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**Department of Human Rights, Decentralization and Communities
Local Good Governance Section**

**Report on Implementation of the Law on Access
to Official Documents at the Municipal Level**

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Executive Summary

Functional and accountable local government is recognised by all democratic states in Europe as an important aim. Good local governance is not just about providing public services, but also about preserving the liberties of local residents, creating a space for democratic participation, adhering to the principles of transparency of the institutions and the rule of law. In this regard, municipalities must promote transparency and implementing the Law on Access to Official Documents,¹ to ensure that requests for information are dealt with effectively.

This report provides an overview of the implementation of the Law and sub-legal acts implementing the Law, at the municipal level. It is the result of a recent survey undertaken by the OSCE Mission in Kosovo (OSCE), Department of Human Rights, Decentralization and Communities, through its Local Good Governance Section.

Following an introduction in Section A, the report's Section B presents the importance of freedom of information legislation and the applicable legal framework, which addresses the rights of Kosovo residents to access information. The subsequent Section C analyses the level of implementation of the Law and of subsidiary legislation at the local level. This section also presents the aspect of awareness of municipal officials of the applicable legislation on freedom of information in Kosovo, including the degree of fulfilment of the obligations by the municipalities regarding issues such as: creation of registers; reporting; appointment of an archive officer to deal with requests; classification of documents; and communication with residents. Sections D and E present municipal awareness raising activities, obstacles to implementation of the Law and data on the number of the requests for access to official documents submitted to the municipalities between 2006 and 2007. The report concludes with a list of recommendations.

The data has been collected by the OSCE Municipal Teams throughout Kosovo in the period between May and June with the follow up in August. The analysis shows that municipal officials are generally aware of the Law. In most cases, municipal officials do have a basic knowledge of the Law and obligations deriving from it. The training activities and the capacity building of municipal officials regarding the Law have increased slightly.

However, the assessment also indicates that a considerable number of municipal officials lack substantial knowledge of the Law and in particular regarding the subsidiary legislation implementing the Law. Also, there is no harmonized procedure regarding the classification of sensitive documents. Although formally there is an administrative instruction, which regulates this matter, it is still not applied in practice. To address this, the OSCE recommends that closer co-operation is established between the central and local level with regard to classification of sensitive documents, and that awareness raising activities continue and are intensified.

The report also presents data on the number of requests submitted to the municipalities, including the number of cases where access is granted or denied. The

¹ UNMIK Regulation No. 2003/23, On the Promulgation of a Law adopted by the Assembly of Kosovo on Access to Official Documents, of 6 November 2003.

result shows that the number of requests is still very low in the vast majority of municipalities. The marginal number of the requests implies that residents are not informed of their rights under the Law. In this regard the OSCE recommends that the municipalities organise awareness campaigns for their residents and inform them on their right to access official documents.

A. Introduction

The OSCE Mission in Kosovo carries out activities to further support and promote the principles of good governance in the municipalities across Kosovo. Within the OSCE, the Local Good Governance Section seeks to assess that the overall legal framework supporting local good governance in Kosovo is in place and compliant with relevant norms and standards. At the same time, the Section covers promotion and support of municipal transparency in relation to implementation of the Law.

The aim of this report is to explore the present situation regarding implementation of the Law at the municipal level, with a view to identifying possible deficiencies and areas for improvement, in order to help create better, more effective and more transparent governance at the local level and to ensure that the individual right to access official information is respected. The report examines such issues as: awareness of municipal officials concerning the Law and fulfilment of the obligations by the municipalities as set up by the Law and subsidiary legislation. The report also looks at the capacity building needs of municipal officials in general and especially of those that deal directly with requests for official information.

The basis for this report consists of data collected and information provided by the OSCE Municipal Teams, assessing the situation in all 30 Kosovo municipalities and the three pilot municipal units (Mamuša/Mamushë/Mamuša, Junik and Hani i Elezit/Đeneral Janković).² These Municipal Teams have shared their experience from their day-to-day work and conducted semi-structured interviews with municipal officials and other stakeholders. The Local Good Governance Section analysed the results from the field in order to understand the level of implementation of the freedom of information legislation at the municipal level, and also to identify obstacles and problems that have been encountered during the implementation process.

The report is oriented towards the general public, the Provisional Institutions of Self-Government, municipal officials, United Nations Interim Administration in Kosovo (UNMIK), the donor community, as well as international and non-governmental organisations. It is intended to serve as a tool in order to assist all actors engaged in local governance reform.

B. Freedom of information

This chapter presents briefly the importance and main objectives of freedom of information legislation generally. It then focuses on the specific legal framework on the freedom of information applicable in Kosovo.

1. Importance and aim of freedom of information legislation

In 1946 the United Nations General Assembly, in passing one of its first resolutions, makes a reference to freedom of information:

² The assessment has been conducted in the period between May and June 2007, with a follow up in August 2007.

“...Freedom of information is a fundamental human right and is the touchstone of all the freedoms to which the United Nations is consecrated”,³

This early quote of the General Assembly shows the fundamental importance that was and is associated with the freedom of information. It is based on the view that information held by public institutions is public information. The public body is only the custodian of that information on a temporary basis.

Information about central or local government is essential if the public is to make informed choices – such as in elections – but also in many other situations where democratic rights are exercised. In view of that, institutional transparency and accountability, as important components of good governance, are the main objectives of the freedom of information acts. These two objectives can best be achieved through passing specific legislation on freedom of information. Over seventy countries around the world, including countries in the Balkan region, have implemented some form of freedom of information legislation.⁴ These laws regularly establish a system to enable access to information or records held by government bodies.

The core principle in most freedom of information legislation is that the burden of proof falls on the body *asked* for information, not the person *asking* for it. In other words, the requesters do not have to give an explanation for their request, but if the information is not disclosed a valid reason has to be given. Finally, the right to access information is covered by Article 10 of the European Convention on Human Rights.⁵

2. Legal and political framework in Kosovo

a) Law on Access to Official Documents

UNMIK Regulation 2003/32 on promulgation of the Law on Access to Official Documents, sets up a comprehensive and unified procedure for access to official documents which are owned, produced or held by the institutions in Kosovo, including the municipalities and their agencies. The Law establishes the rule by which all official documents are accessible and introduces exceptions.⁶ This rule is also safeguarded by Article 10 of the European Convention on Human Rights which specifically enumerates interests which can justify the denial of access to official documents. Accordingly, the public has a right to access official information under domestic law and this access may be subject to restrictions and conditions as prescribed by the law and which are necessary in view of the interests enumerated in the European Convention on Human Rights.⁷

³ GA 59 (I), 65th plenary meeting, 14 December 1946.

