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SUMMARIES OF MONITORING REPORTS

**ACCOUNTABILITY**

# The **Principles** of **Public** **Administration**

**WESTERN BALKANS**

**February**  
**2022**

# Summaries of Monitoring Reports

## Western Balkans

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### The Principles of Public Administration

# ACCOUNTABILITY

February 2022

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\*This designation is without prejudice to positions on status, and is in line with United Nations Security Council Resolution 1244/99 and the Advisory Opinion of the International Court of Justice on Kosovo’s declaration of independence.

# Introduction

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## The Principles of Public Administration and the EU integration path – measuring the fundamentals

*The Principles of Public Administration*<sup>1</sup> set out what good public governance entails in practice and outline the main requirements to be followed by administrations during the European Union (EU) integration process. Good public governance is key for achieving economic growth, competitiveness and a better quality of life. Democratic governance and the rule of law require capable, accountable and effective public administrations. In its 2014 and 2018 Enlargement Strategies, the European Commission (EC) highlighted public administration reform (PAR) as one of three “fundamentals first” areas of the EU enlargement process: “Addressing reforms in the area of rule of law, fundamental rights and good governance remains the most pressing issue for the Western Balkans. It is also the key benchmark against which the prospects of these countries will be judged by the EU”<sup>2</sup>.

## A regional series, with a long-term perspective

SIGMA monitoring reports<sup>3</sup> assess the state of play and progress in improving the quality of national public administrations. Given the geostrategic importance of the Western Balkans to the EU, and the ongoing accession negotiations, Support for Improvement in Governance and Management (SIGMA) conducts regular monitoring of the region. In 2017, SIGMA established a baseline in all areas of public administration. In 2019, monitoring was conducted against selected Principles. The full scope is covered again in the 2021 reports, which compare performance against the 2017 baseline and regional averages. By analysing the long-term perspective, significant changes are identified.

The assessment period was from July 2017 to July 2021. The data collection period was February-May 2021. The COVID-19 pandemic was at its peak, so in-person meetings were replaced by virtual ones. National experts provided invaluable support during this period in securing the necessary data.

## Thematic summaries to provide key insights and recommendations to decision makers and selected performance data at the regional level

This document is a compilation of all summaries for the accountability area in the full SIGMA 2021 monitoring reports. It contains a regional summary with cross-administration analysis of the state of play and key trends since 2017, insights from key performance indicators that showed significant change at the regional level and reflections on the way forward for the region. The purpose is to provide a regional perspective for each of the thematic areas, in order to complement the more detailed monitoring reports developed for each administration.

SIGMA wishes to thank the Governments for their collaboration in providing the necessary administrative data and documentation, as well as for their active engagement during the two rounds of validation to improve the factual accuracy of all the information used. The collaboration with the Regional Cooperation Council on the Balkan Barometer has been excellent. We also thank the experts from EU member administrations who contributed to the report. Finally, the support of the EC is, as always, appreciated.

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<sup>1</sup> OECD (2017), *The Principles of Public Administration*, OECD, Paris, <http://www.sigmaweb.org/publications/Principles-of-Public-Administration-2017-edition-ENG.pdf>.

<sup>2</sup> European Commission (2018), *A credible enlargement perspective for and enhanced EU engagement with the Western Balkans*, p. 4, [communication-credible-enlargement-perspective-western-balkans\\_en.pdf](https://ec.europa.eu/eip/wp-content/uploads/2018/06/communication-credible-enlargement-perspective-western-balkans_en.pdf) (europa.eu).

<sup>3</sup> The monitoring reports are published on the SIGMA website: <http://www.sigmaweb.org/publications/monitoring-reports.htm>.

# Methodology

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**Overall approach – focus on implementation and outcomes, analysing a variety of primary data sources against precise criteria and benchmarks for an objective assessment**

*The Methodological Framework for the Principles of Public Administration*<sup>4</sup> contains a set of standard indicators that SIGMA applies consistently to measure the preconditions and enablers of successful reforms (good laws, policies and procedures, institutional structures, human resources) and the actual implementation of reforms and subsequent outcomes (how the administration performs in practice).

The overall approach recognises that no single measurement method can fully capture the complex issues related to organisational and behavioural change. SIGMA uses information from administrative data, surveys, statistics, interviews, etc., which is cross-checked and triangulated to arrive at a balanced assessment.

## Data sources and validation

The main quantitative and qualitative methods applied in the framework are:

- Desk reviews of legislation, regulations and reports (the most recent are analysed if adopted before July 2021)
- Interviews (conducted virtually March-May 2021 with 100+ interviewees per administration, including civil society)
- Review of cases and samples of government documentation (the most recent are analysed)
- Observations of practice and on-site verification (conducted virtually March-May 2021 with national expert support)
- Analysis of administrative data from public registries and national statistics (the most recent when possible; otherwise, from 2020)
- Surveys of the population and businesses through the Balkan Barometer (conducted February-March 2021)<sup>5</sup>
- Surveys of 950 contracting authorities across the region (conducted February-April 2021).

Data was collected through SIGMA's tool for data collection, analysis and validation (PAR.IS). More than 10 000 documents were received regionally for analysis. In 2021, hundreds of government officials were provided direct access to SIGMA's detailed working sheets for calculation of numerical sub-indicator values and justifications for fulfilment of each of the criteria, in addition to fact-checking the draft monitoring reports. The monitoring reports show only the overall indicator values; the detailed criteria-level analysis will be accessible in 2022 through a public portal<sup>6</sup>.

## Indicator values reflect the level of maturity and preparedness of administrations – from 0 to 5

The indicator values provide an indication of the administrative capacity and overall performance of national public administrations. This provides an indication of the capability to effectively implement the EU *acquis* and participate in the policy-making processes of the EU.

The point allocation is constructed so that an administration can only receive an overall value of 2 on the basis of the quality of its legislative and regulatory framework; a value of 3 cannot be achieved without showing that implementation of key processes is happening in practice; and in order to obtain a value of 4, the administration needs to show a consistent achievement of relevant outcomes. The value of 5 is

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<sup>4</sup> OECD (2019), *The Methodological Framework of the Principles of Public Administration*, OECD, Paris, <http://www.sigmaweb.org/publications/Methodological-Framework-for-the-Principles-of-Public-Administration-May-2019.pdf>.

<sup>5</sup> Regional Cooperation Council, <https://www.rcc.int/balkanbarometer/home>.

<sup>6</sup> OECD, Principles of Public Administration Data Portal [database], <https://par-portal.sigmaweb.org/>.

reserved for outstanding performance and full compliance with the Principles and the standards for good public governance.

In 2021, averages of the indicator values were also calculated for each of the six thematic areas of *the Principles of Public Administration*. This enables a comparison of overall trends across the whole administration over time and across the region

### Understanding how the indicator values are calculated

Across the six thematic areas, the framework is composed of 48 Principles. Each Principle has one or two indicators. There are 52 indicators in total, with 340 sub-indicators and 1 000 individual criteria. Indicator values are presented at the top of the overview tables, on a scale from 0 (lowest) to 5 (highest). The indicator value is based on the total number of points received for the sub-indicators. The point conversion tables are accessible in the Methodological Framework.

If the required information to assess a sub-indicator is not available or is not provided by the administration, 0 points are awarded. All data requested is needed for a well-functioning public administration, and SIGMA does not estimate performance without adequate evidence.

The monitoring exercise of Bosnia and Herzegovina is being conducted in two phases. In 2021, the areas examined were: policy development and co-ordination, accountability and public financial management (PFM), except external audit. In 2022, SIGMA will study strategic framework of PAR, public service and human resource management (HRM), service delivery and external audit. Therefore, regional data comparisons are based on five or six Western Balkans administrations (WB5 or WB6).

### Codes used in this report

<b>ALB</b>	Albania
<b>BIH</b>	Bosnia and Herzegovina
<b>XKV</b>	Kosovo
<b>MNE</b>	Montenegro
<b>MKD</b>	Republic of North Macedonia, (hereafter “North Macedonia”)
<b>SRB</b>	Serbia
<b>WB5</b>	Western Balkan administrations without Bosnia and Herzegovina
<b>WB6</b>	Western Balkan administrations including Bosnia and Herzegovina

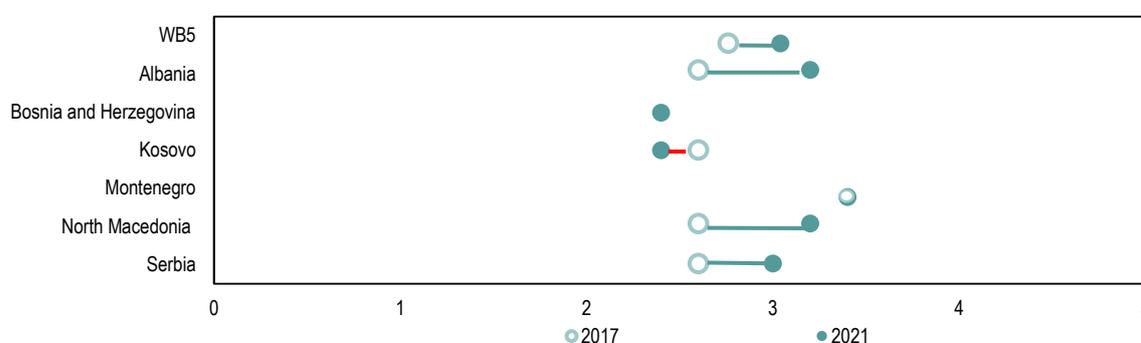
# Regional summary

## State of play and regional trends

Accountability mechanisms were generally strengthened in recent years in the Western Balkans, but this reflects mainly incremental improvements in the regulatory and institutional frameworks, whereas actual practice and outcomes have not improved significantly, and in some cases the situation has even deteriorated.

Three administrations improved their area averages from 2017 to 2021 (Figure 1). However, compared to other areas, the progress was modest. Montenegro continues to have the highest area average of 3.4 in the region, but this is unchanged from 2017. Albania and North Macedonia improved the most over the period, but Serbia advanced as well. Kosovo's area average deteriorated to 2.4, the same as Bosnia and Herzegovina.

Figure 1. Modest regional progress in the accountability area, except for Kosovo and Montenegro

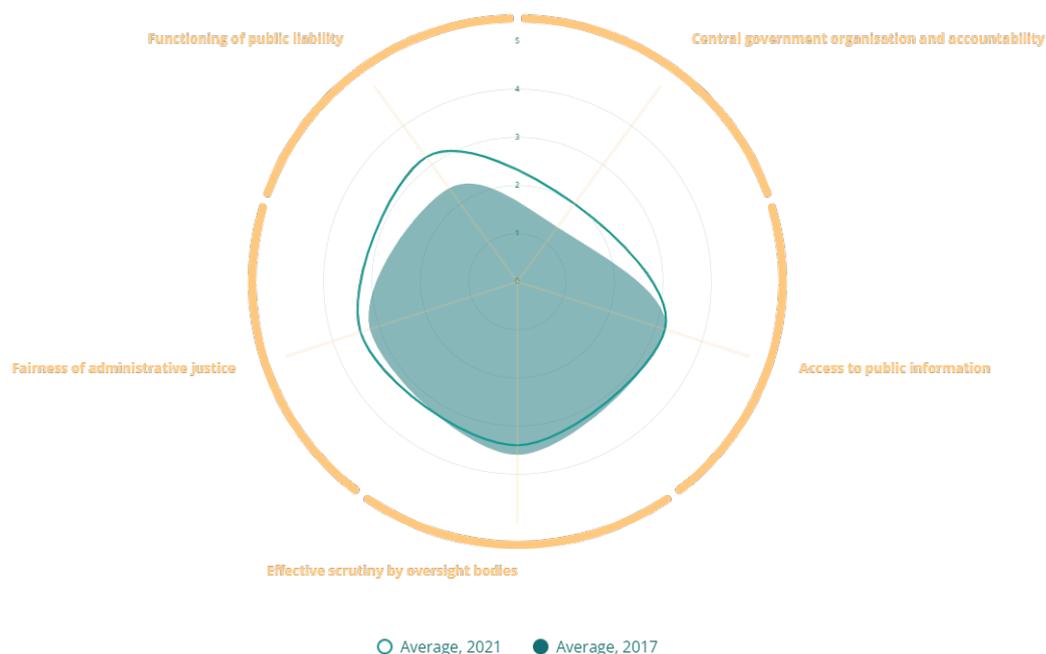


Note: Progress for the region is shown for all administrations except Bosnia and Herzegovina (WB5). SIGMA changed the method of calculating country-level indicator values for Bosnia and Herzegovina in 2021, making direct comparison with 2017 unreliable.

