decisions of public authorities that violate the rights regulated by this law;
- Inform the public of the content of this law and the rights regulated by this law;
- The Commissioner may initiate the procedure for the evaluation of the constitutionality and legality of the law and other general documents;
- The Commissioner shall publish and update an instruction booklet with practical instructions for the efficient exercise of the rights regulated by this law in the Serbian language, and in other languages, determined in accordance with the law as official languages;
- Through the press, electronic media, Internet, public workshops and in other ways, the Commissioner is to inform the public about the contents of the booklet on application of the law.

Commissioner's experiences/concerns:

- There was no political pressure on the Commissioner's Office. It sometimes happens that the heads of public authorities who are dissatisfied with the decisions of the Commissioner criticize the Commissioner's work.
- In order for the Office of the Commissioner to function better, a continuous and constant training of employees is required, as well as additional premises.

Global Right to Information Rating, RTI

Analysis of the Regional Laws

The Right to Information Rating is a global methodology that assesses the strength and analyses the quality of the legal framework for the right to information (RTI) in a country. The results indicate a significant spread from countries which score less than 50 out of a possible total of 150 points (i.e. less than a third) to several which score above 130 points, which is 90 per cent.⁷⁵

Under the RTI Rating are 61 Indicators, and for each Indicator, countries earn points within a set range of scores (in most cases 0-2), depending on how well the legal framework delivers the Indicator, with a possible total of 150 points. The indicators are divided into seven different categories: Right of Access, Scope, Requesting Procedures, Exceptions and Refusals, Appeals, Sanctions and Protections, and Promotional Measures.⁷⁶

In order to better understand the scoring, BIRN analysed the lowest with the highest indicators ranked among the six Balkan countries, and compared the reasoning behind the RTI scoring.

However, it is important to note that the RTI Rating is limited to measuring the legal framework only and does not measure the quality of implementation. In the majority of Balkan countries, it appears that the quality of the laws is very high and the implementation weak. RTI ranks Serbia among the top best 10 in the world.

75 Global Right to Information Rating Map, Country Rating Results <https://www.rti-rating.org/>

76 Global Right to Information, RTI Methodology <https://www.rti-rating.org/methodology/>

The RTI methodology notes that some countries with relatively weak laws may nonetheless be very open (no such case in the Balkans), due to positive implementation efforts, while even relatively strong laws cannot ensure openness if they are not implemented properly.

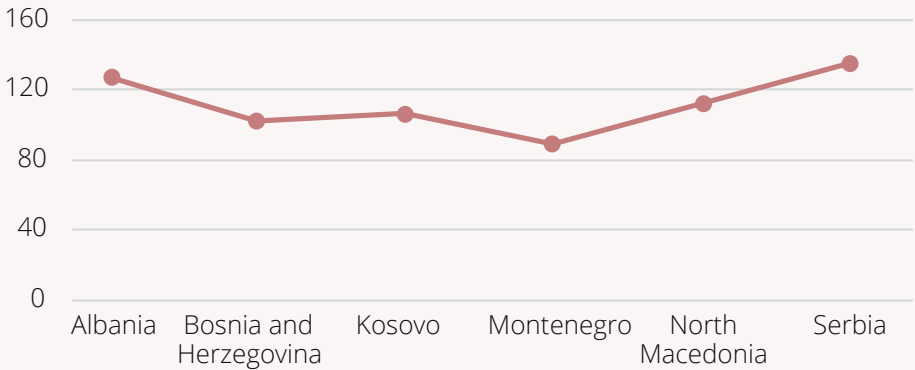


Table 26: RTI Rating Scores⁷⁷

Serbia's Law on Free Access to Information of Public Importance⁷⁸ has been ranked in the best top three in the world, after Afghanistan and Mexico. Of a maximum 150 points, Afghanistan scored 139 points and Mexico 136. Serbia ranked third with 135. Albania was the second country from the region listed in the Top 10, coming sixth with 127 points. Albania is also the only country that adopted the laws before 2000, and has made the most recent changes to the law.