⁴ The oldest being Sweden's Freedom of Press Act of 1766.

⁵ *Freedom of expression and freedom to receive information* in the Leander v. Sweden case (26 March 1987, Series A no. 116, p 29 paras. 74 and 75). In this case, although the Court does not recognize the interference of the government authorities with the applicants right to receive information, the Court observes that the freedom to receive information is protected by Article 10 of the European Convention on Human Rights.

⁶ Sections 3.1 and 4 of the Law.

⁷ Interests enumerated in Article 10 paragraph 2 of the European Convention on Human Rights: “[...] interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others,

The Law defines the processing of applications, the time frame within which institutions are bound to reply to the applicant's request, and the ways official documents can be assessed.⁸ Furthermore, the Law defines the beneficiaries of the right to access official documents and enumerates public interest which can make the exception to the rule of accessibility of official documents. Treatment of sensitive documents is defined in Chapter II, while Chapter III of the Law refers to establishment of the registers of the official documents held by the institutions. The Law also contains provisions on the use of language, on establishment of the Inter-Institutional Committee for examination of best practices on access to official documents, and on obligation of the institutions and the Government to issue annual reports.

b) Subsidiary legislation implementing the Law on Access to Official Documents

In the process of implementation of the Law, the Ministry of Public Services and the Office of the Prime Minister have adopted subsidiary legislation. Administrative Instruction 2006/03 on implementation of the Law on Access to Official Documents, issued by the Ministry of Public Services, regulates issues such as the appointment of archivists who will deal with requests, creation of registers of the official documents, creation of lists of the sensitive documents and other related matters.

Additionally, the Ministry of Public Services has issued Administrative Instruction 2006/01⁹ which determines the application forms and the forms for access to computer data.¹⁰ Regarding the form as envisaged by this administrative instruction, and notwithstanding good intentions of the Ministry of Public Services to facilitate the implementation of the Law, it is important to mention that residents are not bound to any form when applying for access to information. Section 5 of the Law clearly allows the use of any written or electronic form when applying for access to official documents.

The most recent sub-legal act implementing the Law is the Administrative Instruction 07/2007 on Principles, Procedures and Classification Signs of Official Documents, issued by the Office of the Prime Minister. This administrative instruction determines the principles and procedures for classification of official documents and envisages the creation of a Commission in each Institution, responsible for drafting and adopting the list of sensitive documents. Since the administrative instruction has been issued in June this year, its implementation has just started. Hopefully it will help harmonize the long overdue process of classifying sensitive documents.

c) Standards for Kosovo

The establishment of functioning democratic institutions in Kosovo represents one of the priorities envisaged within the Standards for Kosovo framework.¹¹ The first

for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.”

⁸ Sections 5, 7 and 9 of the Law.

⁹ Administrative Instruction 2006/1 Implementing the Law on Access to Official Documents, Annex 1 Application Form for Access to Official Documents, and Annex 2 Form for Access and Rights on the Use of Computer System.

¹⁰ Administrative Instruction 2006/01, Annex 1 and 2, on Application Form and on Form for Access to Computer Data.

¹¹ Standards for Kosovo were launched by UNMIK and Provisional Institutions of Self-Government on 10 December 2003. The Standards for Kosovo are a set of targets that Kosovo must meet in

Standard is on democratic institutions. One of its benchmarks is freedom of information which is envisaged in the Kosovo Standards Implementation Plan.¹² For monitoring and reporting on the implementation of this Standard, a Working Group on Functioning of Democratic Institutions has been created, which is hosted by the Ministry of Public Services and co-chaired by the OSCE. The Working Group meets on a regular basis and assesses the progress made regarding establishment of democratic institutions including the implementation of the Law.¹³

C) Implementation of the legal framework

The following chapter will introduce the factual situation of the implementation of the legal framework on access official documents in all 30 municipalities and the three pilot municipal units. Different aspects of the implementation of the Law and of subsidiary legislation will also be presented under this chapter.

1. Law on Access to Official Documents

a) Awareness

The Law on Access to Official Documents introduces completely new concepts for the Kosovo administrative system and society in general. This is the first legislation in Kosovo to guaranty the rights of residents to access official information held by government bodies and other institutions. The new law encounters a tradition of non-disclosure of public information as a result from a rather restrictive approach to transparency in past years. Thus, the awareness raising activities constitute a very important element to introducing further transparency in the public administration and for the successful implementation of the Law.

Section 13 of the Law oversees the obligation of the institutions to undertake measures to inform the public of the rights they enjoy under this Law. According to OSCE's assessment of the municipalities, only one municipality has stated unawareness of the issue of the freedom of information and in particular of the existence of the Law. However, among municipalities that have responded positively on the awareness issue, the level of knowledge varies. In six municipalities, although the municipal officials have confirmed to be aware of the existence of the law, they have also emphasised that they do not have complete understanding of the legislation on freedom of information applicable in Kosovo. Furthermore, at least in two cases, officials have stated that the law is known to Chief Executive Officers, Directors of Departments and Legal Officers, but not to the remainder of the civil servants.¹⁴

order to be in full compliance with UN Security Council Resolution 1244 (1999) and UNMIK Regulation 2001/9, On a Constitutional Framework for Provisional Self-Government in Kosovo, of 15 May 2001.

¹² The document describes the concrete actions that need to be taken in order to meet the Standards. This plan was agreed and finalized between the Kosovo Government and UNMIK on 31 March 2004 and subsequently endorsed by the UN Security Council in its statement of 12 December 2003.

¹³ Every quarter, the Kosovo Government and UNMIK conduct "line-by-line assessment" of actions taken as part of the Kosovo Standards Implementation Plan. In this assessment, specifically developed indicators are used to assess whether those actions have resulted in Standards being met. This results in a report called a Technical Assessment, written by UNMIK in consultation with the Kosovo Government.