**Within the accountability area, organisation of the central government remains the most problematic overall, but access to information deteriorated the most since 2017. Administrative justice improved the most**

The accountability area covers a wide range of dimensions: macro-organisation of public administration, access to information, external oversight, administrative justice and public liability. Figure 2 shows the indicator values from 0 to 5 for each.

Figure 2. Modest progress in all dimensions, except accessibility of public information and external scrutiny and oversight



Source: OECD, Principles of Public Administration Data Portal [database], <https://par-portal.sigmaweb.org/areas/4> (accessed on 15 February 2022).

The accountability area improved from a low base in “central government organisation and accountability”, from 1.4 in 2017 to 2 in 2021, mainly because legal frameworks were improved. In absolute terms, however, this dimension remains the worst across the area because laws are still not implemented consistently. Access to public information deteriorated the most over the period. Some improvements were made to already-strong legal frameworks, but actual proactive disclosure of key data by governments declined. The falling implementation rate of recommendations from Ombudsperson institutions was the main cause of regression for the indicator values for “external scrutiny by oversight bodies”. The most positive trend that can be found at the regional level is for administrative justice. However, the large backlog of court cases remains a major problem in many administrations.

Figure 3 shows the variation by administration. Kosovo regressed in accountability because public information became less accessible and the effectiveness of the Ombudsperson in scrutinising the executive deteriorated.

**Figure 3. Accountability and organisation of the central government improved from 2017, but in absolute terms remains the worst in 2021. The most significant deteriorations were for Kosovo. Administrative justice improved the most.**

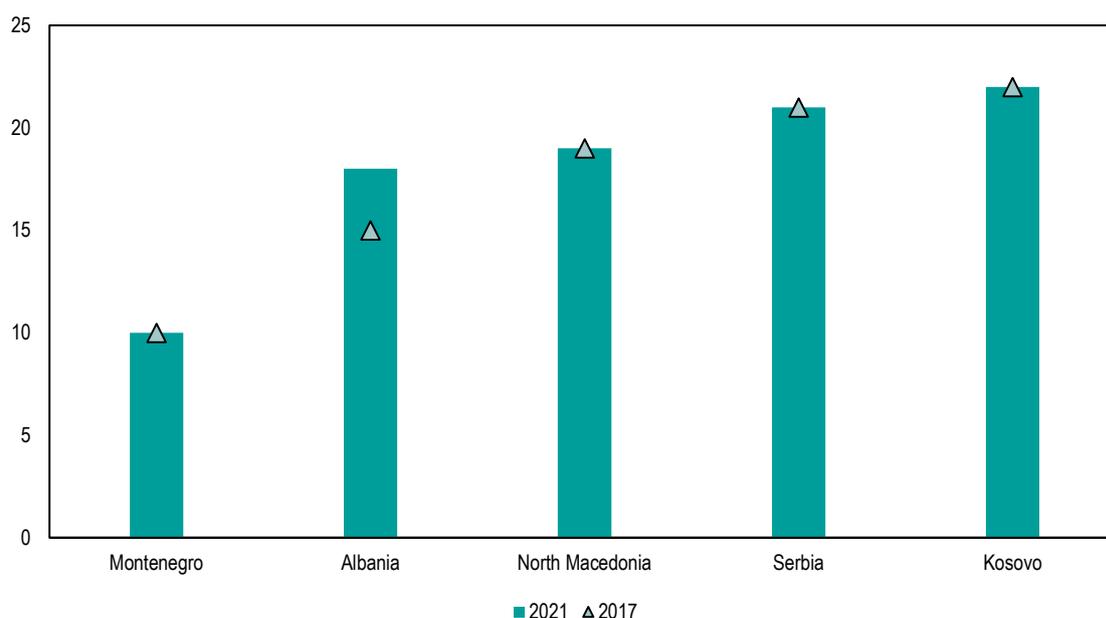


***Organisation of the central government is fragmented across the region, resulting in poor accountability and oversight, duplication of efforts and a waste of public resources***

The organisation of the central government continues to be one of the weakest areas of public administration across the region. Since 2017, the regulatory frameworks have generally improved except for accountability mechanisms between ministries and subordinated bodies, where regulations are still inadequate. In the few administrations where a clear typology of central government bodies is in place, it is still not implemented consistently in practice. Policies to manage central government bodies are inadequate, and accountability and performance management frameworks are lacking.

One direct consequence of the lack of policy and regulation is the excessive number of public agencies reporting to the parliament in all Western Balkan administrations. Another is that subordinated bodies do not systematically report to ministries about their performance and activities on the basis of jointly agreed plans. Delegation of decision making has improved in Albania and Kosovo, but in the rest of the region decisions are highly centralised.

Figure 4. The number of agencies subordinated to parliament remains very high across the region



Note: The values exclude constitutional bodies. The values for Bosnia and Herzegovina are not shown as the administration's constitutional set-up makes comparisons difficult. However, there are 3 agencies subordinated to parliament in the Federation of BiH, and 10 in the Republika Srpska, 2 in the Brčko District and 8 at State level.

### Administrations are less transparent in 2021 compared to 2017

Legislation on access to public information is adequate, generally fulfilling international requirements. Some minor improvements were made since 2017. However, the institutions responsible for monitoring whether the legislative requirements are fulfilled by public bodies have been weakened in all administrations since 2017, except in Montenegro and North Macedonia, and are not capable of performing their basic functions adequately. The most significant decline was in Kosovo, where the two-year delay in appointing the Commissioner for Information and Privacy had serious negative impacts on the functioning of the responsible agency.

Worrisomely, access to public information in practice has deteriorated across the region. Albania is the only administration that substantially progressed on accessibility of public information since 2017, now reaching 4 as the overall indicator value, together with Serbia. Proactive transparency (publication of data and information on websites) is weak across the region. Table 1 shows that several key data sets that were publicly available in 2017 were no longer available in 2021.

Table 1. Proactivity in disclosure of data sets by the central government

	ALB	BIH	XKV	MNE	MKD	SRB
Consolidated versions of all primary laws	✓	×	✗	×	×	✓
The state budget	✓	✗	✓	✓	✓	✓
The results of the last national elections published, aggregated on one website	✓	»	✓	✓	✓	✓
National statistics on gross domestic product and unemployment	✓	✗	✓	✓	✓	✓
The government's annual (or multi-annual) work plan	×	×	×	✓	✓	✓
The government's annual report	✗	×	✓	✗	×	✓
Legislative proposals of the government as sent to parliament	✓	×	✓	✓	✗	✓
Public tenders announced by central government, aggregated on one website	✓	✗	✓	✓	✗	✓
Results of all public tenders awarded by central government, aggregated on one website	✓	✗	✓	✓	✗	×
Company registry	✓	×	✓	✓	✗	✓
Land registry	✓	×	✗	✓	✗	✓
Salaries of individual senior civil servants in all ministries	×	×	×	×	×	✗

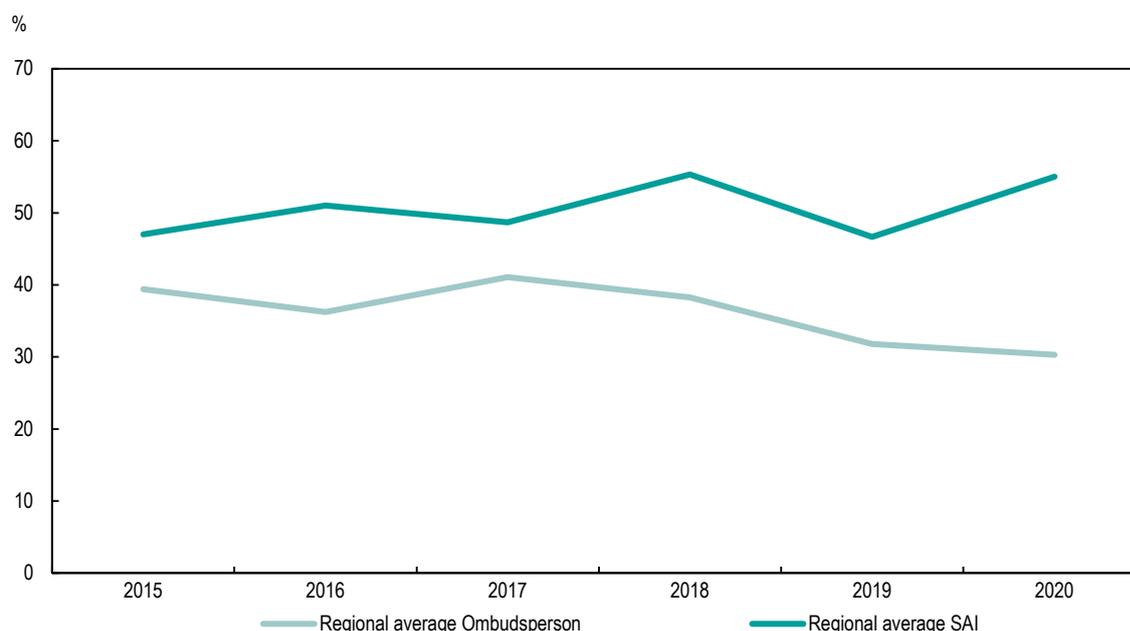
Note: A bold green checkmark denotes that this criterion was not fulfilled in 2017 but was in 2021. A red cross shows where the criterion was fulfilled in 2017 but no longer in 2021. A faded grey cross means nothing was in place in 2021.

**External oversight institutions are protected by legislation, but have little impact in practice. Their recommendations are routinely ignored by state bodies, and citizens have low trust in them**

The legislative framework to protect the independence of external oversight bodies (Ombudsperson, Supreme Audit Institution [SAI]) and courts is well-established, but the rates of implementation of their recommendations continue to be very low across the region for the oversight bodies. Especially the implementation rates for recommendations from the Ombudsperson institution have dropped since 2017. This, combined with the low levels of public trust in the Ombudsperson, SAIs and courts, is a warning sign that external oversight mechanisms need strengthening. Better collaboration with and stronger support from parliament is essential.

Figure 5 shows that public authorities do not, as a rule, accept and implement recommendations issued by the Ombudsperson institutions in the region. This seriously undermines the Ombudsperson institution, and reduces the effectiveness of its role in overseeing and scrutinising the public administration. Kosovo has the lowest rate, with only 19% of recommendations implemented. Next is Albania at 26%. Bosnia and Herzegovina's rate stands at 31%, and Montenegro has the highest rate at 45%. North Macedonia and Serbia do not publish information on the implementation of fully implemented recommendations. There are no official European Union (EU)-level statistics on this key performance indicator, but a review of annual reports from the Ombudsperson institutions in EU member countries shows that the EU average is above 70%, in contrast with the Western Balkan average of 30%. The implementation rate for SAIs in the region has on average improved slightly, from 49% in 2017 to 57% in 2021. Serbia has the highest rate at 75%, followed by Montenegro at 62%, Albania at 50% and Kosovo at 40%. North Macedonia did not publish information on fully implemented recommendations.

**Figure 5. Low Implementation rates for recommendations from Ombudsperson institutions and Supreme Audit Institutions; falling since 2017 for Ombudsperson.**

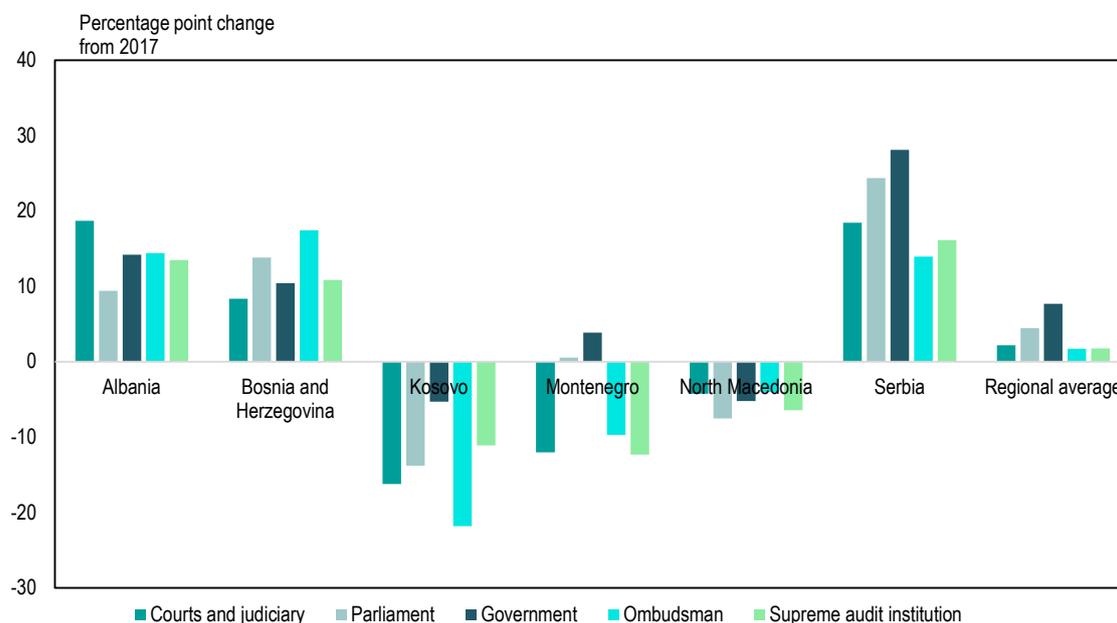


Note: The regional average for the Ombudsperson institution excludes North Macedonia and Serbia, as no data was available. The regional average for the Supreme Audit Institution does not include Montenegro or North Macedonia, as the time series data was not available.