77 RTI rating scores <https://www.rti-rating.org/country-data/>

78 Purposes of the Law on Free Access to Information of Public Importance, Serbia <https://www.rti-rating.org/wp-content/uploads/Serbia.pdf>

RTI Rating Section:	Max Scores	Serbia	Albania	North Macedonia	Kosovo	Bosnia and Herzegovina	Montenegro
Right of access	6	5	6	4	5	4	5
Scope	30	30	29	29	24	30	30
Requesting procedures	30	22	26	21	22	21	22
Exceptions & refusal	30	26	27	22	17	19	21
Appeals	30	29	23	18	20	16	4
Sanctions & protections	8	7	6	4	6	0	2
Promotional measures	16	16	10	14	12	12	5
Total	150	135	127	112	106	102	89

Table 27: Table RTI Scoring List

In order to better understand the points behind each section, BIRN analysed some of the lowest with the highest points, followed by a short summary of the indicator description. The three analysed sections are: Requesting Procedures; Exceptions & Refusal; and Appeals.

As shown in the table above, Albania has scored the highest, 26, in terms of requesting procedures. It is followed by Kosovo, Montenegro and Serbia, with 22, while Bosnia and Herzegovina and North Macedonia have the lowest score of 21.

There were 14 total indicators under the section Requesting Procedures. This section included indicators such as, 'Requesters are not required to provide

reasons for their requests' and, 'Requesters are only required to provide the details necessary for identifying and delivering the information (i.e. some form of address for delivery)' where all countries scored maximum points (2 out of 2). However, when mentioning the obligation of public servants to help requesters with special needs, like illiteracy or disability, Albania and North Macedonia failed (with scores of 0), Kosovo met the requirements partially (1 point), and Bosnia, Montenegro and Serbia met the criteria fully. Under the indicator, 'Requesters are provided with a receipt or acknowledgement on lodging a request within a reasonable timeframe, which should not exceed five working days', only Albania met the criteria partially, with a score of 1, as the legislation states that the "request is recorded and assigned a serial number. The serial number, along with the contact details of the Right to Information Coordinator are given to the applicant who sent the information request". ⁷⁹

All six countries also scored highly (2 points) for having clear due dates on processing FOI requests and being free of charge. Only Serbia scored partially (1 point) under the first indicator, 'There are clear limits on timeline extensions (20 working days or less), including a requirement that requesters be notified and provided with the reasons for the extension.' In Serbia, the public authority shall, within seven days of receipt of the request at the latest, inform the applicant about the delay. The timeline extension is 40 days, ⁸⁰ which exceeds the regional maximum responding timeframe.

From the second section, Exceptions & Refusal, Albania scores the highest (27), while the lowest scores were from Kosovo (17) and Bosnia and Herzegovina (19). With a total of seven indicators, this section evaluates and measures 'Restrictions on information disclosure (secrecy provisions) in other legislation to the extent of any conflict,' 'The exceptions to the right of access are consistent with international standards with permissible exceptions, like:

79 Law on the Right to Information, Albania <https://www.rti-rating.org/wp-content/uploads/Albania.pdf>

80 Law on Free Access to Information of Public Importance, Serbia <https://www.rti-rating.org/wp-content/uploads/Serbia.pdf>

national security; international relations; public health,' and whether 'The law contains a clause stating that exceptions to protect public interests do not apply to information which is over 20 years old.'

Bosnia and Herzegovina⁸¹, Montenegro⁸² and North Macedonia⁸³ completely failed under the first indicator from this section, 'Restrictions on information disclosure (secrecy provisions) in other legislation to the extent of any conflict,' while Kosovo partially met the criteria, scoring medium points, and both Albania and Serbia scored the highest. Under Albanian law, "the right to information is not automatically refused when the information sought is found in documents classified as state secret." While in Serbia, the law notes that, "Nothing in this Law shall be construed as justifying the revocation of a right conferred by this Law or its limitation to an extent exceeding that provided for in paragraph 1". However, BIRN's past experiences when regularly filing FOI requests shows that, in Serbia, the majority of the institutions in 2019⁸⁴ noted a large number of requests as 'classified' with no further explanation.

Furthermore, indicators 32 and 33, from section Exceptions & Refusals, obscure the fact that almost all countries in the region fail to release information as soon as an exception ceases to apply (for example, after a contract tender process decision has been taken); by also failing to include a clause on exceptions to protect public interests does not apply to information that is over 20 years old.

Only North Macedonia scores highly. The law in North Macedonia notes: "Information listed in paragraph (1) hereunder shall become available once the

81 Freedom of Access to Information Act for Bosnia and Herzegovina <https://www.rti-rating.org/wp-content/uploads/Bosnia-and-Herzegovina.pdf>

82 The Law on Free Access to Information, Montenegro <https://www.rti-rating.org/wp-content/uploads/Montenegro.pdf>

83 Law on Free Access to Information of Public Character, North Macedonia <https://www.rti-rating.org/wp-content/uploads/Macedonia.pdf>

84 BIRN Freedom of Information Report, 2019 https://balkaninsight.com/wp-content/uploads/2019/12/FOI_Report_En.pdf

reasons for its being unavailable shall cease to exist,"⁸⁵ and meets the second clause on exception to protect information over 20 years old. The remaining five countries score 0.

