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FREEDOM OF INFORMATION AND JOURNALISM IN KOSOVA 2010 - 2020

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ABSTRACT

The beginnings of the practical implementation of the right on access to public documents, also known as the freedom of information in Kosova date fifteen years back from now, when the first law on access to public documents was adopted (Official Gazette of RKS, 2007).

The freedom of information was attained with difficulties by journalists in relation with public institutions until two years ago. This was because of the oversight body of this law's implementation was a coordinating office within Prime Minister's Office, without a specific binding mechanism to public institutions, whilst the Ombudsperson served as a second instance, also without an executive mandate to empower achievement of this right.

The content of this paper's body entails, among others, aims to highlight the degree of difficulty journalists faced to provide information in the absence of an appellant authority in the country during a ten years' period, which is the subject matter of this writing.

Notwithstanding difficulties to freely access public documents, provided by law to be open for the public, as well as the people's lost trust for public institutions in this regard, since 2019 when the oversight mission of the Law on Access to Public Documents was entrusted to the Information and Privacy Agency, the general perception began to change positively.

The current situation in terms of the respect for the freedom of information may be considered to be relatively satisfactory, because public institutions are made aware of the existence of the oversight authority, which acts as an appellate authority for citizens.

Key words: Access; Appellant Authority; Freedom of Information; Oversight.

Abbreviations

IPA.....Information and Privacy Agency
LAPD…… Law on Access to Public Documents
RKS……Republic of Kosova
PMO……...Prime Minister's Office
IO..…….Institution of the Ombudsperson

INTRODUCTION

The right on access to public information is an integral part of the fundamental right on the freedom of expression, which is stipulated by Article 19 of the Universal Declaration on Human Rights in 1948. This documents, among others, emphasizes that the fundamental right on the freedom of expression encompasses the right to inquire, receive and provide information and ideas through whichever medium, regardless of boundaries (UDHR, Article 19, 2012).

The right on access to information presents two obligations for public institutions. First, the obligation to proactively make public their daily activities; while the second symbolizes the obligation to respond to citizens' requests to access documents being produced, received or kept by state institutions, which are provided by the national law to be accessible to the public.

In 2015, The General UNESCO Conference voted to set September 28th to be 'The International Day on Universal Access to Information', or as it is also known as 'The Access to Information Day' (https://en.unesco.org/commemorations/accesstoinformationday, 2021).

In Europe, the right on access to information is generally applied to all administrative bodies of whichever level, starting from the local to the governmental ones.

In the European Union level, Article 42 of the European Charter for the Human Rights, provides the right to access documents of EU institutions, which is also known as the right stipulated by Article 15 of the European Union Functioning Treaty (Council of Europe, Council of Europe Convention on Access to Official Documents. Council of Europe Treaty Series - No. 205, 2009).

Freedom of Information in relation with EU institutions, in terms of the public access to the European Parliament, the Council and its documents is guaranteed through the EU Regulation 1049/2001, which is also known as the EU's freedom of information law (Guide on Access to EU Documents, p.2, 2013).

The implementation of the right on access to public documents in our country is made in respect to Article 41 of the Constitution, as well as in line with the Law on Access to Public Documents. These legal acts empower the freedom of information for every citizen, although the practice followed so far has proven that this right is being used more rationally and more frequently by media community. In order to prove its serious commitment in implementing this right, the state established the special supervisory authority with an independent operational activity, which, within its legal mandate, supervises public institutions, trains responsible officers for access to public documents and in execution of the respective law, imposes fines to public institutions.

Since this right began being implemented in 2007 and that a whole network of officials responsible for access to public documents in each public institution, is a clear indication that its implementation is relatively satisfying, notwithstanding that the optimum of the desired level of implementation requires even bigger commitment and a stronger effective legally binding measures within the oversight of public institutions by the respective authority, i.e. the Information and Privacy Agency.

In relation to the importance the implementation in practice of this right has, academic papers were drafted, especially within projects launched *ad hoc* by nongovernmental organizations, including the international ones, whose aim was to reflect the real situation of the

respective law implementation protecting and empowering the right on access to public documents. However, the literature in Albanian language about freedom of information, as it is globally called in a generalized way, continues to be deficient for researchers of this area who do not speak or write English or other foreign languages.

By keeping the permanent focus on the media community, in the capacity of exercisers of the right to access on public documents produced, kept, retained, processed by public institutions, a chronology of first steps taken by the state towards promotion of this currency of democracy, i.e. affirmation of the freedom of information is going to be presented within this academic paper in order to bring a realistic picture of this right's implementation in our country.