Citizens' trust in courts and oversight institutions is very low across the region. Only 34% of citizens reported that they "trend to trust" or "totally trust" courts in 2021. The EU average level of trust in courts in 2021 was 52%. As shown in Figure 5, trust has increased since 2017 in Albania, Bosnia and Herzegovina, and Serbia, but decreased in Kosovo, Montenegro and North Macedonia. Trust in parliament is similar at 34% across the region, while it is slightly higher for the Government (38%), SAI (37%) and the

Ombudsperson (42%). Trust in parliament and in government across the EU is respectively 35% and 36%, equally low<sup>7</sup>.

**Figure 6. Trust in courts, parliament, Ombudsperson and Supreme Audit Institution has fallen in Kosovo, Montenegro and North Macedonia since 2017, but increased in Albania, Bosnia and Herzegovina and Serbia**



Source: Regional Cooperation Council, Balkan Barometer Public Opinion database (<https://www.rcc.int/balkanbarometer/>).

***Administrative justice systems made steady progress on strengthening the regulatory and institutional frameworks, but access to justice continues to be hindered in practice by severe backlogs of court cases***

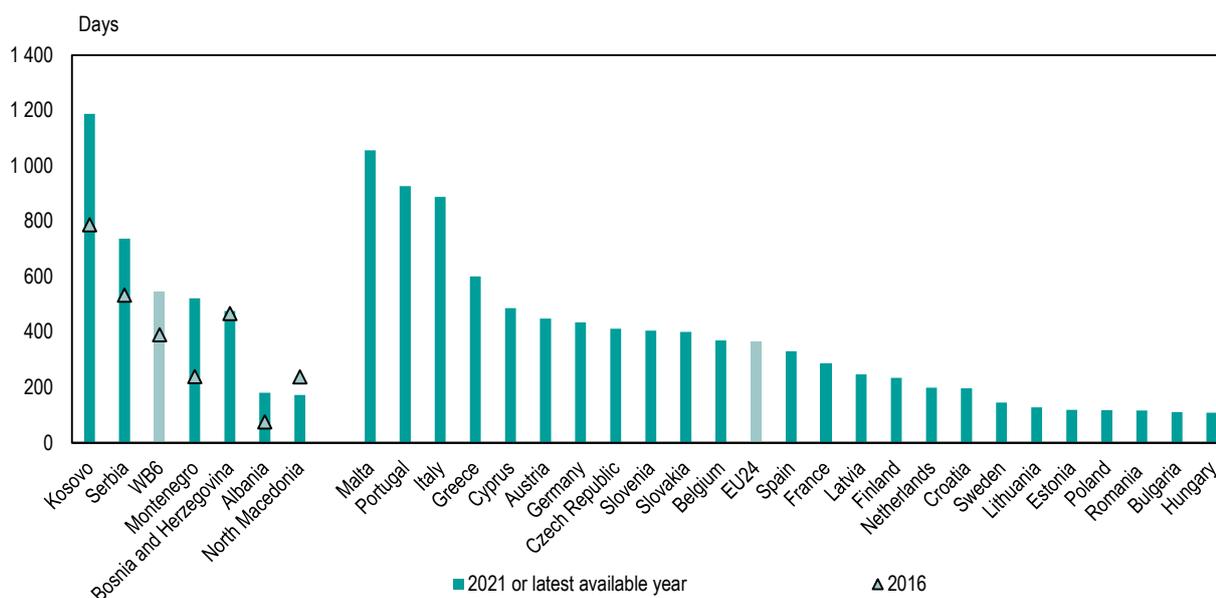
All court administrations made improvements to the regulatory and institutional frameworks for administrative justice; for example, by implementing electronic court-case management systems and increasing the public availability of court rulings. The main weaknesses to be addressed remain the high, and in many cases growing, backlogs of cases, and the public perception that courts are not independent or trustworthy institutions.

The efficiency of administrative courts (calculated disposition time and clearance rates) deteriorated across the region except in North Macedonia, and even there progress was marginal. The calculated disposition time shows how many days on average a citizen has to wait for the resolution of a court case. Figure 7 illustrates that citizens in Albania and North Macedonia have a much lower waiting time than in the rest of the region. The Western Balkan 2020-2021 average is higher than in 2016-2017, and above the EU average. Western Balkan rates are, however, artificially low compared to EU countries because of the “ping-pong” of cases between different court instances and between the court and the administration<sup>8</sup>. The disposition times for Kosovo and Serbia are so high that resolving a case can take respectively two or three years.

<sup>7</sup> Standard Eurobarometer 94, Public opinion in the European Union, Winter 2020-2021, p. 42.

<sup>8</sup> OECD (2020), *Government at a Glance: Western Balkans*, OECD Publishing, Paris, p. 138, <https://doi.org/10.1787/a8c72f1b-en>

**Figure 7. Disposition time for administrative court cases varies significantly across the region but on average is higher than in the EU. There are growing backlogs since 2017**



Source: Data provided by the judicial administrations in the Western Balkan region. Data for European Union countries is drawn from the Council of Europe (2020), European judicial systems: European Commission for the Efficiency of Justice (CEPEJ) Evaluation Report 2020, Evaluation cycle (2018 data), Strasbourg, p. 108.

### **Public liability is secured in legislation, but the application in practice suffers from a lack of data**

Overall in the region, citizens can seek compensation through the courts in case of mistreatment by the administration. The situation has not changed since 2017, but more administrations were able to document that the system works in practice (compensation is paid). What is still missing, however, is for administrations to analyse the reasons for such cases and address them proactively. Thus, there is a need to further strengthen data availability in order to better analyse the causes of public liability cases.

### **The way forward**

- Improve access to information across the region by strengthening monitoring and enforcement functions of supervisory bodies and proactive publication of data.
- Reinvigorate reform efforts to implement new legislation on organisation of the central government, focussing specifically on reducing the number of public bodies subordinated to parliaments and strengthening performance management frameworks.
- Support the work of oversight bodies (Supreme Audit Institution and Ombudsperson institutions) through greater support from parliaments and responsiveness by state bodies in implementing recommendations. Build trust in courts and oversight institutions.
- Improve the efficiency of administrative courts to reduce the backlogs and provide better access to justice.

# Albania

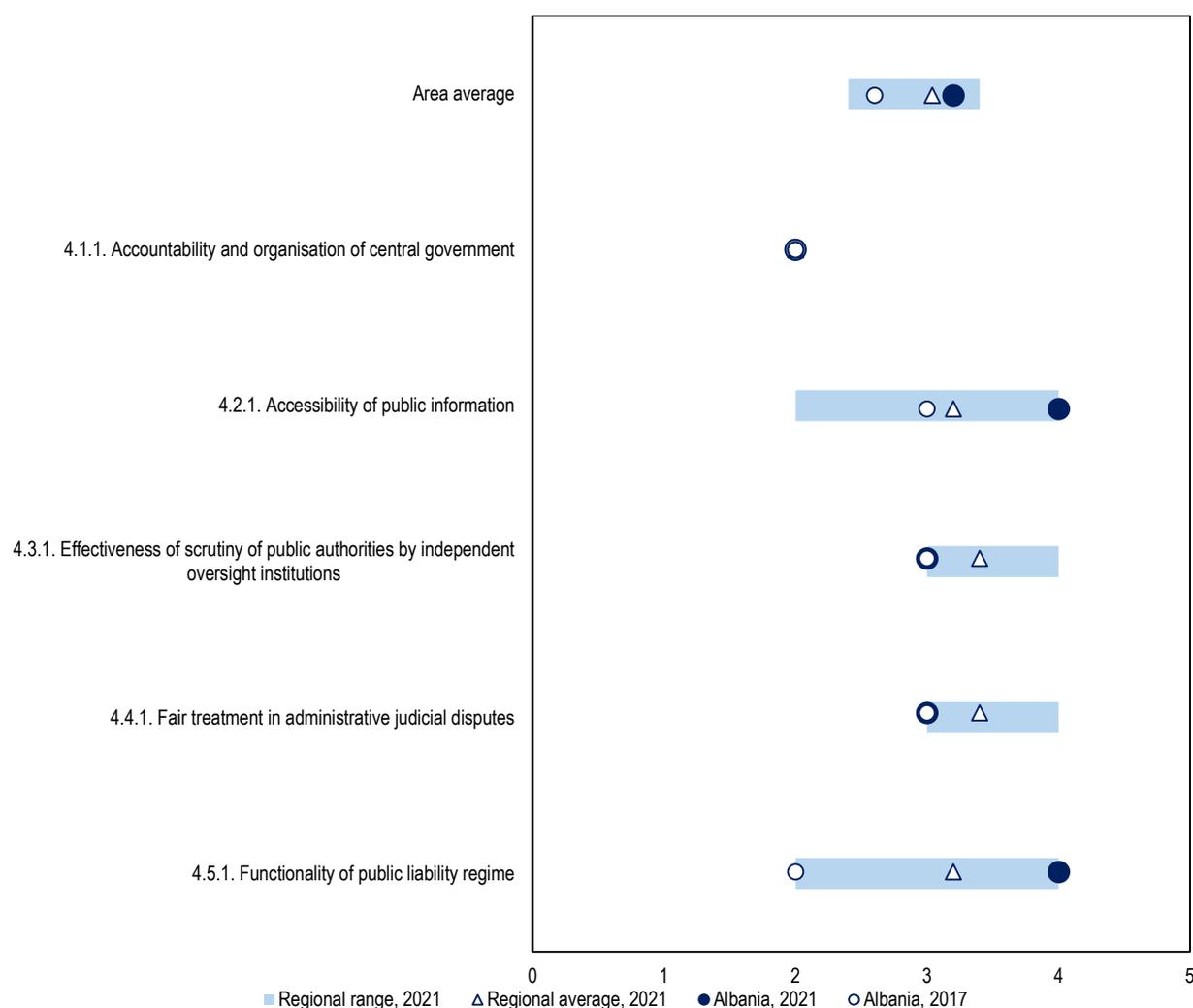
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## Albania

### Summary and recommendations

With an area average of 3, Albania remains a solid regional performer in the area of accountability. The lack of vision and policy of macro-organisation of public administration remains the outstanding weakness. A typology of administrative bodies exists in the legislation, but its practical value is questionable. The distinction between two types of institution – subordinated institutions and autonomous agencies – is blurred and not followed in practice. The unsuccessful initiative for restructuring of agencies that started in 2018 exposed the structural problem of weak central policy and stewardship of the organisational set-up of the Government administration. Another major deficit is the absence of active, results-oriented steering of the subordinated agencies by respective portfolio ministries. Furthermore, within ministries, micromanagement and limited empowerment of senior civil servants persists.

