



RESEARCH ARTICLE

The Right to Free Access to Information of Public Importance As Well As the Possibility of Control of Public Authorities by Citizens in Republic Of Kosovo

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ARTICLE INFO	ABSTRACT
Received: Oct 19, 2024 Accepted: Dec 10, 2024	In order to achieve and preserve the public interest in recognizing and ensuring a free democratic order and an open society, everyone has the right of access to information of public importance available to public authorities. Information of public importance is information available to a public authority, or relating to the work of a public authority, contained in a particular document and refers to anything the public has a legitimate interest in knowing. In this line, we will try to explain the right decision-making procedure for access to official documents, which is in accordance with the Law on free access to information of public importance. And it also analyzes the limitation of the right to access public documents, which is exercised in accordance with the principle of proportionality according to the Law on General Administrative Procedure. The Law on Access to Public Documents and the Agency as a body to complain against actions or inactions of the public to open or refuse access to public documents.
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INTRODUCTION

It is perceived that there always is a legitimate public interest in knowing and in being informed, unless the authority says otherwise. There is always interest when it comes to the information available to the authority regarding the risk, i. e. the protection of public health and the environment, and whether it relates to other information available to the authority. This is very important to note and mention because, as we can see, there is a legal assumption that there is a justified public interest in being informed, in addition to exceptions, until proven otherwise. Probably many state bodies ignore this. They can only be limited to legal terms. What is interesting is the fact that a document, even formally and legally classified as a strictly confidential document, is not enough to deny public access to it, but it is necessary to hide behind the classification the interest to be protected, which in this case prevails. The right of the public to know. (Friedman, 2021; Mani, 2024) Legislation in Kosovo guarantees access to public documents. This is provided by the Constitution of Kosovo, approved in 2008, where according to Article 41 "every person enjoys the right of access to public documents." But the legal basis guaranteeing access to public documents dates earlier than the Constitution. The first law on access to public documents has existed since 2007, when journalists,

civil society activists, citizens and other actors gained the legal basis to request access to public documents. Another problematic aspect of Kosovo law and the European legal framework is that the legislation mainly guarantees access to documents, but not to information, especially with regard to verbal information (data that can be provided orally). For this reason, the leading European organization Access Info Europe, which deals with access to official documents, believes that in 21st century democracy it is essential to guarantee citizens the right to know what decisions are made on their behalf. Therefore, according to this organization, the restriction of the right to know only in documents, for legal reasons, is an outdated concept.

2. Reasonable Interest of the Public to Be Informed

Who, how and from whom can one request information of public importance? Everyone has the right to be informed if the authority has certain information of public importance, i.e. if one has it. There are four ways in which any individual can obtain information about the actions or acts of public authorities:

To be informed if the authority possesses certain information of public importance, i.e. if the information itself is available;

Provides an overview of a document containing information of public importance;

The right to a copy of that document,

As well as the right to have, upon request, a copy of the document sent by mail, fax, e-mail or otherwise. (Paxton, 2022)

Therefore, everyone has the right to access information of public importance that originating from the work or in connection with the work of a state body, failure to fulfill the obligation of the body to act for access to information of public importance, is a violation of personal rights, sanctioned by criminal law for free access to information of public importance. (205, 2009) Only public authorities can be requested this information and these authorities are:

the state body, the body of the autonomous territory, the body of local self-government, as well as the organization entrusted with the exercise of public power;

legal entity established or financed in its entirety, respectively in the predominant part by the state body.

A detailed list of public authorities can be found in the Catalog of Public Authorities within the meaning of the Law on Free Access to Public Information (drafted by the Commissioner). (Institutigap, 2010)

3. Restrictions on the Right to Free Access to Information of Public Importance

As an exception to the rules, the law also lists restrictions on the right of free access to information of public importance, such as exceptions (overriding interests) and conditions that give the right to refuse to provide such information. The authorities misinterpret and enforce the Law, which causes a large number of rejected requests, so here we will try to explain the fair decision-making procedure for such requests. This certainly "sponsors" the weighing when deciding on potential overriding interests, which requires the correct implementation of regulations, but also the not very clear procedure set out in the Law. In the case of restrictions, the most important are described by the article. 25, of the law. The general principle of restriction of rights is defined by Article. 25. of Law No. 06 / L-081 On Access To Public Documents Official Gazette of The Republic of Kosovo / No. 13/04 July 2019, Pristina, the so-called three-part test, which means the cumulative fulfillment of 3 conditions:

if one of the main interests listed in the law (life, health, security, justice, national defense, national and public security, economic well-being of the country, secrecy, privacy and other personal rights, Articles 9, 13 and 14 of law); contrary to the applicant's interest in knowing;

whether access to information would seriously harm the opposite (overriding) interest;

and if the need to protect the opposing interest outweighs the need to protect the applicant's interests in exercising freedom of access to information, judging by the necessity of denying access according to the criteria of a democratic society. Therefore, it is necessary to determine in each individual case whether there is a possibility of restriction of the right to free access to information of public importance, i.e. any of the interests and rights protected go beyond the public right to know. It is a repetitive procedure and is necessary to decide on a specific situation.