¹⁴ Podujevë/Podujevo and Lipjan/Lipljane.

Some municipalities have pointed out the importance of awareness raising and training activities which were organized by the central level, in increasing the importance of the transparency at the municipal level. Related to this, the municipalities of Podujevë/Podujevo and Skenderaj/Srbica mentioned an awareness campaign on the Law organized by the Ministry of Local Government Administration.

b) Register

Section 10.3 of the Law envisages the creation of registers of documents which are held or owned by the institutions, and “the institutions shall immediately take the measures necessary to establish a register [...]”

According to the assessment, only ten out of 33 interviewed municipalities and pilot municipal units have confirmed to have fulfilled the obligation of establishing such a register. Municipal officials in the remaining 23 have stated that they do not have such register of official documents, although six of these municipalities have added that they are currently in process of creating one.¹⁵ In one municipality there is no unified register of official documents, but instead each department has their own registers.¹⁶ In another case, the officials from the municipalities have referred to a protocol book which contains substantive information on each official document, however this list does not reflect “a short description of the content of the document” as foreseen by Section 10.2 of the Law.

c) Annual Report

The Law contains a provision which obliges institutions to issue annual reports. This report should include the number of cases in which the institutions have refused to grant access, the reasons for such refusal and the number of sensitive documents not recorded in the register.¹⁷

Regarding reporting, only two municipalities have stated such reports have been issued.¹⁸ One of these two municipalities referred to a report which includes the number of requests received, those that have been processed and the ones that are currently being dealt with. Thus, the report contains the information as envisaged by the applicable law.¹⁹ In the second municipality, although the municipal officials confirmed that the report is issued, they made no reference to explicit information which is included in it.²⁰ The remaining 31 municipalities or pilot municipal units have not issued such reports. Within this number, three municipalities have stated that although they have not issued specific reports on implementation of the Law, the information on the cases processed by the municipalities have been included within other reports, such as the regular Standards implementation assessments.²¹ On the other hand in other cases the municipalities have stated that the annual report, which is sent to the Municipal Directorate of General Administration, includes one part

¹⁵ Štrpce/Shtërpçë, Viti/Vitina, Ferizaj/Uroševac, Novobërdë/Novo Brdo, Shtime/Štimlje and Mitrovicë/Mitrovica.

¹⁶ Istog/Istok.

¹⁷ Section 16.1 of the Law.

¹⁸ Gjakovë/Đakovica and Dragash/Dragaš.

¹⁹ Section 16 of the Law.

²⁰ Gjakovë/Đakovica.

²¹ Podujevë/Podujevo, Obiliq/Obilić and Novobërdë/Novo Brdo.

concerning the implementation of the Law, that is - the number of request submitted to municipalities for access to official documents.²²

One of the reasons given by municipalities for non-issuance of an annual report, is the marginal number or even lack of submitted requests.²³ Other reasons include lack of staff and lack of knowledge of the Law, while in two cases the municipal officials have said that the implementation of the Law is not considered as a top priority of the municipality.²⁴ One municipality has stated that the Law is being implemented only since late last year; thus the first report on the implementation of the Law will be issued by the end of this year.²⁵

2. Administrative Instruction 2006/03 implementing the Law

a) Awareness

Administrative Instruction 2006/03 implementing the Law, passed by the Ministry of Public Services, is a comprehensive and detailed sub-legal act which sets up practical rules for implementing the Law. It includes matters such as appointing an archivist, the classification scheme, functions of the Inter-Institutional Committee for assessment of administrative practices, communication with residents, and so forth.

Regarding the awareness of municipalities of Administrative Instruction 2006/03, six have stated that they are not aware of the administrative instruction²⁶ while in three municipalities this administrative instruction is known only to few municipal officials.²⁷ Similar to the Law as analysed above, in many cases those that confirmed to have knowledge on the administrative instruction have also added that they do not have clear understanding of it. One municipality has stated that the administrative instruction is familiar to the Municipal Information Officer and Legal Officers but not to the archivist, although significant parts of the administrative instruction determines, the duties and procedures to be followed by the archivist.²⁸ In another case, the Department Directors are reportedly familiar with the it but the civil servants are not aware of the practical rules.²⁹ Notwithstanding this, in some municipalities³⁰ officials have shown extensive knowledge of the administrative instruction, which they mention as one of the bases for drafting the Action Plan on Municipal Transparency³¹. In addition, one municipality has mentioned that some of its officials have received specific training on the Law and on Administrative Instruction 2006/03.³²

²² Kaçanik/Kaçanik, Viti/Vitina and Mitrovicë/Mitrovica.

²³ Zubin Potok, Leposavić/Leposaviq, Vushtrri/Vučitrn, Gjilan/Gnjilane, Lipjan/Lipljan, Shtime/Štimlje, Malishevë/Mališevo and Istog/Istok.

²⁴ Zvečan/Zvečan and Mamuša/Mamushë/Mamuša. Zvečan/Zvečan municipal officials also emphasised that lack of co-operation between the municipality and PISG makes this kind of reports meaningless.

²⁵ Prishtinë/Priština.

²⁶ Dragash/Dragaš, Prizren, Štrpce/Shtërpçë, Viti/Vitina, Leposavić/Leposaviq and Vushtrri/Vučitrn.

²⁷ Malishevë/Mališevo, Pejë/Peć and Kaçanik/Kaçanik.

²⁸ Fushë Kosovë/Kosovo Polje.

²⁹ Lipjan/Lipljan.

³⁰ Obiliq/Obilić and Klinë/Klina.

³¹ Based on the Administrative Instruction 2006/03 on Municipal Transparency, issued by the Ministry of Local Government Administration, each municipality has to draft its own Municipal Action Plan for Transparency.