And finally, the 33rd indicator, on 'clear and appropriate procedures consulting with third parties who provided information which is the subject of a request on a confidential basis,' and on 'public authorities taking into account any objections by third parties when considering requests for information, but third parties do not have veto power over the release of information' are nonexistent in all six countries.

On the other hand, the last two indications from this section, 34 and 35, rank all countries with highest scores. All countries scored maximum points for covering part of a record and disclosing the remainder. Indicator 35 ranks the section of public authorities 'when refusing to provide access to information, must a) state the exact legal grounds and reason(s) for the refusal and b) inform the applicant of the relevant appeals procedures.

BIRN has also observed closely the two last indicators, but technically all countries hide only the personal data. No 'classified' information has been covered from a released document. And BIRN requesters are not always notified that the authorities have received the requests and are working on disclosing the information.

Under the Appeals section from the RTI ratings, in general Serbia scores the highest with 29 points (out of 30). North Macedonia scored 18, a medium level. Montenegro scores the lowest, with only 4 points. For some indicators all countries show good scores, and in some others, very low scores.

Five countries scored high under criteria 37 - 'Requesters have the right to lodge an (external) appeal with an independent administrative oversight body (e.g. an information commission or ombudsman)', and under criteria

85 Law on Free Access to Information of Public Character, North Macedonia <https://www.rti-rating.org/wp-content/uploads/Macedonia.pdf>

38 - 'The member(s) of the oversight body are appointed in a manner that is protected against political interference and have security of tenure so that they are protected against arbitrary dismissal (procedurally/substantively) once appointed.'

Only Montenegro scored 0 in both criteria.

However, five countries also scored low under criteria 48, on government bearing the burden on demonstrating that it does not operate in breach of the rules. Only Serbia scores high (with max 2 points). Nonetheless, that high score is evaluated on the article that, "The public authority shall prove it has acted in accordance with its obligations set forth in this Law."⁸⁶

On the last criteria from this section, Kosovo⁸⁷ and Serbia score the same, with 1 point each (0-2-point scale). Apparently, they have some sort of external appellate body that has the power to impose appropriate structural measures on the public authority (e.g. to conduct more training or to engage in better records management).

In short, RTI rating gives an excellent evaluation of the scores of countries' laws. And the Rating indicates the strengths and weaknesses of the legal framework and provides a handy means for pinpointing areas in need of improvement.

However, it is unfortunate that the majority of counties from the Balkans belong under the second group of cases: with FOI laws that sound great on paper but are lacking implementation. Thus, it is no surprise to see Serbia with the world's highest points, followed by Albania – but with little progress on implementation of the laws in practice.

86 Law on Free Access to Information of Public Importance, Serbia <https://www.rti-rating.org/wp-content/uploads/Serbia.pdf>

87 Law on Access to Public Documents, Kosovo https://www.rti-rating.org/wp-content/uploads/2020/11/Kosovo.RTI_.2019-3.pdf

Conclusion

In 2020, BIRN submitted a total of 359 Freedom of Information requests to public institutions in the six Balkan countries, to measure institutional transparency. During the reporting period, 15 investigations and thirteen features and analysis were produced based on information obtained from those requests. The majority of the documents are available online at BIRN's database BIRD Source.⁸⁸

Based on BIRN's monitoring, it was discovered that only a few institutions publish information online (on their websites), but the majority of this published information is not up-to-date; almost all of the monitored institutions lack updates, delay providing access to information, often reject requests or classify the information "confidential", so that no access is granted to the journalist or the public. Even those that did respond to BIRN's FOI requests often offered only partial information. They answered, or released only parts of the requested documents, or simply said that they would "respond after the state of emergency is lifted".

On paper, Freedom of Information laws are well presented in almost all the countries concerned, but implementation is lacking, and is becoming even more difficult, and almost impossible, in some countries.

The law in all the covered countries has an established and independent mechanism to ensure implementation of the law. However, the powers granted these offices are not strong in most of the countries, so no institution can actually be fined for not complying with FOI laws. Even in the few countries that impose fines, institutions are not required or strongly encouraged to respect the law, and deny access to public records. It is also doubtful that any of the imposed fines have been paid, even when institutions were found guilty of

88 <https://source.bird.tools>.

wrongly denying access to information.