Special emphasis will be given to specific cases addressed to public institutions by representatives of local media, by elaborating the narrow spectrum of access to public documents requests exercised by journalists.

A special importance within this paper will be given to the practical work of the Information and Privacy Agency, because it is its work of supervising character that positively affects the expected success of having this right implemented, especially by media.

THE BEGINNINGS OF FREEDOM OF INFORMATION IN KOSOVA

The beginnings of accessing public documents implementation in Kosova date back fifteen years from now when interim institutions of self-governance drafted the first law on access to official documents (IISG Official Gazette, 2007), which was adopted by the Assembly in 2007.

The advancement of this right took place three years later, respectively in 2010, by adoption of the Law No.03/L-215 on Access to Public Documents by the Assembly of Republic of Kosova.

After the entry into force of this law, its monitoring of implementation in practice and coordination with public institutions obliged by this law was initially entrusted to the public relations office within Prime Minister's Office.

On the other hand, the Institution of Ombudsperson served as an independent body in charge of taking care to assist citizens and facilitate the process of accessing the requested public documents.

However, unsatisfied parties in the procedure of exercising the right of access to public documents could also appeal to other public institutions.

Freedom of information or the right on access to public documents was monitored until two years ago by a coordinating office, without a specific binding mechanism to public institutions, while the Institution of Ombudsperson served as a second instance, also without an executive mechanism to empower implementation of this right.

Reasons that made the Government to transfer this mandate to the Information and Privacy Agency were mainly related to its executive mandate, respectively IPA's legal mandate to impose fines to public institutions, which would be disregarding the requests of citizens to provide access to public documents, which they produce, store or process.

Since July 2019 when the new law on access to public documents (Official Gazette of RKS, July 4^{th,} 2019) got adopted, this right of citizens is no longer considered just as right on paper, but as a legal binding obligation of public institutions.

Ignorance of this freedom of citizens is punished by the Information and Privacy Agency.

The law has defined two levels within each public institution responsible for implementing this right in practice, the chief administrative officer, and the officer for access to public documents.

This legal act guarantees the right of every person, without discrimination on any grounds to have access to public documents, which mean any act, fact or information held by public institutions (Ibid, Article 1, p.1).

Being responsible for overseeing and ensuring the implementation of this law, the Information and Privacy Agency promotes and provides trainings public institutions to implement the law in practice.

The IPA, among others, reports to the Assembly about the observance of this law by other public institutions, cooperates with responsible institutions to organize training of their officers, as well as undertakes measures provided by law for the effective implementation of this right.

Public institutions are obliged to report to the Agency once a year regarding all access to public documents requests received and handled during the previous year.

The current situation in respect of the freedom of information may be considered relatively satisfactory because public institutions are made aware for the existence of the supervising authority, which functions in the capacity of an appellate authority for citizens.

During this period of two years, IPA has functioned mainly in the advisory segment for public institutions, whose officers, knowing the executive mandate of this authority, often do not feel confident in which cases they are entitled to refuse citizens' access to public documents.

A mitigating circumstance for journalists is created by the interpretation of the term 'public document' (LAPD, Article 3, 2019) by the head of access to public documents department in the Information and Privacy Agency. The journalists' questions addressed to public institutions were so far not considered as access to public documents requests, so journalists were quite often left without original information requested in the form of questions, or even if answers were provided, those were given in later stages, so the news depending on that information lost the expected effect.

In the trainings conducted by the Information and Privacy Agency, the network of responsible officers for access to public documents of all public institutions in the country was made clear that questions made by journalists to public institutions are going to be considered as access to public documents requests, no matter if the respective request form is completed or the journalists do not mention the term 'access to public document request' (Arifi, 2021).

The advantage of this approach for treating questions as access requests is related to the institution's obligation to provide access, respectively to respond the claimant within seven days, as provided by law.

THE INFORMATION AND PRIVACY AGENCY

The independent authority in the Republic of Kosova, which was mandated by law (Article 27, LAPD, 2019) to oversee implementation in practice of this legal right, as well as to impose respective measures is the Information and Privacy Agency.

This authority was transformed by law (LAPD, Article 108, 2019) from the former National Agency for Personal Data Protection, which during the first eight years of its operation, was mandated to supervise personal data protection area only.