³² Hani i Elezit/Đeneral Janković.

b) Archive Office/Archivist

Administrative Instruction 2006/03 states that every institution should have an archive office, which will among other duties, deal with the requests for access to official documents³³. This instruction also envisages appointing an archivist who will enable access to official documents in accordance with the Law.³⁴

The assessment shows that 18 municipalities have reported to have established an archive office while the remaining 15 have not. However, of municipalities which do have an archive office, most were referring to the archive offices which were established prior to endorsement of Administrative Instruction 2006/03. While two municipalities have explicitly stated to have established their archives in accordance with Article 15 of the administrative instruction,³⁵ the remaining seemed to be referring to the archive offices which serve residents in general and which are established according to the Law on Archives.³⁶ In those municipalities where the archive office does not exist, the municipalities have found alternative solutions. For instance, four respondents have stated that the Reception Office or the Front Desk is being used as “an archive office.”³⁷ In another case, municipal officials have stated that the Municipal Directorate of General Administration is currently acting as a host archive office³⁸, while in one municipality the municipal legal office serves as the municipal archive.³⁹

The OSCE believes that although these facilities do not fulfil the conditions for proper archiving as prescribed by the applicable law, these alternative solutions if used on temporary basis, can still be efficient especially in processing the requests for access to official information.

Regarding the appointment of the archivist, in 11 municipalities, officials reported to have an appointed archivist who also deals with the processing of requests. The remaining municipalities have stated that they do not have an archivist with the specific task of handling these requests, but instead such requests are handled by various municipal officials. The Reception Desk Officer is often mentioned as a person who processes the requests.⁴⁰ Other municipal officials stated as being responsible to handle requests include: municipal registry officers, the chief of archive, civil registry officers, residents service centre and pilot municipal unit secretaries.

Although not related to the appointments of archivist, it is important to mention that one municipal official has stated that the archivist who has been appointed to handle

³³ Article 15 of AI 2006/03: “Every institution should have the archive office of the institution” and Article 15.1: “In institutions where it is not justifiable for an office to exist, the functions of the archive office, archivist, and archive staff may be exercised by other office, and an official authorized for this job from a higher institution manager.”

³⁴ Article 17 of the Administrative Instruction 2006/03.

³⁵ Klinë/Klina and Fushë Kosovë/Kosovo Polje.

³⁶ UNMIK Regulation 2003/20 On the Promulgation of the Law on Archive Material and Archives, of 23 June 2003.

³⁷ Kamenicë/Kamenica, Mamuša/Mamushë/Mamuša, Mitrovicë/Mitrovica and Prishtinë/Priština.

³⁸ Pejë/Peć.

³⁹ Gjiilan/Gnjilane.

⁴⁰ Klinë/Klina, Deçan/Deçane, Istok/Istog, Ferizaj/Uroševac, Obiliq/Obilić, Prishtinë/Priština, Shtime/Štimlje and Mitrovicë/Mitrovica.

the requests of residents for access to official documents is also authorized to require from the applicant 1 Euro charge for this service.⁴¹ In another municipality, this fee is 2 Euro per page, while the municipal archive does not accept requests for access to official documents via mail.⁴² In both cases, the municipalities may be in violation of certain provisions of the Law. Section 9.1 of the Law determines that the fee which may be charged “[s]hall not exceed the real cost of producing and sending the copies [...]”. Moreover, this provision specifically states that copies less than 20 A4 pages shall be free of charge. Hence, a lump sum could only be charged for copies of more than 20 A4 pages and should not exceed the real costs of producing and sending. Finally, Section 5.1 of the Law expressly allows a request to access a document to be in any written form.

c) Classification scheme

Article 25 of Administrative Instruction 2006/03 sets up the obligation for the institution to classify the documents according to a scheme of classification criteria. However, the administrative instruction does not make a reference to the relevant provision within the Law according to which the Government has to issue secondary legislation establishing rules and procedures with respect to classification of sensitive documents.⁴³

The situation at the time the assessment was carried out, shows that the classification of the official documents has been accomplished in five municipalities.⁴⁴ Two of them have reported to also have classified the official documents according to the sensitivity criteria.⁴⁵ Nonetheless, a majority of municipalities have reported not to have classified their official documents, mainly stating the reason of vague legal provisions on classification of documents and lack of guidelines from the central level. Regarding lack of guidelines, five municipalities have specifically stated that they are waiting for clarification from the Ministry of Local Government Administration.⁴⁶ With regard to classification scheme, with exception of two,⁴⁷ all other municipalities have stated that they are not familiar with such a scheme. In absence of such a scheme one municipality has stated that, the only documents which are currently considered sensitive and thus are not available to the public, are documents relating to personnel issues.⁴⁸ Moreover, one municipality stated that, in absence of the classification of the documents according to the sensitivity criteria, all official documents in this municipality are accessible to the public.⁴⁹

In course of preparation of this report, the Office of the Prime Minister issued Administrative Instruction 07/2007 on Principles, Procedures and Classification Signs of Official Documents.⁵⁰ The administrative instruction sets up the principles and

⁴¹ Fushë Kosovë/Kosovo Polje.

⁴² Suha Rekë/Suva Reka.

⁴³ Section 14.3 of the Law.

⁴⁴ The assessment has been carried out between 21 May until 13 June 2007, with the follow up in August 2007.

⁴⁵ Klinë/Klina and Vushtrri/Vučitrn.

⁴⁶ Skenderaj/Srbica, Obiliq/Obilić, Prishtinë/Priština, Kaçanik/Kaçanik and Viti/Vitina.

⁴⁷ Klinë/Klina and Zvečan/Zveçan.

⁴⁸ Novobërdë/Novo Brdo.

⁴⁹ Gjilan/Gnjilane.

⁵⁰ The Administrative Instruction 07/2007 on Principles, Procedures and Classification Signs of Official Documents was issued on 06 June 2007.

procedures of classification. In addition, the administrative instruction contains an Orientation List for Classification of Official Documents which should serve as a basis for classification of documents held by respective institutions. It is expected that the situation regarding classification of official documents, as described above, will change significantly now that the Government issued the sub-legal act filling the legal gap regarding the classification of official documents.

d) Communication with residents

Administrative Instruction 2006/03 sets up an obligation for institutions to establish common e-mail addresses for each department that will serve as communication links with residents.⁵¹

The assessment has shown that, although only one municipality managed to create a common e-mail address as envisaged by the relevant administrative instruction provision, others have found alternative forms of communication with residents. Eight municipalities⁵² reported to have established certain e-mail communication systems. Among them, one municipality has fulfilled the obligation as foreseen by the administrative instruction, by creating common e-mail addresses for each municipal department.⁵³ Another way of communication mentioned by the municipal officials, is creating a common e-mail address from which requests are forwarded to the relevant departments.⁵⁴ As another example, one municipality has stated that residents are offered to use private e-mails of the directors which are accessible through the municipal web-page.⁵⁵ In another case, a common e-mail address exists but it is established under the name of each director of the department.⁵⁶