For several years in a row, the countries concerned have lacked the political will to fully implement Freedom of Information laws. However, thanks to constant criticism of this situation from the European Union, local civil societies, NGOs and media representatives, including journalists, there is still some cause for optimism about the state of transparency in the Balkans – although more work needs to be done to ensure that the public is properly informed about their governments and the work that they do.

Recommendations

Based on the daily challenges that BIRN journalists faced during the last year, amid a global pandemic, their job was made more difficult when trying to obtain access to public records. The following recommendations would ensure better institutional transparency and implementation of the well written laws on Access to Public Information:

- More power should be granted to freedom of information officers for better and more effective responses to unlawful denials of access to public records.
- Their capacities should be strengthened, with more staffing and bigger operational budgets.
- Their offices should remain free of political interference and be fully independent in their work.
- All public Institutions should be trained on Freedom of Information Laws and obliged to publish all their decisions, records, spending and financial budgets online. They should make data available online, and make it more accessible for a broader audience.
- Stronger fines should be imposed on institutions that do not answer FOI requests, and a record kept of public servants that actively deny or do not answer FOI requests, backed by legal sanctions.
- Financial fines imposed on officers that reject requests without legal justification should be made payable by the individual officer, not by the institution.
- Civil society representatives, journalists and media experts should be invited to actively participate when the government is seeking to make any changes to FOI laws.

- Restrictions to FOI laws during any declared state of emergency should be eliminated.
- Tighter deadlines should be included for issuing notifications when institutions do not possess the requested information.
- Public servants in charge of FOIs from each public institution should contact the requester as soon as they receive the request and, if needed, suggest how to change/adapt the request so that the requester receives the answer faster and in full.
- A nationwide online register should be established of all FOI requests sent to all public institutions, along with their responses and published documents. This register should be publicly available, easily accessible, and searchable. This way, members of the public would not have to file new FOI requests for documents that are already made public.

About the Project

As presented in the report, although FOI laws are well established throughout the Balkans, unfortunately, that is only on paper. This report reflects on the challenges, practices and responsiveness of public institutions to local Freedom of Information requests sent by BIRN journalists. This Annual Regional Review on Freedom of Information is part of the project “A Paper Trail to Better Governance”, implemented by Balkan Investigative Reporting Network, BIRN, with the aim of promoting the rule of law, accountability and transparency in the six Balkan countries of Albania, Bosnia and Herzegovina, Kosovo, North Macedonia, Montenegro and Serbia.

The project contributes to the better functioning of the public sector in the project countries, which should abide by the principles of transparency and accountability. In the first project year alone, BIRN published 36 long reads and news, including 15 cross-border and country-based investigations, exposing the wrongdoings of governments, public and private companies, as well as powerful individuals, usually linked with the governments and politicians.

These stories focus on some of the most pressing issues for Balkan citizens – corruption, nepotism, environmental pollution, accountability, gender equality, privacy, surveillance and data tracking. They also deal with issues important on a global scale, where Balkans states are important actors – such as arms trade regulations violations and the refugee crisis. The BIRN team has done this through the extensive use of public documents, obtained through FOI laws, leaked or provided by sources.

The BIRN team also questioned transparency of public institutions in the project countries and beyond, submitting a total of 359 FOI requests to access public documents between February and December 2020, whose analysis remains the focus of this report.

The main target groups and beneficiaries of the “A Paper Trail to Better Governance” project are investigative journalists, young journalists, researchers, media outlets and the general public - at least 3 million people were exposed to published material resulting from investigative reporting, monitoring of public institutions’ compliance with legislation and annual review reports. Indirect beneficiaries include public institutions and different stakeholders, including media outlets and universities.

The project has for eight years in a row been supported by the Austrian Development Agency, ADA, the operational unit of the Austrian Development Cooperation. The first project phase covered the period January 2013 to 2016, and the second phase of the project covered the period January 2017 to December 2019. The ongoing phase lasts from February 2020 until January 2023.

This report covers the period from February to December 2020 and addresses the transparency of public institutions in Albania, Bosnia and Herzegovina, Kosovo, North Macedonia, Montenegro, and Serbia through: tracking the FOI requests that BIRN journalists sent; monitoring institutions from five countries that are part of the Open Government Partnership, OGP; and informing the public about the related obstacles.

