

For the glory of the rule of law: institutional and procedural guarantees of the access to public information in seven CEE/SEE countries

-first draft, please do not quote-

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Abstract: The right to public information (RTI) is of the key importance in a contemporary society and represents a fundamental principle of democracy and the rule of law. Through RTI, individual citizens or NGOs as beneficiaries acquire data influencing public governance and oversee the enforcement of the rule of law. In addition, as pursued by constitutional provisions and Freedom of Information acts (FOIA), a broad circle of authorities and private providers of public tasks are bound to disclose such data even proactively, unless there are legal grounds for any of specific exceptions. However, several analyses and comparative studies (e.g. Bannisar 2006; Brandsma et al. 2010; Savino 2010, Galleta et al., 2015, Access Info Europe, Transparency International, GCRT, GRTI; Democracy Index, etc.) reveal that institutional and procedural guarantees highly influence how the law is implemented in practice. The relevant institutional elements include the impartiality and independence of institution, sufficient resources and budgeting, accountability mechanisms, and similar. Likewise, the procedural elements include above all: procedural good administration rights, e.g. reasonable deadlines, burden of costs, a balanced formality of a request and a reply, right to appeal, right to be heard and reasoning, etc. In the ex-socialist states of the CEE/SEE region, who have been at the different stages of the transition or have managed to achieve the effective democratic governance, the issue of the functioning of the rule of law and its subprinciple of transparency/access to information, is even more prominent and fragile.

This paper seeks to identify and analyse the institutional guarantees of the effective access to information in seven the CEE/SEE countries (Slovenia, Hungary, Croatia, Serbia, Macedonia, Montenegro, Albania). The main goal of the paper is to answer to what extent the institutional guarantees of the access to information as defined by legal frameworks in selected countries confer to the international and EU standards.

In order to answer this question first the international documents, principles list and indices are analysed in order to identify the main institutional ATI standards. Second, a list of key standards is devised as to encompass four dimensions – managerial autonomy, political independence, powers and functions, and accountability. Third, the evaluation of ATI institutions in seven countries with the reference to the established standards is made on the formal level, by assessing their legal frameworks.

The main conclusion of the paper is that among seven selected countries the institutional strength on the basis of managerial autonomy and accountability is in generally high, while greater differences exist when it comes to political independence and powers and functions the institutions display. The lower independence and the restricted scope of affairs and instruments that the ATI institution has at its disposal affects its effectiveness and the achievement of above mentioned goals and values. The paper also shows that the policy diffusion is strongly mediated by local political and institutional environment.

Points for Practitioners

The paper identifies the standards for institutional set-up of the oversight body for the protection of the right of access to information which are internationally recognised, either in international documents or defined by internationally active non-governmental organisations on the basis of the assessments and lessons from various countries. The list of key standards applicable to the access to information oversight body may be used as a guidance for policy makers and implementers of the access to information laws for the purposes of improving the existing institutions or designing the new ones.

Key words: access to information, transparency, rule of law, freedom of information, independent institutions, information commissioner, CEE, SEE