3. Action Plan for the implementation of Administrative Instruction 2006/03

a) Awareness

An Action Plan on Implementation of Administrative Instruction 2006/03 was issued by the Ministry of Public Services in 2006. The plan envisages specific tasks, for both, the central and local level. It also includes a timeframe for the fulfilment of these tasks by the respective institutions, as part of the implementation process of the Administrative Instruction 2006/03. Based on the assessment, it appears that many municipalities have never seen this document nor were they officially informed about it. In total, 18 municipalities confirmed being familiar with the Action Plan, while the remainder have stated that they are not aware. Moreover, in some municipalities the information on the existence of the plan is limited to only a few municipal officials. In one municipality, the Municipal Secretary, the Municipal Information Officer and the Legal Adviser have stated that they have seen the document for the first time when presented by the OSCE.⁵⁷

⁵¹ Article 41.3 of the Law.

⁵² Junik, Istog/Istok, Mitrovičë/Mitrovica, Gjakovë/Đakovica, Malishevë/Mališevo, Ferizaj/Uroševac, Lipjan/Lipljan and Shtime/Štimlje.

⁵³ Mitrovičë/Mitrovica.

⁵⁴ Shtime/Štimlje and Lipjan/Lipljan.

⁵⁵ Dragash/Dragaš.

⁵⁶ Ferizaj/Uroševac.

⁵⁷ Istog/Istok.

b) Activities undertaken

The Action Plan envisages several activities which need to be undertaken by the municipalities in the process of the implementation of the Law. Some of the activities include: classification of the documents in use; informing the employees on the procedures of using official documents; drafting annual reports; creating and developing procedures on access, use and storage of official documents. In this regard, four municipalities⁵⁸ have confirmed to having undertaken some activities as envisaged by the Action Plan. For instance, the municipality of Dragash/Dragaš has undertaken activities regarding the preparation and adoption of a list of sensitive documents, maintenance and storage of official documents, submission of the annual reports and establishment of the register. Notwithstanding this, 29 municipalities⁵⁹ have stated that no activity has been undertaken according to the Action Plan. Some municipal officials have mentioned specific reasons for not undertaking activities such as lack of co-operation with the Provisional Institutions of Self-Government⁶⁰ or lack of guidelines from the central level.⁶¹

c) List of municipal sensitive documents

One of the activities included in the Action Plan is the creation of a list of the sensitive documents and of a general reference scheme which needs to be submitted to the Inter-Institutional Committee for harmonisation.⁶² With regard to the classification of the documents and related matters, it seems that a lack of clear legal provisions has been the main reason that the classification of sensitive documents has not yet been harmonised.

According to the answers provided, 31 municipalities have stated that they have neither submitted the list of sensitive documents nor the scheme of official documents to the Inter-Institutional Committee. The remaining two municipalities have stated to be in the process of drafting the list.⁶³ In a few cases, municipal officials have mentioned reasons for not having submitted such a list. Two have explicitly mentioned that they are not aware of an Inter-Institutional Committee while at the same time they have never been contacted by the Committee with such a request.⁶⁴ Furthermore, lack of instructions from the central level and a limited existence of municipal sensitive documents,⁶⁵ have been pointed out as reasons for not submitting the list of sensitive documents.

⁵⁸ Mitrovicë/Mitrovica and Junik.

⁵⁹ Among this number, four municipalities have referred to activities which have been undertaken based on the Municipal Transparency Plan which is envisaged by Administrative Instruction 2006/03 on Municipal Transparency, issued by the Ministry of Local Government Administration.

⁶⁰ Zubin Potok, Zvečan/Zveçan and Leposavić/Leposaviq. It should be noted that the first two have stated that they are currently boycotting the Provisional Institutions of Self-Government.

⁶¹ Skenderaj/Srbica.

⁶² The Inter-Institutional Committee was established on 17 May 2006. Establishment and functions of the Committee are envisaged in Section 14.2 of the Law, while its structure is determined by Article 20 of the AI 2006/03. The Committee examines the best practice and addresses possible conflicts in the process of implementation of the Law. The Committee is composed of eight members which are nominated by the Government. The head of the Committee is also appointed by the Government.

⁶³ Podujevë/Podujevo and Shtime/Štimlje.

⁶⁴ Fushë Kosovë/Kosovo Polje and Gjakovë/Đakovica.

⁶⁵ Zubin Potok and Kamenicë/Kamenica.

Notwithstanding this, the recently issued Administrative Instruction 07/2007 on classification of official documents which was approved by the Office of the Prime Minister, regulates in detail the process of preparation of the list of sensitive documents. The administrative instruction envisages the creation of a Commission for classification of documents within each institution, in charge of drafting such a list.⁶⁶ Furthermore, the administrative instruction determines that, after the approval by the Commission inside the respective institution, the list of sensitive documents is submitted to the Inter-Institutional Committee.⁶⁷

The assessment has shown that the vast majority of municipalities are neither informed nor have they received a copy of this Administrative Instruction 07/2007. Out of 33 municipalities, 30 reported not having received the Administrative Instruction 07/2007 while only four municipalities have been informed about it. Furthermore, only three municipalities⁶⁸ have established the Commission for classification of sensitive documents, while only one claims to have submitted the list to the Inter-Institutional Committee.⁶⁹

According to one of the members of the Inter-Institutional Committee,⁷⁰ to date, they have not received any list of sensitive documents owned by the institutions, although the deadline for submission of such lists has expired.⁷¹ One of the reasons for such delay can be lack of co-operation between the central level and institutions where he believes that in many cases the institutions are not even aware of the Administrative Instruction 07/2007. On the other side, such co-operation between the Inter-Institutional Committee and the institutions is lacking, as there is no system of communication established between them. Regarding the classification issue, members of the Inter-Institutional Committee also mentioned the need for trainings on classification of official documents as envisaged by the administrative instruction. In this regard members of this Committee who participated in the drafting of the administrative instruction, would be willing to provide trainings for the officials in the institutions.

d) Examples of municipal sensitive documents

Out of 33 municipalities, 25 municipalities have provided examples of what they consider to be sensitive documents in their municipalities. In three cases municipal officials stated that they are not able to provide such examples,⁷² in three municipalities the answer was not provided.⁷³ while in another two municipalities the officials have stated that they do not possess sensitive documents.⁷⁴ Municipal officials referred to various documents which they consider as documents of a

⁶⁶ Article 3 of the Administrative Instruction 07/2007.