**Albania is a strong regional performer in the accountability area. Major improvement came from new evidence of functioning of the public liability regime**



**Albania performs relatively well in the area of access to public information, and its legislative framework is in line with international standards.** The public perception of transparency, among both citizens and businesses, has improved significantly since 2017 and is at a relatively high level. Interventions of an independent Information and Data Protection Commissioner prompt the administration to provide requested information, but the effectiveness of this body suffers from shortcomings in the

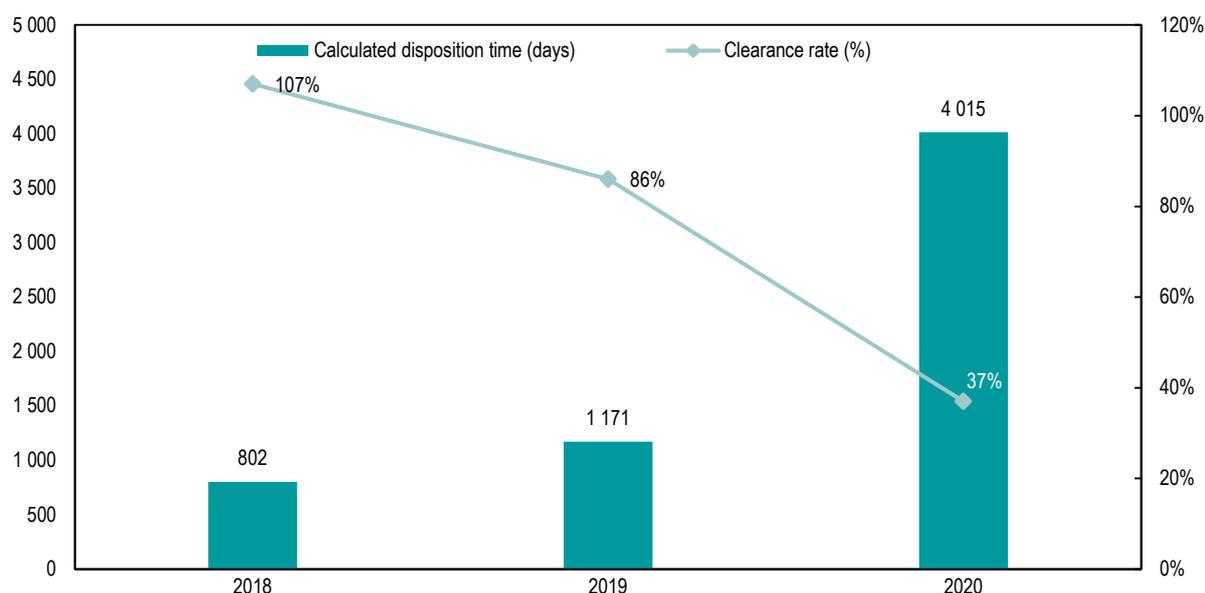
legislative framework. It lacks mechanisms to enforce its decisions and has no explicit mandate to conduct comprehensive inspections. Limited use of sanctions stems from a flawed concept of “liable person” that has persisted since 2017. There is also room for improvement on collecting comprehensive data about the functioning of the system, proactive disclosure of public information and fulfilling transparency obligations, where progress is slow.

**As regards oversight of the public administration by independent institutions, the legislative framework is adequate overall and ensures sufficient independence of the oversight institutions.**

The only limitation concerns the Ombudsman, whose mandate does not cover the entire executive. Moreover, a further decline in the implementation of its recommendations has been noted since 2017. Nevertheless, the People’s Advocate stands out among oversight bodies as the most trusted and most effective controller of the executive, widely perceived as independent of political influence.

According to the legislation, judicial review of administrative decisions is accessible to all groups of citizens, thanks to relatively low court fees and the recently adopted Law on State Guaranteed Legal Aid. The efficiency of administrative courts is satisfactory at the level of first instance, but continues to be dramatically low in the single Administrative Court of Appeal. The appeal procedure in administrative judicial cases does not function, as potential applicants cannot reasonably expect their cases to be handled in any less than several years. Contrary to the SIGMA recommendations of 2017, in some respects, the technical and organisational preconditions for effective functioning of the administrative courts have even deteriorated. The newly introduced right to seek financial compensation for delays, not yet widely used, is unlikely to solve the structural problems in the Court of Appeal. **Albania scores particularly low in terms of effectiveness of judicial control of the executive and public trust towards the courts, despite continuous efforts towards judicial reform.**

#### Basic parameters of efficiency of the Administrative Court of Appeal, 2018-2020



Source: Data provided by the Administrative Court of Appeal.

**Public liability for administrative wrongdoing is enshrined in the legislation, and there is also evidence that it is implemented in practice.** However, there is no mechanism for regular monitoring and analysis of the administrative and judicial practice in these matters. Further, the Government does not collect data on payments made in public liability cases and the reasons for them, to make it possible to detect and mitigate cases of severe maladministration.

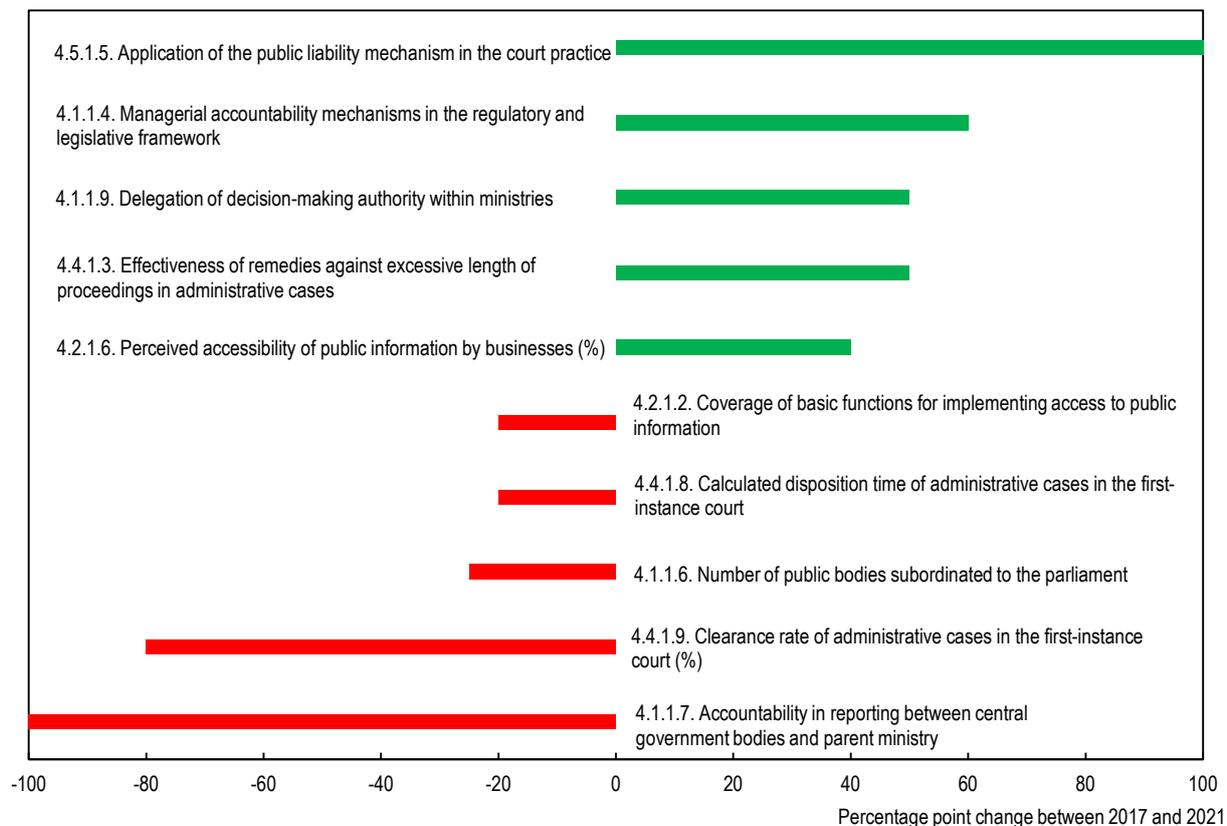
### Short-term recommendations (1-2 years)

- 1) The Government should develop and implement a comprehensive steering framework for the bodies subordinated to the ministries, ensuring that monitoring and supervisory functions are clearly allocated to the relevant ministerial unit, that subordinated bodies are held accountable for results delivered and that the ministry provides them with structured performance feedback. Implementation of these measures could start with a major revision of Law No. 90/2012.
- 2) The Government should establish stronger central oversight and control over organisational changes in the public administration, particularly in the creation of new bodies, through institutionalisation of *ex ante* analysis, to prevent excessive agencification and to ensure that it is justified and in line with the government policy.
- 3) The Government, in close co-operation with the Information and Data Protection Commissioner, should strengthen the Commissioner's mandate to collect data on the practice of implementation of Law No. 119/2014, conduct inspections of compliance with transparency requirements and amend the provisions of Law No. 119/2014 relating to sanctions, so that violations of the right to information are effectively penalised, and to collect comprehensive data on the functioning of the system of access to public information.
- 4) The Assembly should enhance its co-operation with the Ombudsman and address the increasing problem of the lack of responsiveness of public administration bodies to the Ombudsman's recommendations. Among possible measures, the creation of a special parliamentary subcommittee could be considered, with the mandate to monitor implementation of the Ombudsman's recommendations. In addition, the monitoring mechanism based on the Inter-Institutional Online Platform should be revived.
- 5) The Ministry of Justice, in co-operation with the High Council of Justice, should urgently develop and implement an action plan for tackling the enormous backlog in the Administrative Court of Appeal. Extraordinary measures are needed to address this issue, including temporary or permanent transfer of judges, as well as increasing the number of judicial assistants and administrative staff.

### Medium-term recommendations (3-5 years)

- 6) The Government should consider revision of the institutional locus of the regulatory authorities currently reporting to the Assembly, by ensuring that they are involved in the implementation of Government policies. While respecting the functional autonomy of regulators, this could involve mechanisms for aligning their strategic objectives with Government policy priorities, as well as reporting the obligations of the regulators towards the Government.
- 7) The Ministry of Justice should introduce mechanisms to monitor cases based on Law No. 8510/1999 on Non-contractual Liability of State Administration Bodies (both court cases and amicable settlements) that result in the liability of the State, with the goal of improving administrative procedures and decisions and thus reducing public liability cases in the future.

The five highest percentage point increases and decreases for all sub-indicators in the area in compared to 2017. Data on public liability mechanism being used in practice and better results in managerial accountability contribute to the increases, but the COVID-19 pandemic negatively influenced the efficiency of administrative justice



# **Bosnia and Herzegovina**

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## Bosnia and Herzegovina

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### Summary and recommendations

Laws on public administration at the State level, in the Federation of BiH (FBiH), the Republika Srpska (RS) and the Brčko District (BD) establish the organisational set-up of the administrative apparatus. However, **official typologies of administrative bodies determined in legislation lack clear definitions and criteria to apply them to different government functions.** The exclusion of regulatory bodies and other institutions with executive powers from government administration contributes to an unclear organisational set-up and a weak accountability system.

**Within government administrations, accountability mechanisms exist in legislation at all levels, but implementation is of a purely formal nature.** It consists of activity reports forwarded to ministries by subordinated bodies as a prerequisite for approval by governments. Ministries and government departments do not carry out activities to effectively steer subordinated bodies, such as setting objectives, monitoring performance and providing guidance and feedback. In contrast, **internal management in ministries is heavily centralised, with the minister's approval required for all decisions, including those of minor technical relevance.** This distracts ministers from their essential role of strategic direction, undermines the role of professional managers in ministries and allows for undue political influence in ordinary administrative procedures.

Legislation grants access to public information to all interested applicants without discrimination and with no requirement to justify requests. It defines public information broadly, and a catalogue of legitimate restrictions of the right to information is compatible with international standards in this field. Despite these legal guarantees, effective implementation of the right to information is not secured. One of the main reasons is the absence of a specialised body responsible for overseeing and enforcing the compliance of public bodies with transparency requirements. Another is the **lack of political leadership at government level to promote proactive disclosure of information.** A catalogue of information to be disclosed proactively by public bodies exists only at the State level, and it is not binding. Perceptions of both citizens and businesses on government transparency show a deteriorating situation in this area.

Overall, the legislation provides for effective executive oversight in other fields, in line with international standards, through the Ombudsman Institution, the State Audit Institutions (SAIs) operating at all levels and the courts. However, the Ombudsman Institution has no mandate to launch a constitutional review of legislation before the Constitutional Court, and its budget proposal must be approved by the Ministry of Finance. This opens the door to undue intervention of the executive power in the Ombudsman Institution's capacities. The relatively good legislative framework contrasts with poor performance in practice. **Insufficient implementation by public authorities of the recommendations of the Ombudsman Institution and the SAIs** contributes to this situation and hampers the growth of public trust in both institutions. Trust in the judiciary is hindered by concerns on the functioning and transparency of the High Judicial and Prosecutorial Council (HJPC).

Legislation uniformly safeguards the right to challenge both administrative acts and inaction of administrative bodies across the country through different and harmonised laws regulating administrative disputes at the different levels. However, **access to administrative justice is expensive, and the efficiency of courts in handling administrative cases varies sharply by entity.** The situation in the Cantonal Court of Sarajevo (the biggest court in the country) is particularly worrying, with a disposition time exceeding twenty-eight months at the end of 2020 and a high backlog of cases. A positive development is that special laws establishing procedures for citizens to seek compensation for excessive length of proceedings were passed in the RS and BD.

Uniform regulation of public liability secures the right of citizens to seek compensation for damage caused by unlawful acts of public authorities. Unfortunately, **due to the absence of monitoring mechanisms of the administrative and judicial practice in public liability cases, it is not possible to analyse the**

**most common causes** of maladministration resulting in damage to citizens and assess the actual implementation of the right to compensation.