To promote transparency, hold authorities and public figures accountable and help journalists in their investigations, BIRN established a free, user-friendly, searchable online library of public documents and scraped documents, BIRD Source . It is a comprehensive database of documents that the BIRN team has scraped, obtained through FOI laws and collected from sources for its groundbreaking investigations. Currently, it hosts more than 3 million documents ready for further use.

Apart from the BIRN Investigative Resource Desk, BIRD, launched in January 2020, BIRN launched a new feature, BIRD Community⁸⁹ in January 2021. This

89 BIRD Community platform <https://birdcommunity.tools/>

is a safe space where journalists can meet colleagues from different countries and interact to exchange ideas, data and information, collaborate on existing projects or start new ones.

Importantly, BIRD Community also offers its registered users free access to BIRD Source. BIRD Community also offers free access to Directory, a database of contacts of experts in different fields from the six Balkan countries of Albania, Bosnia and Herzegovina, Kosovo, Montenegro, North Macedonia and Serbia, as well as Forum and Bulletin Board sections, where members can communicate with each other privately or publicly and exchange data safely.

Investigations and features/analysis published during the monitoring period

Investigations (15):

1. [Company Linked to Serbian Minister's Husband Gets State Contracts](#)
2. [Kosovo Taxpayers' Money Was Used to Promote Border Changes](#)
3. [After the Flood, Serbian Villages Left to the Mercy of a River](#)
4. [Teddy Bear Bomb in Libya Linked to Serbian Arms Violations](#)
5. [Unclean Energy: The Kosovar Who Would Own the Sun](#)
6. [Asylum Outsourced: McKinsey's Secret Role in Europe's Refugee Crisis](#)
7. [How McKinsey Put 'Productivity' At Heart of European Refugee Policy](#)
8. [Serbian Inmates Hired for a Pittance by Subsidiary of Austrian Construction Giant](#)
9. [Luxury State Villa in Serbia Sold to Associate of Powerful Palestinian](#)
10. [In Nagorno-Karabakh Fight, Serbian-Made Rockets and Links to Blacklisted](#)

Dealer

11. [Hungarian Media Expansion in Balkans Raises Worries but Lacks Impact](#)
12. [Irish Dream Turns to 'Nightmare' for Eastern European Seasonal Workers](#)
13. [Currying Favour or Just Generous? Donors to Serbian Police Raise Eyebrows](#)
14. [Marcos and Soldado: Colombian Shootout Sheds Light on Balkan Drug Ties](#)
15. [Son of Fugitive Ex-President Builds Raspberry Fortune in Serbia](#)

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1. [Concern for Rights in Montenegro amid COVID-19 Fight](#)
2. [Central and Eastern Europe Freedom of Information Rights 'Postponed'](#)
3. [Governments Continue to Undermine Right to Information Under Cover of COVID-19](#)
4. [North Macedonia Leads Region in COVID-19 Tracing App](#)
5. [COVID-19 and Domestic Abuse: When Home is not the Safest Place](#)
6. [COVID-Related Boom Reveals Video Conferencing's Dark Side](#)
7. [Hackers Expose Gaping Holes in North Macedonia's IT Systems](#)
8. [Rights Denied: Albanians in Greece Face Long-Term Limbo](#)
9. [Muddy Waters: The Pollution Killing Kosovo's Lakes and Rivers](#)
10. [Gender Gap: Why Men Are Failing Albania's Judicial Vetting](#)
11. [New Cyber Attacks on North Macedonia Spur Calls for Better Defences](#)
12. [Concern in Albania over String of Secretive COVID-19 Tenders](#)
13. [Struggling to be Seen: In Croatia, Albanian Women Fight Prejudice, Patriarchal Norms](#)

Investigations' follow-ups (8):

1. [Flood-Prone Parts of Serbia, Bosnia Inundated by Water despite Investment](#)
2. [Kosovo President, Ambassador, Lobbied Influencers to Back Land Swaps](#)
3. [Serbia's Graft Agency Ignores BIRN Probe Into Minister's Husband's Deals](#)
4. [Iraqi Forces 'Deliberately Killed' Protesters with Gas Grenades](#)
5. [Serbian Bullets Used to Attack Unarmed Nigerian Protesters](#)
6. [Montenegro Renews Push to Extradite Fugitive Ex-President](#)
7. [Serbia Stays Silent on Call to Extradite Ex-President Marovic](#)
8. [Serbia Invokes 'Confidentiality' Clause on Montenegrin Ex-President's Extradition](#)