⁶⁷ Article 7 of the Administrative Instruction 07/2007.

⁶⁸ Prishtinë/Priština, Shtime/Štimlje and Viti/Vitina.

⁶⁹ Shtime/Štimlje.

⁷⁰ On 10 September 2007, the OSCE had a meeting with a member of the Inter-Institutional Committee.

⁷¹ Article 7 of the Administrative Instruction 07/2007 envisages the deadline of 30 days from the day the Administrative Instruction enters in force, within which period institutions are obliged to submit the list of sensitive documents to the Inter-Institutional Committee.

⁷² Podujevë/Podujevo, Shtime/Štimlje and Mitrovicë/Mitrovica.

⁷³ Gjilan/Gnjilane, Kaçanik/Kaçanik and Junik.

⁷⁴ Glogovc/Glogovac and Leposavić/Leposaviq.

sensitive nature.⁷⁵ The most common document which is stated as a sensitive document by the municipal officials, is personal files/records. Interestingly, one municipality mentioned documents such as a list of inhabitants possessing arms,⁷⁶ a list of inhabitants who received their driving licence during the conflict in Kosovo and information related to private land nationalised after World War II,⁷⁷ as highly sensitive documents. The examples of sensitive documents mentioned by municipal officials shows that the perception of sensitivity is rather diverse.

The OSCE believes that absence of clear guidelines is the reason for the variety of examples mentioned as sensitive documents by municipal officials. Nonetheless, this situation is expected to change with the recently issued administrative instruction on classification of documents, which among other issues determines the orientation list of official documents classification. The orientation list includes different fields and under each field it enumerates certain documents belonging to the respective field. On the basis of this list, the institutions should make the classification of official documents. With the adoption of this sub-legal act, it is also expected that uniformity regarding the process of classification of official documents will be introduced.

D. Training/Awareness Activities

This chapter will focus on training and awareness activities related to the law and the subsidiary legislation, held at the local level. Information on training and awareness activities organised by the Provisional Institutions of Self-Government and by the OSCE, are also included under this chapter.

1) Training/Kosovo Institute for Public Administration

UNMIK Regulation 2005/15 amending UNMIK Regulation 2001/19 on the Executive Branch of the Provisional Institutions of Self-Government in Kosovo, determines that the Ministry of Local Good Administration shall perform functions in the field of local administration including identifying the ways and means to provide training activities for the municipalities.⁷⁸ The Regulation envisages the obligation of the Ministry of Local Government Administration in assisting municipalities in making their activities transparent to the public.⁷⁹ Moreover, Administrative Direction 2003/25⁸⁰ which establishes the Kosovo Institute for Public Administration as an Executive Agency of the Ministry of Public Services, foresees that this institution

⁷⁵ Municipal officials in various municipalities have mentioned the following documents containing sensitive information: tender offers; information on cadastral data; civil registry documents; interview score sheets; information on child adoption; disciplinary actions; action plan for emergency cases; specific financial documents; minutes from security meetings; voting results from recruitment of directors; civil servant statute; information on viruses/pandemics; and information on amounts allocated to project and information on ongoing court proceedings where the municipality is a party.

⁷⁶ In their explanatory note, municipal officials have stated that this documents is sensitive because “during the conflict only those who were co-operating with the Serbian regime had the right to carry arms and the disclosure of this list could put these inhabitants in danger”.

⁷⁷ As for these documents, the municipal officials have said that the information would be sensitive because some of the land owners were compensated and others were not.

⁷⁸ UNMIK Regulation 2005/15, Amending UNMIK Regulation No. 2001/19 on the Executive Branch of the Provisional Institutions of Self-Government in Kosovo. Annex XIV, (iii) (e).

⁷⁹ UNMIK Regulation 2005/15, Annex XIV, (iii) (f).

⁸⁰ Implementing UNMIK Regulation No. 2001/19 on the Executive Branch of the Provisional Institutions of Self-Government in Kosovo.

shall enhance the conditions for the training of civil servants in conformity with European public administration standards.

The majority of municipalities and pilot municipal units reported having received training sessions on the Law, while municipal officials in six municipalities stated that no training has been provided.⁸¹ Typically, trainings were organized by the Kosovo Institution for Public Administration. As a rule, one to two officials from the municipality took part in the trainings. Chief Executive Officers, directors of administration, municipal information officers and municipal legal officers have been usually targeted, while in the municipality of Skenderaj/Srbica almost all municipal officials reported having received training. In some sessions, the issue of access to official documents was covered as a part of broader training efforts on municipal transparency, such as a Ministry of Local Government Administration training that addressed the Law,⁸² or as a component in more specific professional trainings organized by the United Nations Development Programme and the Kosovo Institute for Archives.⁸³ The Ministry of Public Services, besides compiling the Manual on the Law, has also organized several trainings for officials at the central and local level.

Several municipal and pilot municipal units officials highlighted that it would be beneficial for training on the Law to continue, and that these trainings should include all civil servants in the municipalities in order to increase internal awareness on the issue.⁸⁴ In this direction, the OSCE has also been involved in organizing awareness raising activities on the Law, and the procedures to access municipal official documents according to the Law. Earlier this year, the OSCE has implemented the project “Municipal Transparency” in co-operation with the Association of Kosovo Municipalities and the Ministry of Local Government Administration. The general objective of the project was to promote and increase the transparency of the municipal administration, while one of the specific goals was to ensure the implementation of the normative acts regarding the policies on local transparency including implementation of the Law and its sub-legal acts. Besides this, the OSCE is regularly involved, through its Municipal Teams, in organizing activities in municipalities with the aim of increasing the awareness of the Law among municipal officials and residents.⁸⁵

2) Ministry of Public Services Manual on the Law on Access to Official Documents

Although several municipal officials have received training on the Law, half of the municipalities have not received copies of the Manual on the Law prepared by the Ministry of Public Services in 2006.⁸⁶ The Manual is directed toward local residents,

⁸¹ Zubin Potok, Zvečan/Zveçan, Leposavić/Leposaviq, Vushtrri/Vučitrm, Kaçanik/Kaçanik, Štrpce/Shtërpçë, Suharekë/Suva Reka, Pejë/Peç and Klinë/Klina.