#### **Short-term recommendations (1-2 years)**

- 1) Governments at all levels should further develop the legislation on the organisation of public administration, by establishing a clear link between the types of public bodies and the functions they perform and their degree of autonomy.
- 2) Governments at all levels should promote managerial responsibility and accountability by introducing the principle of delegation of decision-making powers within ministries.
- 3) Parliaments at all levels should amend legislation on access to public information to establish comprehensive catalogues of information to be proactively disclosed, as well as institutions and procedures, to ensure adequate supervision of public bodies' compliance with transparency obligations.
- 4) The Law on the Ombudsman should be amended to eliminate direct intervention of the executive in the approval of the Ombudsman Institution's budget and to establish its competence to launch a review of legislation before the Constitutional Court.
- 5) Governments at all levels should implement the SAI's, and particularly the Ombudsman Institution's, recommendations or should formally justify non-implementation. Parliaments at all levels should monitor government implementation of the recommendations and request regular reporting on the topic.
- 6) In co-operation with the respective Entities' authorities, the HJPC should develop and implement an action plan to reduce the backlog of administrative cases across the country.

#### **Medium-term recommendations (3-5 years)**

- 7) Governments at all levels should: 1) enhance the accountability of public bodies subordinated to them, by establishing the obligation for portfolio ministries to set clear objectives, targets and timelines in collaboration with subordinated bodies; 2) ensure the resources necessary to achieve them; and 3) conduct regular performance monitoring reviews.
- 8) Ministries of Justice at all levels should develop mechanisms to monitor public liability cases (both court cases and amicable settlements) to more effectively detect and eliminate cases of maladministration resulting in liability of public bodies.

# Kosovo

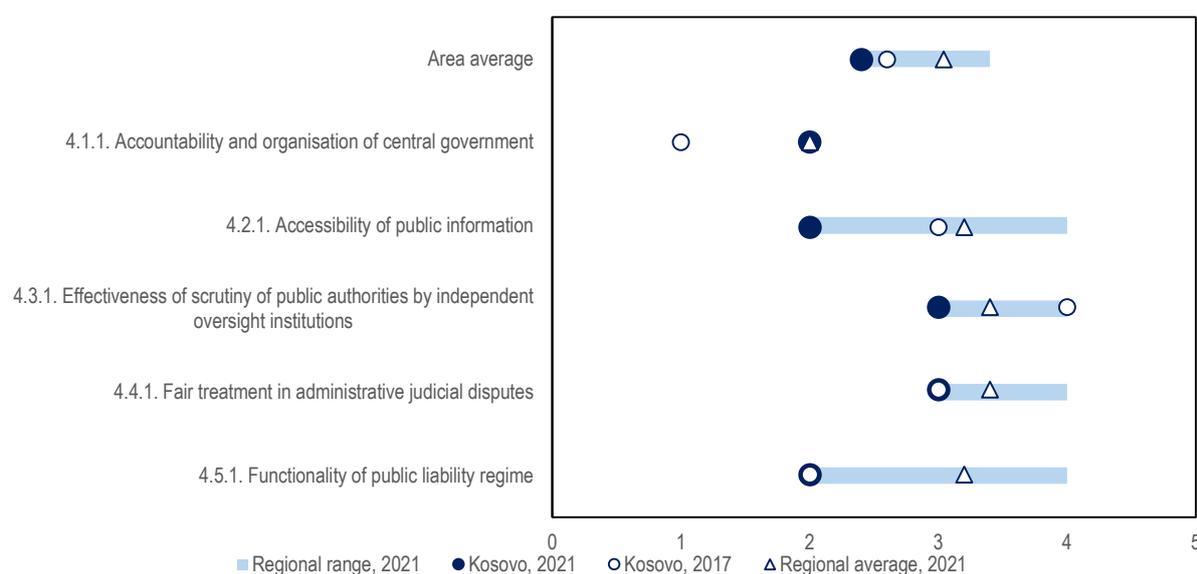
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## Kosovo

### Summary and recommendations

The overall trajectory for Kosovo in the accountability area is downward. The area average of 2.4 is the lowest compared to its neighbours in the region and has fallen from 2.6 in 2017. Only Kosovo and Montenegro regressed in the area of accountability since 2017. A new law has improved the regulatory framework for the organisation of public administration and thus raised the corresponding indicator value from 1 to 2, but in the areas of access to information and strength of the oversight institutions, Kosovo's indicator values have gone down by one, mainly because political instability has affected the institutional performance of the Commissioner for Information and Privacy and the Ombudsperson. There was no significant change for administrative justice and public liability.

**The area average for accountability is the lowest in the region and less than in 2017 because access to public information and the performance of oversight institutions have both deteriorated**

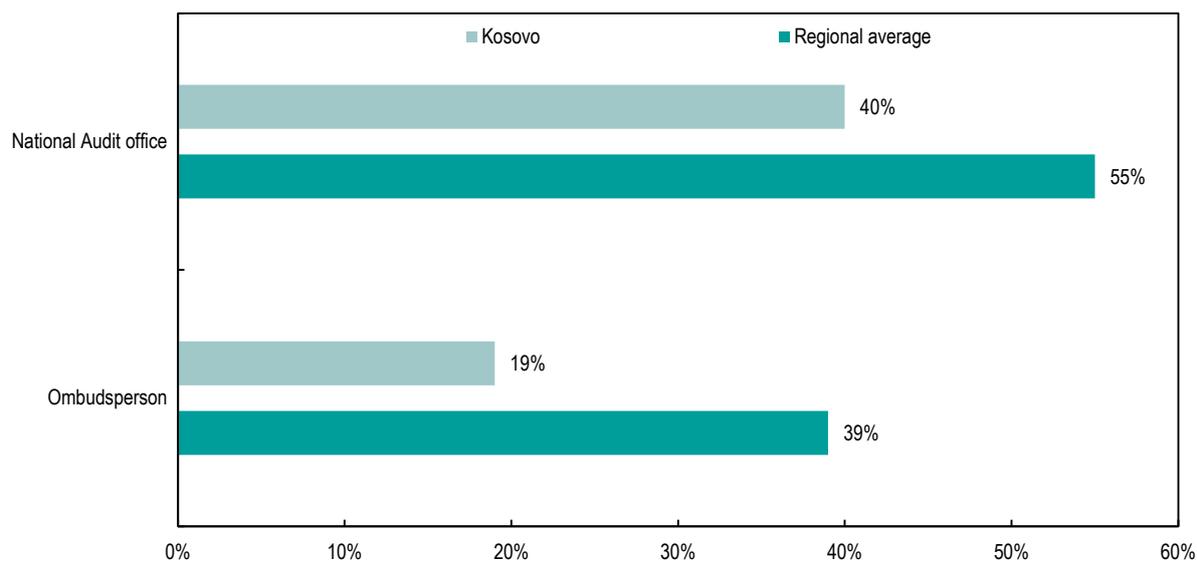


**The new Law on the Organization and Functioning of the State Administration and Independent Agencies (LOFSAIA) laid strong foundations** for achieving better organisation of central government, fewer executive agencies being subordinated to the Assembly (parliament) and the results-oriented governance of public agencies, based on a new, clear concept of agencies' autonomy and rules for ministerial steering. However, the Government action plan for the restructuring of agencies has so far not been implemented, despite the commitments made in the European Reform Agenda. Political instability stalled the process of aligning existing agencies with the new law, and Kosovo continues to have weak ministerial steering of public agencies and the highest number of executive agencies subordinated to the Assembly in the region. The renewed commitment by the Government to implement the action plan is therefore crucial.

**The right to access public information is formally guaranteed in legislation, but citizens and businesses face several barriers in practice.** The Commissioner for Information and Privacy post has been vacant since 2019, which means that the responsible agency is not fully operational, and if public bodies for any reason deny or ignore requests for information there is no independent appeal mechanism. Public bodies are less proactive in disclosing basic information than in 2017. Citizens continue to have a positive perception of the accessibility of public information (the highest in the region), but the satisfaction of businesses with accessibility of public information has dropped by half since 2017.

**Public trust in Kosovo’s judiciary, the Ombudsperson Institution and the National Audit Office (NAO) is declining, and there is a low rate of implementation of recommendations.** None of these oversight institutions are perceived by the population as being independent of political influence. Overall, the NAO performs effectively as an oversight institution, with adequate powers to hold the executive to account for its actions and strong collaboration with the Assembly, but the rate of implementation of its recommendations continues to be low and below the regional average. The continuing decreasing rate of implementation of the Ombudsperson’s recommendations is even more worrying.

**Recommendations from the Ombudsperson and the National Audit Office in Kosovo were less frequently implemented by state bodies compared to the regional average in 2020**



Source: Annual reports of the Ombudsperson institution and National Audit Office.

**Administrative justice is hindered by insufficient capacity.** On average, administrative judicial proceedings take more than three years. The new electronic case management system is a positive development but cannot on its own reduce the extraordinarily large backlog of cases. A deeper structural problem that must be tackled is that there are no mechanisms for citizens to seek compensation for excessive length of proceedings. As shown in the chart below, the increased public availability of court rulings and better organisation of judges have been important improvements since 2017.

**The legislative framework for public liability is in place, but no data on administrative and judicial practice in this field is collected and analysed,** which hinders the elimination of the most serious areas of maladministration.

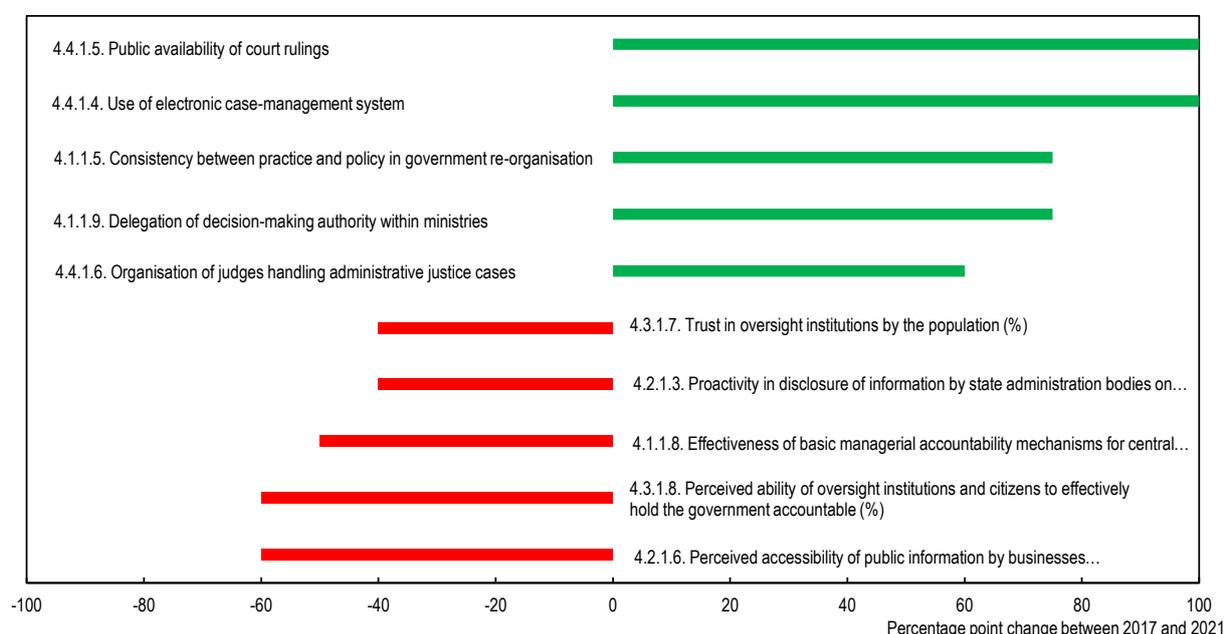
### Short-term recommendations (1-2 years)

- 1) The Government, with the Office of the Prime Minister and the Ministry of Internal Affairs as co-ordinators, should implement the Action Plan for the Rationalisation of Agencies, harmonise all laws regulating individual agencies with the LOFSAIA, and ensure consistent application of the performance management system for public agencies.
- 2) The new Law on Access to Public Documents should be evaluated *ex post* to review whether the Information and Privacy Agency has the necessary supervisory powers to work effectively.
- 3) The Assembly should enhance its co-operation with the Ombudsperson Institution, to increase the responsiveness of the public administration in implementing its recommendations.
- 4) The Ministry of Justice, in co-operation with the Kosovo Judicial Council, should develop and urgently implement an action plan for reducing the backlog of administrative cases in the Basic Court of Pristina. Temporary transfer of judges could be considered.