The IPA, among others, monitors and reports to the Assembly on the level this law is being respected by other public institutions, then it cooperates with Ombudsperson's Office and other regional counterpart authorities to ensure similar cases are being handled on the same practical logic.

The Agency is also entitled to initiate the declassification procedure of classified documents in cases when such an action is considered to be necessary to guarantee the freedom of

information, but without prejudice to the provisions of the relevant law on classification of information (Arifi, 2018).

Nongovernmental organizations operating in the country, some of which are hybrid media, were involved by the Agency in several awareness activities with journalists and civil society representatives, which is an indication that they represent a sustainable partnership in this regard.

INSTITUTION OF THE OMBUDSPERSON

The Ombudsperson is an independent institution in execution of its duties and does not accept advice or interference by other bodies, institutions or authorities, which exercise power in the Republic of Kosova.

Being an independent institution, it is led by principles of impartiality, independence, prevalence of human rights and professionalism.

Ombudsperson's competence, in accordance with Article 21 of the Law on Access to Public Documents is to support citizens in having their right on access to public documents undisputed, in line with the Constitution and in accordance with the Law No.05/L-019 on Ombudsperson (IO, 2019, p.45).

The Ombudsperson conducts investigations, provides recommendations, publishes reports and advocates for human rights and liberties, among which for citizens' right to access public documents.

In cases where investigations by Ombudsperson's legal advisors result in finding human rights violations, the institution may request additional notifications from public authorities and make recommendations to relevant public authorities.

In cases where the Ombudsperson considers that a general practice or situation is not in line with local or international human rights standards, affects an individual or wider, it provides special reports, which comprise recommendations addressed to the Assembly of Kosova with the purpose of improving the created situation and harmonizing it with local and international standards on human rights.

THE STRUGGLE OF JOURNALISTS FOR THE FREEDOM OF INFORMATION

Legal principles of exercising the right on access to public documents do not provide treatment privileges for the journalistic community, because this right is meant to be implemented for every citizen, regardless of profile, profession or occupation in public life he/she may have in the capacity of an access to public documents claimant.

Moreover, the freedom of information is not limited to citizens of our country, for the public institution in which they have reasons to submit a request. It was not inadvertent that a date was chosen during the year to be marked internationally by all authorities that guarantee this right, but also by the civil society, as the International Day for Universal Access to Information (UNESCO 38C Resolution, 2015).

By accepting the impartiality principle (Article 4, LAPD, 2019), according to which, the right of access to public documents belongs to each individual, in an equal and same manner, representatives of media are obliged to follow the general criteria of acquiring information produced, retained or received by public institutions.

The journalistic community in our country has been legally enabled access to public documents since the end of 2007, during the time our country was administered by the institution of self-governance under the administration of UNMIK (IISG Official Gazette, Law No.2003/12).

However, the lack of a supervisory authority to implement this law in practice by public institutions at the time had had little effect on improving the freedom of information in the country. Consequently, it cannot be convincingly said that even journalists, especially investigative ones, found it easy to provide the information needed to write impartial and verified news.

Being a democratic state, albeit an evolving one, the only functional and somewhat effective instance was the Ombudsperson, which, after the independence of the country in 2008, became the Institution of Ombudsperson that in the context of citizen support for any human right, advocated for the freedom of information, too, although only with recommendatory powers for country's institutions.

The state had made a more serious step in improving the freedom of information in 2010, enacting a new law regulating the field of access to public documents. For the implementation of

the same, the public relations office within Prime Minister's Office was given coordinating competences, which collected reports from all public institutions regarding the implementation in practice of this law.

Despite the lack of a binding mechanism of this coordinating office, from the data reported by this office, it has been concluded that the journalism community has experienced facilitation in providing the necessary information from public institutions.

It is not a coincidence that journalism community has recorded the largest percentage of requests for access to public documents addressed to public institutions during 2011, leading the list with 73% (PMO, *Comprehensive Report*, 2011, p.11) of total number of requests country wide.

The statistical trend of requests for access to public documents submitted by the journalism community at public institutions during 2012, compared to the previous year's figures of 514 requests (PMO, *Comprehensive Report*, 2011, p.10) addressed to all public institutions has decreased in percentage.

These data are evidenced by the comprehensive report produced by the public relations office at the Office of the Prime Minister, which had a coordination role with public institutions at that time, which used to provide report to this office periodically.

To provide a realistic picture of the implementation of this right and to enable the comparison of citizens' profiles who have exercised their legal right of access to public documents, this paper refers to some data, which again prove that the journalistic community continued even in during 2014 to lead the list of claimants of this nature with a percentage of 57.58% (PMO, *Comprehensive Report*, 2014, p.12) in comparison to the civil society and other categories of citizens.