⁸² Novobërdë/Novo Brdo.

⁸³ Viti/Vitina.

⁸⁴ Prishtinë/Priština, Kamenicë/Kamenica, Gjakovë/Đakovica and Klinë/Klina.

⁸⁵ For instance, the Municipal Team in the pilot municipal unit Mamuša/Mamushë/Mamuša has recently organized an information meeting for municipal officials and settlement representatives where the Municipal Teams explained to them the scope of the main legal provisions regarding access to official documents. Also, the Municipal Team in Novobërdë/Novo Brdo will be supporting the publication of a brochure outlining what residents can expect from the Municipal Transparency Action Plan, with a specific accent on the Law.

⁸⁶ The Manual has reportedly not been received in the following municipalities: Zubin Potok, Zvečan/Zveçan, Leposavić/Leposaviq, Vushtrri/Vučitrm, Novobërdë/Novo Brdo, Ferizaj/Uroševac,

journalists and institutions as a quick reference which explains some common problems related to access to official documents. The explanations which are provided in the Manual are based on the Law and Administrative Instruction 2006/03. Some copies of this Manual were provided during the Kosovo Institution for Public Administration trainings, while in few cases municipal officials received copies through the Ministry of Local Government Administration. Only one municipality reported wider distribution of the Manual among municipal officials.⁸⁷ In general, municipalities are properly aware of the existence of the Manual, even though its purpose is to facilitate application of the Law at the central and the local level.

3) Municipal awareness raising activities on the Law on Access to Official Documents

Awareness raising activities are generally aimed at encouraging residents participation and understanding of an issue. Such activities usually introduce a topic which is new or insufficiently understood among community members. Awareness raising implies a pro-active approach on the side which has an interest in increasing alertness on a particular subject. The Law oversees the obligation of the institutions to inform the public on the rights they enjoy under the Law.⁸⁸

A small number of municipalities have made individual efforts to raise awareness on the Law. In the municipality of Mitrovicë/Mitrovica, several debates with civil society have been conducted through its Municipal Information Office. In Obiliq/Obilić, brochures were issued and residents can obtain them at the entrance of the municipal building. In Shtime/Štimlje, a public debate with residents and civil society was recently organised, with the Law as one of the main topics. In Gjilan/Gnjilane, the internal awareness of civil servants was increased by informing them of the Ministry of Public Services envisaged forms for access to documents, and by informing residents through the municipal web-page about their right to access official documents. In Malishevë/Mališevo, in co-operation with the OSCE, the municipality organized a roundtable and distributed posters to promote the Law. The roundtable was accompanied by a number of radio broadcasts that covered the Law specifically. In Klinë/Klina, the Municipal Regulation on Consultation and Public Participation on Decision Making, includes relevant provisions from the Law regarding access to official documents, the ways to access official documents in the municipality, deadlines for providing the requested information and remedial provisions.⁸⁹ In Dragash/Dragaš, the municipality has produced posters and leaflets on the right to access information. Several municipalities, however, have reported not having organized any specific awareness activities on the Law. Some have addressed this issue as a part of public discussions on the municipal transparency action plan.⁹⁰

Awareness raising activities have also been conducted by civil society. In this regard, the regional non-governmental organisation Youth Initiative for Human Rights is

Hani i Elezit/Đeneral Janković, Kaçanik/Kaçanik, Štrpce/Shtërpçë, Prizren, Malishevë/Mališevo, Mamuša/Mamushë/Mamuša, Pejë/Peć, Istog/Istok and Klinë/Klina.

⁸⁷ Skenderaj/Srbica.

⁸⁸ Section 13 (a) of the Law.

⁸⁹ Municipal Regulation on Consultation and Public Participation on Decision Making, Part III Right of Public to be informed and have access to municipal documents, Articles 16, 17 and 18.

⁹⁰ Podujevë/Podujevo, Lipjan/Lipljane, Glogovc/Glogovac, Novobërdë/Novo Brdo, Prizren, Pejë/Peć and Junik.

noteworthy. It has conducted and monitored the implementation of the Law and published the findings in a report from January 2007.⁹¹

E. Requests for Access to Official Documents

This chapter presents an overview of the number of requests for access to official documents submitted to municipalities. The factual situation regarding the establishment of the database on the number of the requests submitted to the municipalities is also included.

1) Number of requests received/access granted or refused

The following table shows the number of the requests submitted and the number of cases where access was granted or refused, according to municipal officials interviewed by the Municipal Teams. The assessment covers the period between years 2006 and 2007 and includes all 30 municipalities and three pilot municipal units in Kosovo.

	Number of requests received	Access granted	Access refused
Novobërdë/Novo Brdo	80	79	1
Kaçanik/Kaçanik	63	63	0
Viti/Vitina	20	20	0
Prishtinë/Priština	18	18	0
Kamenicë/Kamenica	13 (2 ongoing)	11	0
Rahovec/Orahovac	7	7	0
Klinë/Klina	6	6	0
Mitrovicë/Mitrovica	6	6	0
Suharekë/Suva Reka	4	4	0
Prizren	3	3	0
Lipjan/Lipljan	3	3	0
Ferizaj/Uroševac	2	2	0
Fushë Kosovë/Kosovo Polje	2	2	0
Pejë/Peć	2	1	1
Dragash/Dragaš	1	1	0
Obiliq/Obilić	1	1	0
Shtëmë/Štimlje	1	1	0
Gjilan/Gnjilane	1	1	0
Istog/Istok	1	1	0
Skenderaj/Srbica	1	1	0
Vushtrri/Vučitër	1	1	0
Malishevë/Mališevo	0	0	0
Gjakovë/Đakovica	0	0	0
Štrpce/Shtërpçë	0	0	0
Podujevë/Podujevo	0	0	0
Mamuša/Mamushë/ Mamuša	0	0	0
Hani i Elezit /Đeneral Janković	0	0	0
Junik	0	0	0
Deçan/Deçane	0	0	0
Leposavić/Leposaviq	0	0	0
Zvečan/Zveçan	0	0	0
Zubin Potok	0	0	0
Gllgovc/Glogovac	No response	No response	No response

⁹¹ Out of 30 municipalities to which the Youth Initiative for Human Rights sent requests for access to official documents, 13 did not answer at all. See Youth Initiative for Human Rights report: Monitoring of the Law on Access to Official Document, January 2007, Prishtinë/Priština.