### Medium-term recommendations (3-5 years)

- 5) The Ministry of Justice should develop a legislative proposal providing an effective remedy against excessive length of judicial proceedings, including measures to speed up proceedings, and ensuring the right to compensation for violation of the right to a judicial hearing within reasonable time.
- 6) The Government should introduce mechanisms to monitor cases (both court cases and out-of-court settlements) that result in a liability of the State, with the goal of improving administrative procedures and decisions and thus reducing public liability cases in the future.

**The five highest percentage point increases and decreases for all sub-indicators in the area compared to 2017. Advances in some areas of administrative justice, and better delegation of decision-making, but lower trust in oversight institutions, less transparency and openness and less effective basic managerial accountability mechanisms**



# Montenegro

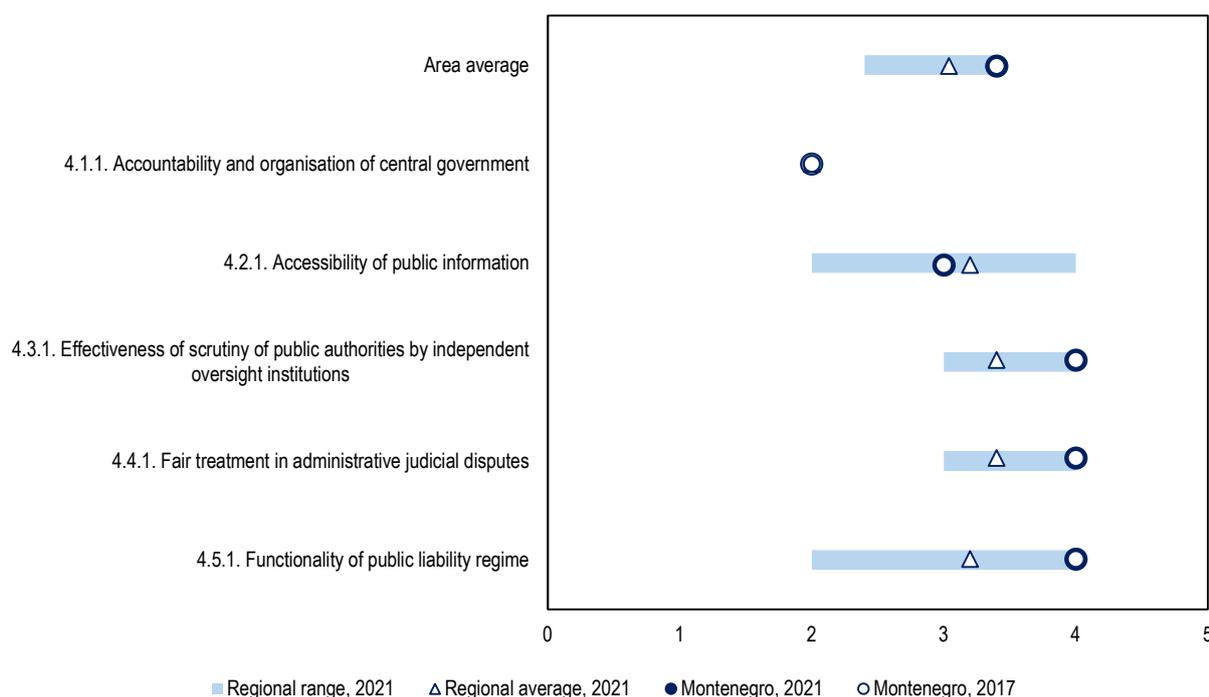
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## Montenegro

### Summary and recommendations

Montenegro is above the regional average in the accountability area. The average indicator value is 3.4, the same as in 2017. There have been changes to the legal framework regulating the organisation of state administration, and the public perception has deteriorated in several aspects (e.g. regarding public availability of information, independence of oversight institutions) but these were not significant enough to change the indicator values.

**The area average is the same as in 2017, as there has been no change at the level of indicator values**



**The 2018 Law on State Administration provides a new legal framework for state organisation, but it has not been fully implemented nearly three years after its adoption** as the majority of the existing agencies have not been aligned to the law. Furthermore, the Government did not consistently follow the existing legal requirements for analysis and prior consultations in place for merging and creating new administrative bodies when carrying out reorganisations after the establishment of the new Government in December 2020. The annual plans and reports of subordinate institutions to the ministries are not used as management tools, but are prepared for formal reasons. Decision-making regarding even the most basic administrative issues like requests for training, annual leave and business trips is usually kept at the level of the minister or state secretary and not delegated down.

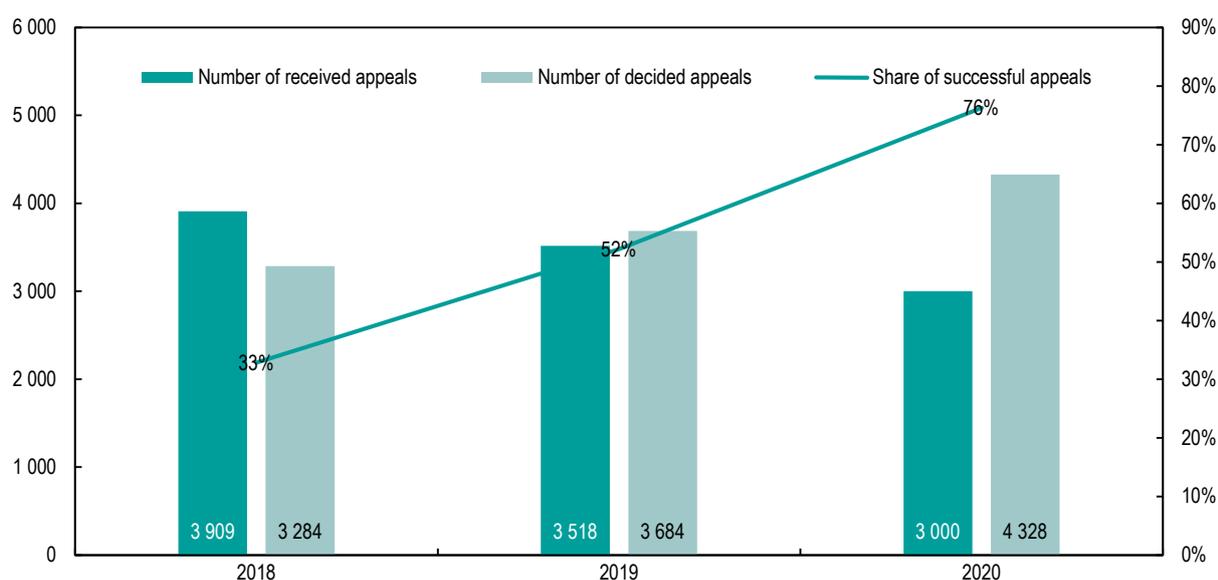
**The right to access public information is well established in the legal framework, but the system is not fully functional. This is evidenced by the high share of successful appeals** against the decisions of public authorities, often due to administrative silence. The large number of requests for information, as well as of subsequent appeals, can at least partially be explained by inconsistent proactive publication of data by state administration bodies. The perception of the general public and businesses of the accessibility of public information has deteriorated.

Legislative safeguards for the mandate and the independence of the Ombudsman Institution, the State Audit Institution (SAI) and the courts are in place. However, the **effectiveness of the work of the oversight institutions is limited based on the low implementation rate of their recommendations**,

especially the recommendations of the Ombudsman. The perception of the oversight of institutions' independence and public trust in them have deteriorated.

**The Administrative Court is functional but has been negatively affected by the significant increase in the number of incoming cases since 2017.** The number of incoming cases has recently been the highest in the area of access to information, where a significant number of cases are submitted just for claiming the compensation of court costs in confirmed cases of administrative silence. Additional judges and legal advisers have enabled the court to reduce slightly the case backlogs from the highest levels of 2017 and 2018, but the average duration of handling administrative disputes is still more than double than in 2016. As a consequence, the number of requests for the acceleration of court proceedings has increased significantly in recent years. In addition, the perception of the independence of the judiciary has deteriorated compared with 2017.

**The high number of appeals on access to information requests, as well as the high share of successful appeals, indicate that the access to information system is not fully functional**



Source: Annual reports of the Agency for Personal Data Protection and Free Access to Information.

The legal framework for the public liability regime is in place. The high number of court decisions according to which the Government is obligated to compensate damages, as well as the high expenses associated with these payments, indicates that the system is also functional. However, **the Government has not analysed the reasons for the compensation claims and has not taken any measures to address their causes in order to be able to avoid them in the future.**

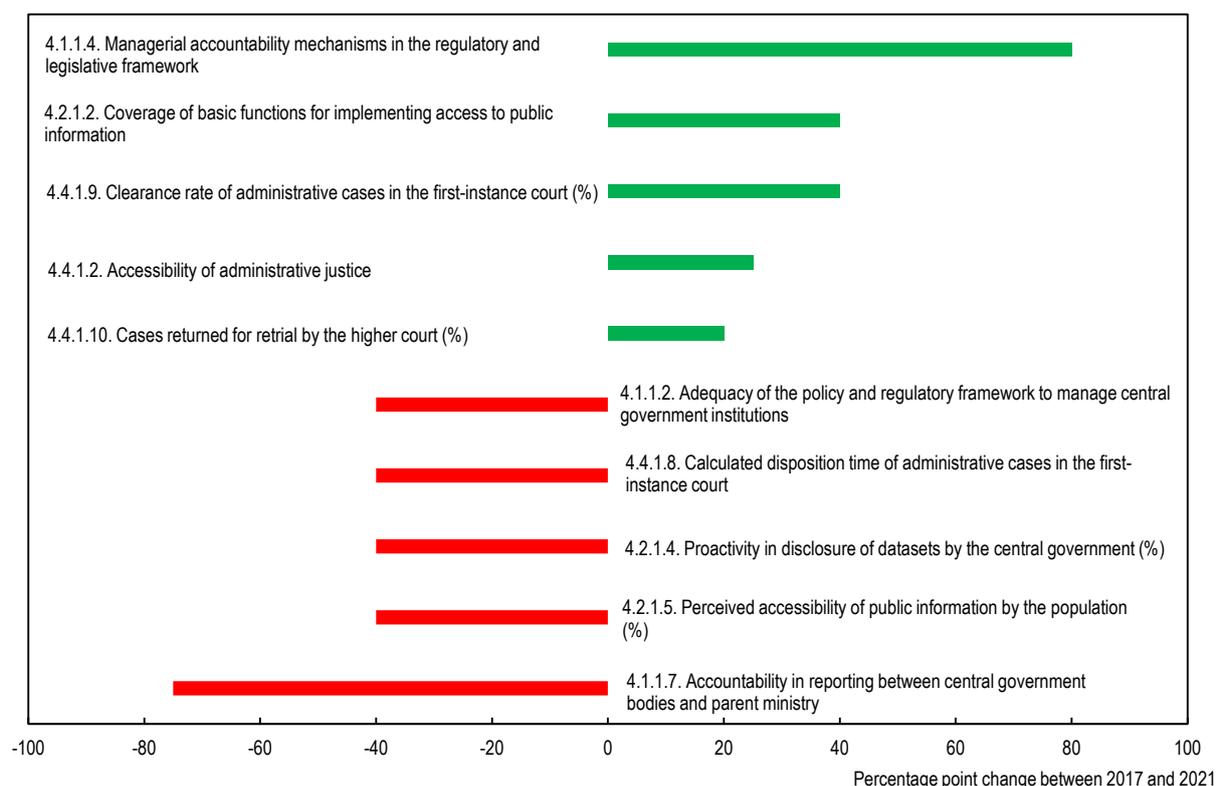
### Short-term recommendations (1-2 years)

- 1) The Government, under the institutional leadership of the Ministry of Public Administration, Digital Society and Media (MPADSM), should ensure full implementation of the Law on State Administration and align all agencies and funds to the requirements of the law.
- 2) The Agency for Personal Data Protection and Free Access to Information should address the causes of the large number of appeals, by providing targeted guidance to the public bodies against which the majority of successful appeals are submitted.
- 3) The Parliament, in co-operation with the Ombudsman and the SAI, should establish mechanisms for ensuring more consistent implementation of recommendations of the oversight institutions; for example, by requesting explanations from the bodies that fail to implement the recommendations.
- 4) The judiciary, in co-operation with the Ministry of Justice, Human and Minority Rights, should adjust the principles for compensating court costs in administrative disputes in order to limit the submission of complaints for the sole purpose of claiming the disproportionate compensation.
- 5) The Ministry of Finance and Social Welfare (MoFSW) should analyse the causes of compensation payments due to Government liability and address them to decrease the number of cases claiming damages, as well as the amount of payments.

