

SPECIAL EDITION – SERIES OF ESPRESSO INSIGHTS

#KOSOVOin2020: Access to Public Documents

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Group for Legal and Political Studies

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2020 has been a year to remember, especially in Kosovo. In this Espresso.Insights series, GLPS recaps and analyses the main events in the fields of politics, law and society that have affected the country this year and identifies the challenges ahead of 2021. In part 7, Ema Pula explores Kosovo's institutional progress in the fields of transparency and public document access.

#KOSOVOin2020: Access to Public Documents

By: Ema Pula – Group for Legal and Political Studies

Even in 2020, the public institutions' transparency towards the public continues to lag behind. One of Kosovo's main challenges regarding transparency has been the right to access public documents. With the entry into force in 2019 of the Law on Access to Public Documents¹, there have been some changes regarding the introduction of the principles of proactivity and disclosure of data and among these changes has been the establishment of the Agency for Information and Privacy. In addition, this Law indicates the grounds on which a request for access to public documents may be refused and the cases in which requests must always be approved.

The law provides two channels of accessing public documents: through proactivity, where institutions are forced to proactively publish data, and through direct request. In terms of proactivity, in 2020 institutions were selective in publishing public documents and, at the same time, lacking in efficiency. Although the inclusion of this principle represents innovation as a positive novelty by making proactive publication as essential and mandatory, the work of the public institutions still does not reflect this principle.

As for the request for access to public documents as a means of information, it has existed since the appearance of the first legal regulation of this field in Kosovo. Regarding the central-level institutions' approach towards this, it is estimated that even this year their decisions on the requests are selective. As regards to requests related to situations of high importance, access is limited to rejection, non-response or partial approval. Meanwhile, municipalities still remain among the most problematic public institutions in handling requests for access to public documents. Legally, in this area the Municipalities must implement the Law on Access to Public Documents and the Law No. 03 / L-040 on Local Self-Government² which obliges municipal assemblies to adopt special regulations for transparency of the legislative, executive and administrative bodies of the municipality. For this year, the institutions have not yet reported to the Agency for Information and Privacy regarding the requests for access to public documents. Unfortunately, reporting on an annual basis alone cannot be considered a good practice as, apart from transparency, accountability falls behind as well.

Regarding the basis for the rejection of requests, the institutions are obliged to subject the requests they accept to the damage and public interest test interest as provided in Article 8 of the Law on Access to Public Documents. In September 2020, the Agency for Information and Privacy came up with a Guide for the Development of the Damage and Public Interest Test³ for the public institutions. The guide states that this test is considered "sustainable and effective

¹ Law no.06/L-081 on Access to Public Documents, available at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=20505>

² Law Nr.03/ L-040 on Local Self Government, available at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2530>

³ Guide for the Development of the Damage and Public Interest Test, available at: <https://aip.rks-gov.net/assets/cms/uploads/files/Legjislacioni/KONCEPT%20DOKUMENT%20p%3%ABr%20Udh%3%ABzuesin%20e%20Estetit%20t%3%AB%20D%3%ABmit%20dhe%20Interesit%20Publik.pdf>

when binding, applies to all exceptions, favors publication and sets out relevant criteria to be considered". Therefore, the institution must demonstrate that the proactive publication or approval of a request to public documents would harm the public interest.

The Commissioner for Information and Privacy, a stagnation of the right of access to public documents

After the establishment in 2019 of the Agency for Information and Privacy, responsible for overseeing the implementation of the Law on Access to Public Documents, the efforts for the selection of its head, the Commissioner, have continued in 2020 after two failed selection processes in 2019.

In May, the vacancy for the position of Commissioner was opened. The Assembly of Kosovo was sent three shortlisted names that were later subject to an interview. On the 14th of August, after two rounds of voting, the Assembly failed to select a candidate, so none of the shortlisted names managed to get the 61 votes necessary. A few days later, the British Embassy, which was involved in the selection process even after the Assembly's failure to appoint a Commissioner, let the public know that they would not be included in the next competition because it ["questions the stated commitment of the political parties to implement the Memorandum of Understanding with the British Embassy, but more importantly, sends negative signal for independent professionals in Kosovo and their hopes to contribute to Kosovo Institutions"](#).

During October, the Committee on Security and Protection of the Assembly decided to amend the legal provisions regulating the manner of selection of the Commissioner⁴. As per the proposed change, if a candidate does not get the majority of votes during the first round, the candidate who receives the highest number of votes in the second round is elected as Commissioner. From this, it can be concluded that, with the votes of only one political party, the Commissioner for Information and Privacy can be elected, thus stopping the efforts to reach a consensus between the political parties to choose the best candidate. At the same time, this raises doubts about the independence of the Commissioner.

What about 2021?

During 2020, the biggest challenge in this field remains the selection of the Commissioner for Information and Privacy, a position that revitalizes and enables full implementation of the Law on Access to Public Documents and the Law on Personal Data Protection. In addition, the year 2021 should be followed by the embodiment of the principles of proactivity and openness of data, leaving the demand for access to public documents as secondary so that the work of public administration itself is more efficient and transparency takes on its full meaning in Kosovo's public institutions.

⁴ Law no.06/L-082 on Protection of Personal data, article 60, available at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=18616>

Espresso.Insights

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