This table provides an overview on the information received from municipal officials. Since not even all requests submitted by the Youth Initiative for Human Rights (see footnote 91) have been registered, it is doubtful that the respondents have been completely accurate in their record keeping.

2) Database on the number of requests

Almost half of the municipalities have reported keeping written data on submitted requests for access to official documents, and data on cases where the access was granted or refused.⁹² However, not a single municipality has reported on establishing a specific database on requests to access to official documents. For the few municipalities that keep written records on submitted requests, usually the archive office or the reception desk are responsible to maintain data about the requests and their outcome. Seven municipalities do not keep any written data on requests, although they have reported receiving them.⁹³

F. Conclusions

According to the assessment, many identified obstacles in the process of implementation of the legal framework on the right to access information at the local level, are common for most of the municipalities.

One major issue seems to be the awareness of municipalities of the legal framework. Although, most of the municipalities and pilot municipal units are aware of the existence of primary legislation, i.e. the Law on Access to Official Documents, municipal officials lack clear understanding of the primary law and sub-legal acts issued by the relevant ministries and the government in the process of implementation of the Law.

Another impediment identified by municipal officials is the lack of awareness among residents on the concept of freedom of information, and in particular on the right to access official documents held by the institutions. The municipalities mentioned decades of non-transparent administration, where official documents were not accessible, as an important factor resulting in a very low number of requests for access to official document submitted to respective municipalities.

Lack of knowledge of the provisions of the Law combined with the lack of will and interest to implement the Law, has resulted in non-compliance of the municipalities with the relevant provisions of the Law. For instance, in the vast majority of cases the municipalities have not established registers of official documents while the main obstacle for this seems to be lack of interest to fulfil the given provision of the Law. Regarding the issue of annual reports, the officials often stated that due to the marginal number of requests for access to official documents, or in some cases due to the fact that there have been no requests submitted, they consider the issuance of the annual report to be unnecessary. However, according to the OSCE's interpretation of

⁹² Prishtinë/Priština, Fushë Kosovë/Kosovo Polje, Podujevë/Podujevo, Lipjan/Lipljan, Shtime/Štimlje, Gjilan/Gnjilane, Kamenicë/Kamenica, Kaçanik/Kaçanik, Rahovec/Orahovac, Pejë/Peć, Istog/Istok, Klinë/Klina and Mitrovicë/Mitrovica.

⁹³ Glogovac/Glogovac, Ferizaj/Uroševac, Viti/Vitina, Suharekë/Suva Reka, Leposavić/Leposaviq, Zubin Potok, and Skenderaj/Srbica.

the Law, these reports are also aimed at monitoring the implementation of the Law by the relevant institution and they should be issued regardless of the number of the request submitted by the residents.

Lack of a designated municipal official – i.e., an archivist – for processing the requests, lack of clear guidelines on the issue of a classification scheme and the classification of official documents, have also been stated as major problems encountered during the process of the implementation of the Law at the municipal level.

Another issue often mentioned by the municipal officials is lack of co-operation between the central and local level and lack of clear guidance from the central level. With regard to co-operation the municipalities have also referred to the flow of information between the municipal departments which seems to be insufficient when it comes to the implementation of the Law. As a consequence, in many cases only senior officials of municipalities are aware of developments in the field of implementation of the Law.

The information of the local level, regarding developments in the process of implementation of the Law, appears to be an issue as well. Many municipalities have not received the Ministry of Public Services Action Plan on implementation of the Administrative Instruction 2006/03. As a result, more than half of the municipalities have not prepared the list of sensitive documents or not undertaken any activity as envisaged by the Action Plan.

Finally, nearly all municipalities and pilot municipal units have highlighted the need for further professional training focusing especially on municipal staff dealing comprehensively with the implementation of the Law.

G. Recommendations

To be able to improve the implementation of the Law on Access to Official Documents and to achieve municipal transparency through enabling residents to access official documents, the municipalities and the relevant ministries need to continue implementing the applicable law while addressing the issues identified. In this regard, the OSCE recommends the following:

Recommendations to municipalities

- Municipalities should continue with awareness activities through information campaigns targeting the municipal officials and residents.
- Municipalities should establish a register of all official documents, held or owned by the municipality.
- Municipalities should keep a written record of the requests submitted and issue annual reports in accordance with the applicable law.

- Municipalities should appoint and designate a municipal official/archivist who will deal with the request for access to official documents.
- Municipalities should continue fulfilling their tasks as envisaged by the Action Plan.
- Municipalities should each establish a commission for drafting the list of sensitive documents and submit the list to the Inter-Institutional Committee.

Recommendations to the Provisional Institutions of Self-Government

- The Ministry of Local Government Administration and the Ministry of Public Services through the Kosovo Institution for Public Administration, should continue with training and capacity building of municipal officials on the entire legal framework regulating the issue of access to official documents.
- The training activities for municipal officials organised by the central level, should focus especially on the procedures to be followed in providing access to officials documents. Archivists should be included in the target group, since they deal with processing of the requests. The trainings should also have a special focus on the classification of documents according to the Administrative Instruction 07/2007.
- The central level should provide clear guidelines on the issue of implementation of the Law on Access to Official Documents and regularly update the municipalities on the developments with regard to implementation process.
- The Ministry of Public Services should ensure that all municipalities are informed through distribution of the Action Plan.
- The Office of the Prime Minister should ensure that municipalities are informed of and delivered the Administrative Instruction 07/2007 on Principles, Procedures, and Classification Signs of Official Documents.

Recommendation to the Inter-Institutional Committee

- The Inter-Institutional Committee should establish contacts and communication systems with all 30 municipalities and three pilot municipal units.
- The Inter-Institutional Committee should provide trainings, through Kosovo Institution for Public Administration, for officials on the issue of classification of the sensitive documents according to Administrative Instruction 07/2007.