### Medium-term recommendations (3-5 years)

- 6) The Government, led by the MPADSM, should introduce proper accountability schemes between ministries and subordinate bodies that enable them to establish performance-oriented objectives, ensure the allocation of relevant funds and monitor the achievement of these objectives.
- 7) The Agency for Personal Data Protection and Free Access to Information should use a case-management system for handling the appeals that enables it to automate the more technical steps of the process and to produce reports for systemically analysing the causes of appeals.

### The five highest percentage point increases and decreases for all sub-indicators in the area compared to 2017. Improvements in the regulatory framework for managerial accountability, but regression in actual use of accountability mechanisms as management tools



# Republic of North Macedonia

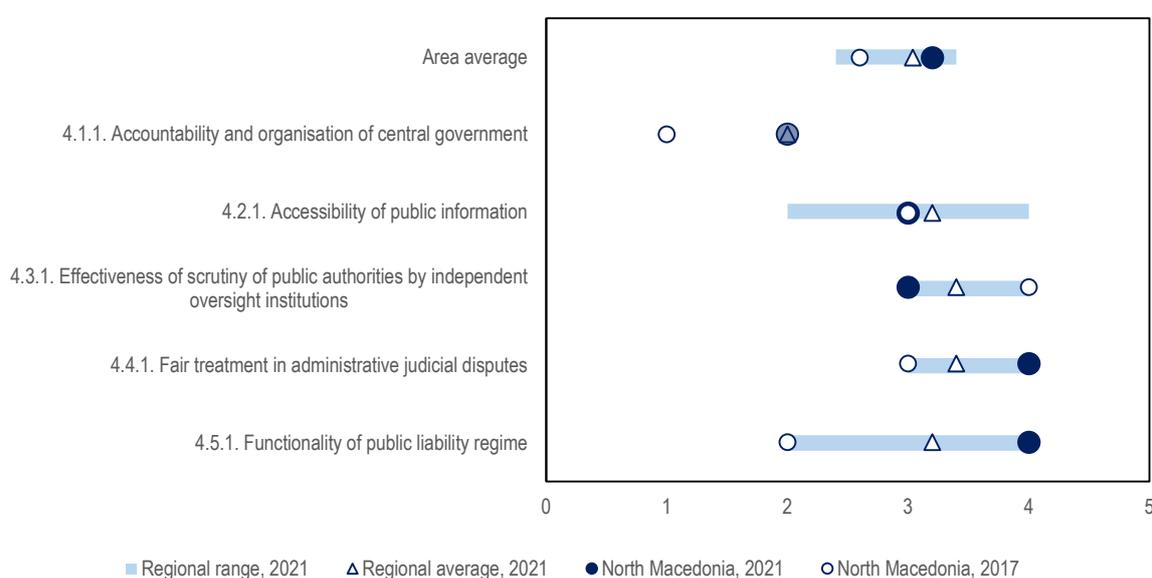
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## Republic of North Macedonia

### Summary and recommendations

Overall, North Macedonia shows progress since 2017 in the area of accountability and is with an average indicator value of 3.2 not far from the regional top performer (3.4). Effectiveness of scrutiny by oversight institutions is the only indicator with a lower value than in 2017, and the access to information remains at the same level. Nevertheless, some major reforms are still needed regarding certain elements in the accountability area.

**Close to the regional top performer, North Macedonia shows progress in the area of accountability since 2017, except for scrutiny by oversight institutions**



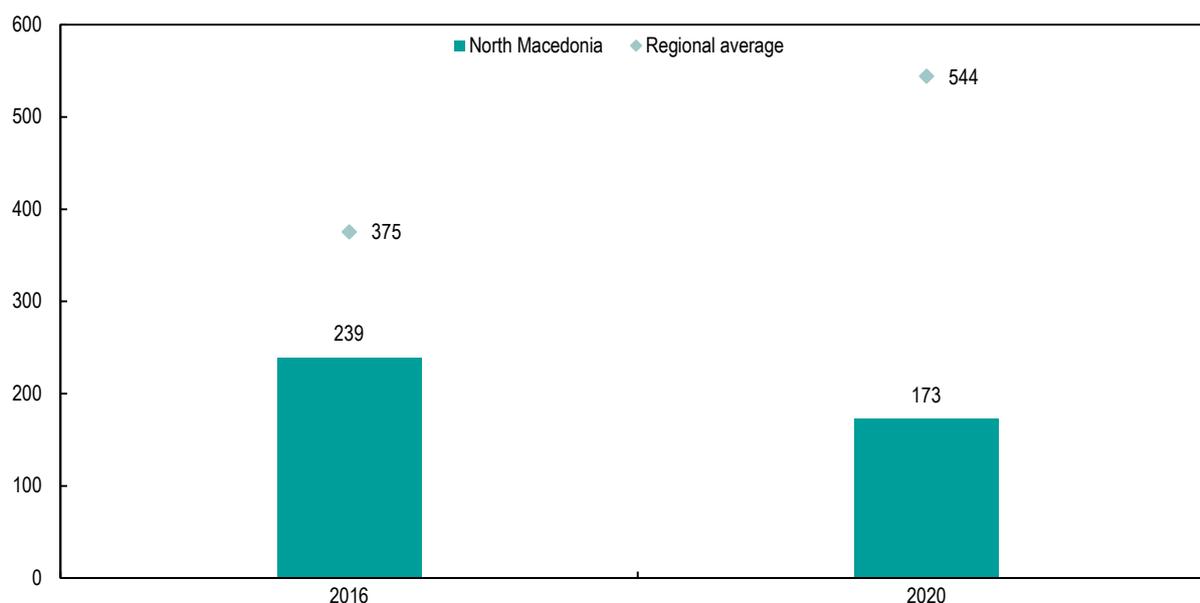
**The overall organisation of the central government bodies is not rational and does not ensure adequate accountability.** There is a significant lack of clarity regarding the typology of the central government bodies. Accountability mechanisms between subordinated bodies and their parent ministries are ineffective when it comes to strategic planning, priority setting, reporting and evaluation. There is no systematic approach or clear criteria for independent bodies, resulting in **many bodies reporting to the Parliament** instead of to their portfolio ministries.

The legal framework for access to public information system has improved since 2017 through the adoption of a new Law on Free Access to Public Information (LFAPI) in 2019. However, **proactive disclosure of information and datasets on official websites remains very low**, which indicates significant gaps in the implementation of the new LFAPI. The Agency for Protection of the Right to Free Access to Public Information does not have legal jurisdiction to conduct regular *ex officio* inspections of the compliance with the legislation on access to information.

The effectiveness of the scrutiny of public authorities by independent oversight institutions has deteriorated since 2017. **The legal framework for the Ombudsman, the Supreme Audit Institution (SAI) and the judiciary mostly follows the basic international standards but lacks some key elements.** The State Audit Office (SAO) is not mentioned in the Constitution, and the law on the Ombudsman does not include the promotion of human rights among its competences, although it is done in practice. Data on the implementation rates of Ombudsman's recommendations are not available. **The perceived independence of oversight institutions by the population, as well as trust in them, remains very weak.**

The fairness in handling administrative judicial disputes is based on a sound legal framework, which provide a strong formal base for the overall system of administrative justice. The workload of individual administrative judges is not systematically monitored. **The average disposition time of first-instance administrative cases amounts to 173 days**, which is a significant improvement from 2016 (280 days) and is now better than the Western Balkans (544 days) and European Union (EU) (241 days) averages<sup>9</sup>. On the other hand, **only 21% of the population considers the judicial system independent of political influence.**

**The average disposition time of first-instance court administrative cases has decreased further since 2016 and is now better than the Western Balkan**



Source: Data provided for the assessment by the Ministry of Justice and similar institutions in the region.

**There is a good legal framework for public liability and data availability has improved. Nevertheless, there is still no reliable data on the court rulings and payments.**

<sup>9</sup> Council of Europe member states, the average time needed to resolve administrative case is 241 days. Source: Council of Europe (2020), European judicial systems: CEPEJ Evaluation Report 2020, Evaluation cycle (2018 data), Strasbourg, p. 108.

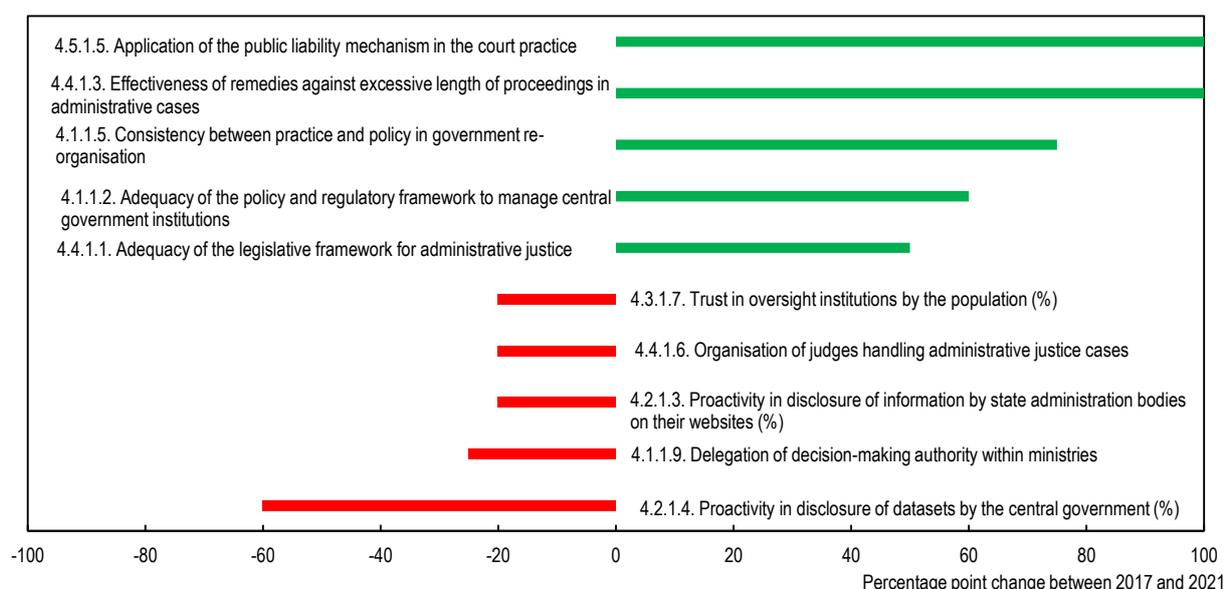
### Short-term recommendations (1-2 years)

- 1) The Government and the Parliament should ensure that the new Law on Organisation and Operation of State Administrative Bodies (LOOSAB) sets a clear typology of central government bodies.
- 2) The Government should implement the reorganisation proposals derived from the IPA project “Support to State Reorganisation”.
- 3) The Government and the Parliament should identify the state bodies that do not require independence from the Government and are currently accountable to the Assembly and transfer their accountability lines to the relevant portfolio ministry.
- 4) The MISA, in co-operation with the MoF, should create effective objective-setting and accountability mechanisms between ministries and their subordinated bodies.
- 5) The Government, in co-operation with the Agency for Protection of the Right to Free Access to Public Information, should extend the proactive disclosure of information and datasets on official websites.

### Medium-term recommendations (3-5 years)

- 6) The Agency for Protection of the Right to Free Access to Public Information should be given legal competence to conduct *ex officio* inspections of the compliance with the LFAPI.
- 7) The Ministry of Justice and the Judicial Council should develop the existing court management information systems to provide data on the workload, performance and quality of individual courts and judges.
- 8) In the event of a constitutional reform, the relevant institutions should use the opportunity to include the SAO as a constitutional body.
- 9) In the event of a legislative reform, the mandate of the Law on the Ombudsman should include the promotion of human rights.