The general situation of the implementation of the right on access to public documents in the middle of the second decade, according to official indicators, proves a slight loss of trust by journalists for public institutions' transparency.

This loss of trust seems to have been caused by the second instance of exercising this right. Having the Institution of the Ombudsperson in the capacity of the *amicus curiae* and of the provider of supportive recommendations in favor of citizens for public institutions, which

according to the respective legislation has an effective mechanism to oblige them not to remain silent to parties' requests, citizens in general, especially the journalistic community, has not found institutional support to have the freedom of information guaranteed even after eight years of an enacted law providing guarantees for transparency.

On the other hand, the continuous situation of overburdened courts has caused distrust of journalists to address indictments to public institutions who were denying the right on access to public documents.

The nature of information requested by journalists, in most cases coincides with the expected actuality of the news or research, which depends on the public documents object of the request. Thus, eventual delays have often affected loss of interest by journalists to follow other instances, even alternative ones, in order to exercise their right in this aspect to the end.

Concrete evidence of this distrust is the following data, according to which, requests for public documents of journalists, addressed to public institutions during 2015 have decreased to 45.32% (PMO, *Comprehensive Report*, 2015, p.9).

Despite the efforts made by the Institution of Ombudsperson to raise awareness among public institutions in this aspect, its binding impotence has continued to be manifested in constant silence over requests to public documents.

The lack of an independent authority with a supervisory and binding mandate on public institutions, which were subjected to the provisions of relevant legislation regulating this field during the second half of the last decade, continued to negatively impact the cultivation of a public trust and especially to the journalists to the commitment of public institutions to develop transparency.

This is clearly evidenced by the declining trend measured, due to the coordination mandate of the Prime Minister's Office, according to which, during 2016, journalists were ranked with only 33.33% (PMO, *Comprehensive Report*, 2016, p.13) of submitted requests to public institutions, aiming to acquire access to public documents.

Eventual declines and increases in access to public documents requests of journalists, in terms of percentage, can be taken as indicators of their continued dependence on documents that are produced, received and stored by public institutions.

Despite the lack of trust expected for effective review and within the legal deadlines by responsible officials, the percentage of 44% (PMO, *Comprehensive Report*, 2018, p.10) extracted for 2018 by the public relations office within PMO proves an increase compared to previous years.

CONCLUSION

Institutions of the Republic of Kosova apply and implement the Law on Access to Public Documents in practice, thanks to which the freedom of information is strengthened, which can be considered as a currency of democracy.

I believe that this paper can make a satisfactory contribution in some areas, such as providing a realistic picture of the implementation of the right to access to public documents by citizens in general, with special emphasis on the media. In addition, it serves the public with an idea of a brief history of the relatively slow pace of development of state mechanisms to empower it, by providing superficial statistics on the difficulties presented by journalists in relation to public institutions during the implementation of this right.

Disrespect of the right to access public documents by public institutions themselves, in most frequent cases has appeared as a phenomenon of influence from the managerial and political level within institutions, which has been conveyed to lower level of officials, especially to the position of the access to public documents responsible official.

Other reasons that have diminished the credibility of the public, respectively the media towards public institutions, has been proven to have been the negligent approach of responsible officials towards requesting parties (Official Gazette of RKS, LAPD, 2019). This occurred, especially during the first decade of the respective law enactment, in lack of a specialized authority with executive mandate and binding mechanisms to public institutions that are obliged to implement this law, consequently, to respect the right to be informed by citizens.

This paper shows how journalists in our country face daily challenges in acquiring information, within which, they are enabled to righteously inform citizens through media they represent regarding local and central governance.

To reflect better recommendations and conclusions, the topic elaborated within this academic paper identified the benefits that the observance within the legal deadlines of this right of citizens brings for public institutions themselves in the first place, because this is how the level of citizens trust for them increases, by not neglecting the increase of institutional transparency, which restores citizens' lost trust in state institutions and serves as a mechanism to fight corruption.

These indicators show that freedom of information in public institutions should be one of the main priorities, which can be achieved with political will and with strict oversight of the implementation of the relevant law by the supervisory authority, i.e., the Information and Privacy Agency.

These objectives are easily achievable, precisely through the empowerment of the sole appellate authority with independent operational status, which was mandated to serve as the second instance of the right on access to public documents.

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