**Five highest percentage point increases and decreases for all sub-indicators in the area compared to 2017. Indicators measuring public liability mechanisms in court and remedies against excessive length of administrative court cases have improved significantly, while proactive disclosure of information and delegation of decision-making are the indicators with the most deterioration.**



# Serbia

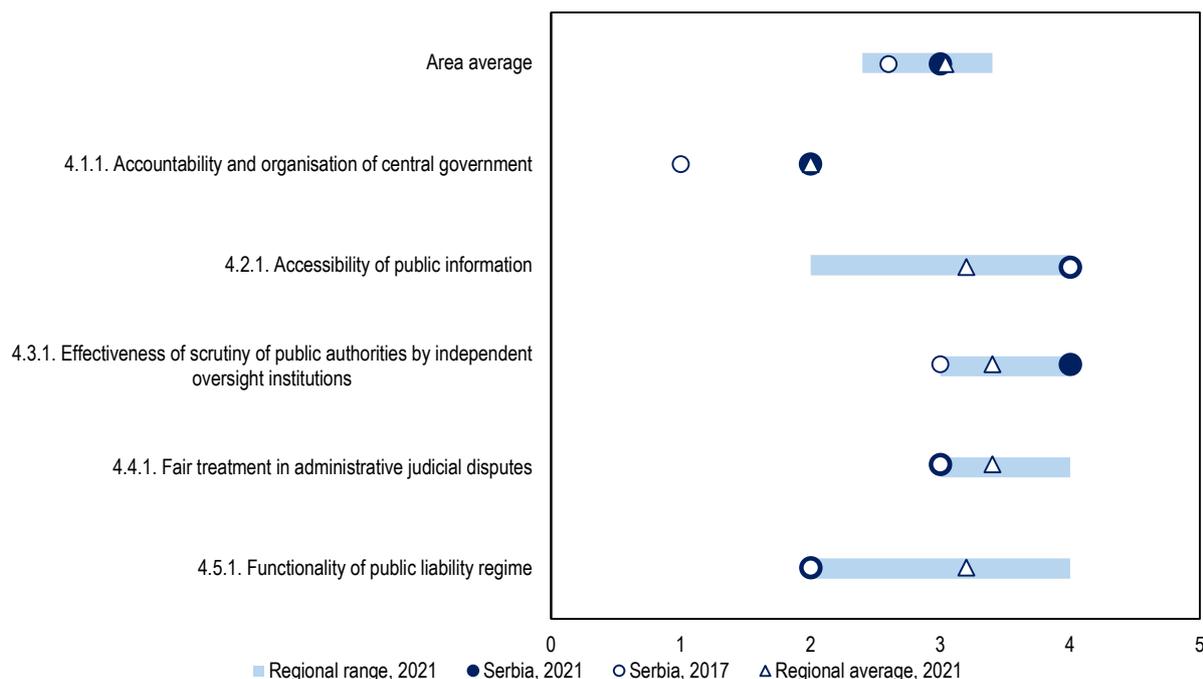
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## Serbia

### Summary and recommendations

With an area average of 3, Serbia remains an average performer in the region in the area of accountability, with advancement from 2017 when the average was 2.6.

#### Serbia remains a solid performer in the area of accountability



**The most outstanding weakness is the lack of vision and policy of macro-organisation of public administration.** While a typology of administrative bodies exists in the legislation, its practical value is questionable. The distinction between two organisational types – administrative authorities within ministries and special organisations – is blurred. For the sake of transparency and clarity, one of the two types, i.e. special organisations, could be deleted from the legislation. A significant problem that persists is the limited normative value of the Law on Public Agencies. Namely, each public agency (this status is used chiefly for regulatory bodies) is regulated in a special law, and a large number of public agencies are accountable to Parliament instead of the Government. They are thus exempt from accountability to the ministries and government, although they perform administrative functions.

**While administrative bodies enjoy a sufficient level of managerial and professional autonomy, this autonomy is not counterbalanced with a sound framework of performance management, ministerial steering, oversight or accountability for results.**

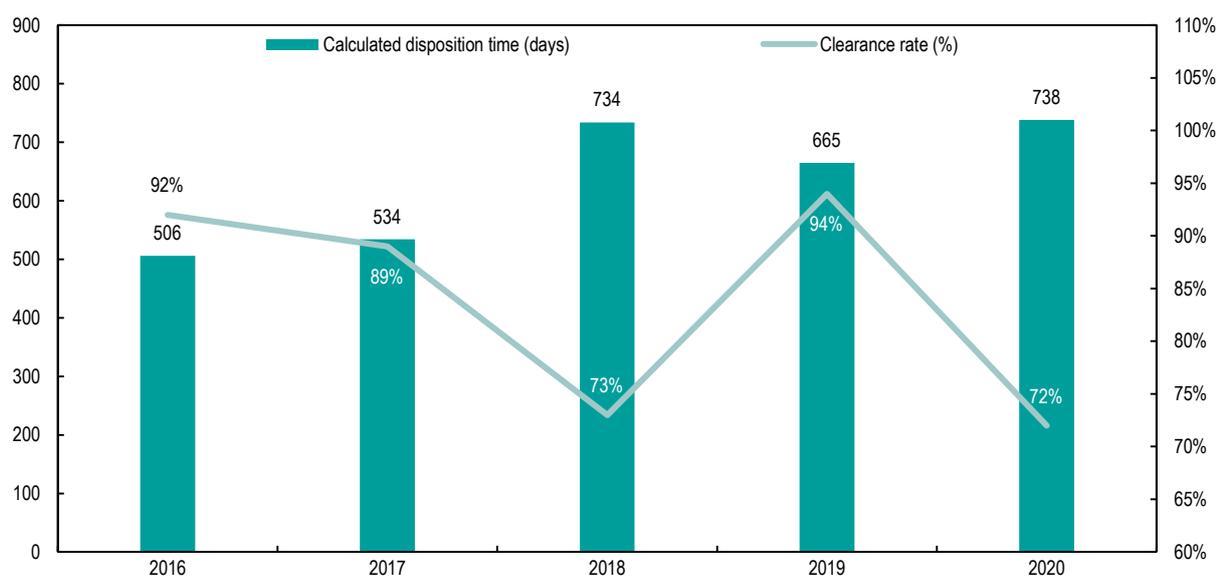
**Serbia remains a solid performer in the area of access to public information.** The legislative framework is in line with international standards and is even recognised globally as one of the most advanced. The public perception of transparency is positive and has improved significantly since 2017. There are still some outstanding challenges in this area, however. The provision on the abuse of the right to access to public information is not sufficiently clear and could be interpreted arbitrarily. The Commissioner for Information of Public Importance and Data Protection lacks mechanisms to enforce the decisions and sanctions for cases of non-compliance. There is also room for improvement regarding proactive disclosure of public information.

**Regarding oversight of public administration by external oversight institutions, the legislative framework is adequate overall** and ensures sufficient independence of the oversight institutions. The

Balkan Barometer demonstrated positive change in terms of public perception of independence and trust in oversight institutions. There is an ongoing problem with access to reliable statistics on the implementation of the Ombudsman's recommendations.

**Accessibility to administrative justice is severely affected by the high backlog of cases in the Administrative Court.** At the end of 2020, the average time needed by the Court to resolve a case (calculated disposition time) reached 738 days (over 200 days more than in 2016 and three times more than the European average). The clearance rate has been constantly below 100% since 2016, which leads to growing backlogs. On a more positive note, court fees are extremely low, and legislation on free legal aid has been adopted recently.

**Excessive and increasing disposition time of cases in the Administrative Court hinders the effectiveness of judicial review of administrative decisions**



Source: Annual reports of the Administrative Court.

**Public liability for administrative wrongdoing is enshrined in the legislation.** However, data is not available due to the absence of monitoring of judicial cases and amicable settlements, making it impossible to assess how the implementation is unfolding in practice.

### Short-term recommendations (1-2 years)

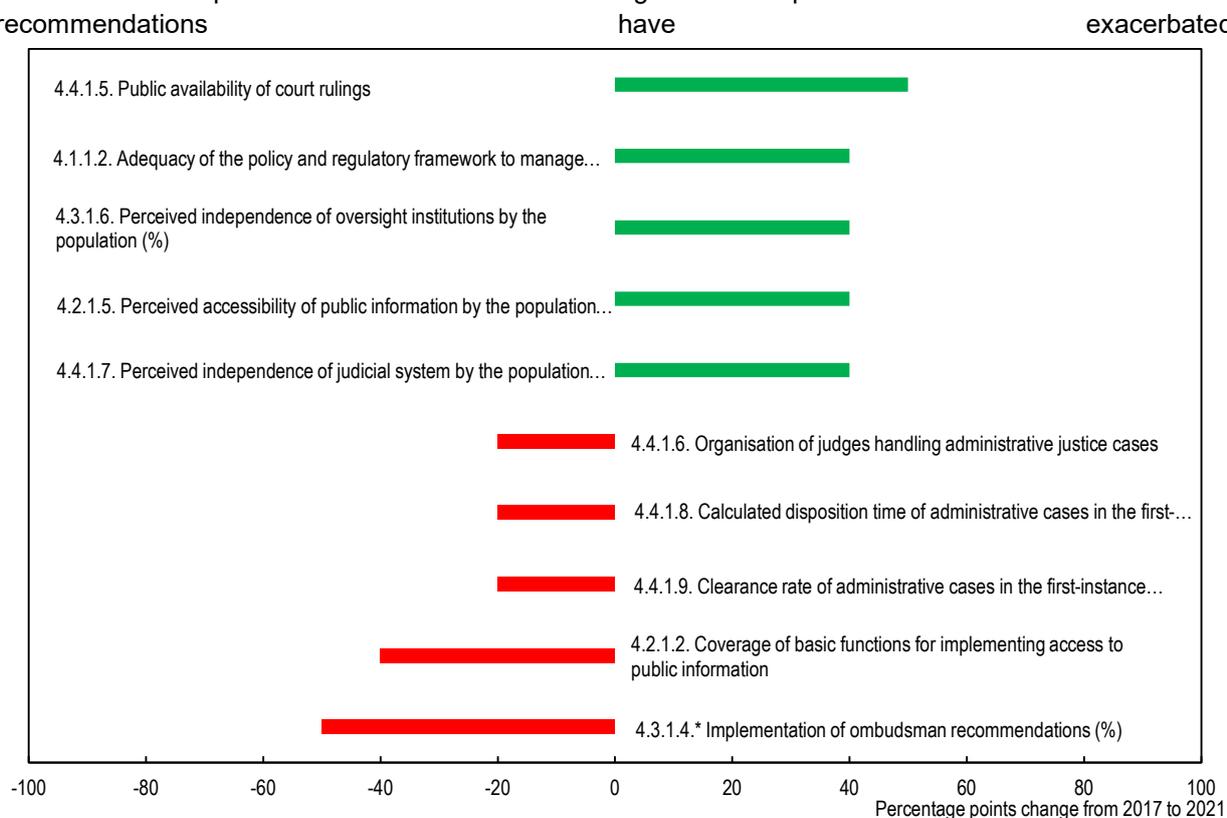
- 1) The Ministry of Public Administration and Local Self-Government (MPALSG) should review and simplify the current legislative framework for the typology of public administration bodies, in particular eliminating unclear distinctions between administrative authorities within ministries and special organisations.
- 2) Any future organisational changes (e.g. the creation of new bodies, the merger and abolition of institutions, and shifts in powers and competences, change of status) should be preceded by comprehensive *ex ante* analysis and reviewed by the MPALSG, based on a clearly established government policy.
- 3) The Government should adopt an accountability framework for bodies subordinated to the ministries, ensuring that portfolio ministries actively shape the objectives and expected results for subordinated bodies, monitor their implementation and provide structured, regular feedback on the performance of these bodies.
- 4) The MPALSG, in close co-operation with the Commissioner for Information of Public Importance and Data Protection, should replace the controversial provision of the law on “abuse of right to access to public information” with a mechanism that would reduce the risk of arbitrary decision making.

- 5) The MPALSG, in close co-operation with the Commissioner for Information of Public Importance and Data Protection, should develop a legislative proposal eliminating obstacles to effective supervision of the observance of the right to information, ensuring in particular that decisions of the Commissioner are enforceable and sanctions are imposed for violations of the right to information.
- 6) The Protector of Citizens should establish mechanisms for monitoring and reporting on the actual implementation of the recommendations by the state administration bodies that rely on comprehensive checks of implementation measures, not only acceptance of the recommendations by the relevant bodies.
- 7) The Ministry of Justice and the High Judicial Council should undertake urgent and concerted actions tackling the problem of a systemic backlog of cases in the Administrative Court, such as increasing the number of judges (on a temporary or permanent basis) of this Court and increasing the number of administrative staff (including judicial assistants) combined with an inter-institutional mechanism for more regular monitoring of this Court's workload.

#### Medium-term recommendations (3-5 years)

- 8) The Government should review all public bodies subordinated to the National Assembly, identify those that perform purely executive and regulatory functions and propose legislation to make them accountable to the Government.
- 9) The Government, in co-operation with the State Attorney's Office, should introduce mechanisms to monitor cases (both court cases and amicable settlements) that result in the liability of the State, with the goal of improving administrative procedures and decisions and thus reducing public-liability cases in the future.

The five highest percentage point increases and decreases for all sub-indicators in the area compared to 2017. While public availability of court rulings has improved, the issues of judicial backlogs in administrative disputes and the lack of monitoring of the implementation of the Ombudsman's recommendations



Note: The \* marks where points have been deducted because data was not available, not provided, or of poor quality.

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