The opinion of the Commissioner for Information of Public Importance and Personal Data Protection Nr. : 071-01-2956 / 2019-03, dated 30 May 2019) From the review of the case file it resulted that the journalist had submitted a request to the first instance body for access to information from the public, requesting information regarding the traffic accident that occurred at the point of the Arber Xhaferi highway Prishtina - Ferizaj, in which three vehicles collided, including an government vehicle Bmw X5 "owned by a department in which was the IA, i.e. a copy of the official note made on 31.01.2019. Years in relation to the intervention of the traffic police in relation to the accident in question. In order that the body of first instance (which bears the burden of proof of Article 25 of the Law), in this particular case, to refuse access to the information required under Article 11, points 1, 2 of the Law, is not sufficient, nor is the abstract assumption of the body requested to intervene in its conduct and further completion, but the first instance body is obliged to prove without a doubt that the requested access would seriously impede further conduct of the proceedings. This is due to the fact that in addition to one of the conditions for the protection of certain interests provided by Article 9, point 2 of the law, it is necessary to meet another condition from Article 8, paragraph 1 of the same law, i. e. it is necessary to determine that this interest in access to information would be severely compromised, i.e. that it is information or a document due to which the disclosure may have serious legal or other consequences for the interests protected by law, which weigh more than the interest for access to information. Namely, the first instance body has stated in general that providing access to the requested information would endanger, hinder the development of the procedure and the work of the Prosecution. It directs the investigative procedure, but does not provide any evidence in support of such a claim, which would concretely violate the interest protected by law. The same would have concretely serious legal consequences for the interests protected by law. It would prove that the protection of that interest, in a democratic society in this case, is more important than the public interest. Careful assessment of all the circumstances, facts and evidence, which influence the decision which legally protected interest is most important in a given case, is particularly important when dealing with access requirements to which there is a strong public interest to know. This is exactly the case. The requested information is related to the actions of the Ministry of Internal Affairs in relation to the traffic accident that occurred on January 31, 2019 in which three vehicles participated, including the official car of the brand "Bmw x5", in which has been public official AB, official of state institutions. In that traffic accident one person lost his life, while several people were injured. The event was reported by all electronic and print media, while some had doubts about the official version of the event, which means that the public doubts the legitimacy of the work of the authorities related to this tragic event, the recognition is so strong, public authorities must provide strong and consistent evidence in support of claims that access to the requested information would seriously and severely harm some of the legally protected interests, so much so that the public interest in knowing whether the competent state bodies are acting lawfully, cannot be considered a predominant and most important interest in that particular situation. In this case, the first instance body stated only that access to the requested information would endanger the interests protected by Article 14 of the law, without any evidence, except the letter dated 21 February 2019 of the Basic Public Prosecution in Prishtina, sent the body of the first instance, where it is only stated that the

procedure for performing evidentiary actions is ongoing and that the decision of the public prosecutor has not been taken. This evidence also does not create a single reason to argue that it is justified in a democratic society to deny access to the information required. In this case, the first instance body stated only that access to the requested information would endanger the interests protected by Article 9 of the law, without any evidence, except the letter dated 21 February 2019 of the Basic Public Prosecution in Prishtina, sent to the body of the first instance, where it is only stated that the procedure for performing evidentiary actions is ongoing and that the decision of the public prosecutor has not been taken. This evidence also does not create a single reason to argue that it is justified in a democratic society to deny access to the information required. Given all the above, it is indisputable that there is a strong interest of the public to get acquainted with the contents of the official note made by the traffic police at the scene on the occasion of that tragic event. The Commissioner finds that the availability of the above information to the complainant, ie the public, would contribute to the removal of all doubts about the legality of the work of the competent authorities, as the request required an official note from the traffic police regarding the critical event. This is especially so as videos from the scene of the accident have already been made available to the public. The Commissioner also finds that the first instance body erred in rejecting the complainant's request on the grounds that such information could not be made available to the public as information of public importance due to the legitimate public interest in its recognition, as an essential element of the notion of information of public importance from article 4 paragraph 1 of this law implies the obligation of public authorities to make it available to any other applicant, media or public in general and such cannot be of the nature of general. Because their availability would be information of public importance endangered, hindered or hindered the conduct of the procedure - the performance of evidentiary actions and the decision of the public prosecutor. This is due to the fact that the requested information is information of public importance, given that, in this case, all the essential elements of Article 4, paragraph 1 of the Law on Free Access to Information of Public Importance, which must be completed in intended to be considered information of public importance because it relates to the work of the traffic police in connection with a fatal traffic accident and is contained in certain documents in the possession of the authorities of which the public has a legitimate interest to know, given the legitimate interest of the complainant within the meaning of Article 4 of the Law on Free Access to Information of Public Importance, it always exists, unless the authority proves otherwise, which it has not done in this particular case. Therefore, evaluating everything in the spirit and in accordance with the criteria and standards of a democratic society, the Commissioner comes to the conclusion that in this case the public interest is more important than the interest in question. The first-instance body did not find or notice any circumstances that would justify the restriction of access to the requested information, the action based on the complaint, and that the complainant in terms of the provision of the Law on Free Access to Information of Public Importance. It has the right to make available the requested information, which is in accordance with the Law on free access to information of public importance. The same provides for the possibility of separating the requested information of public importance from other information in the document in which the authority is not obliged to provide access to the applicant, because providing access to this information would violate the right to privacy and the protection of personal data.

4. The Right to Privacy as the Most Common Exception

Here we also have a right that is contrary to the public's right to know - the right to privacy, the right to reputation or any other right of the person to whom the requested information relates personally. It should be emphasized that the right to privacy is largely covered and protected by the Law on Personal Data Protection ("Official Gazette of RKS", no. 06/L-081), as a separate law. Article 89 of the Law on the Protection of Personal Data establishes that information of public importance containing personal data may be made available to the information seeker by the authorities in a manner that guarantees that the public's right to know and the right to protection of personal data. The same highlights the measure determined by the law that regulates free access to information of public

importance. Again, depending on the case, the prevailing interest is measured in each specific situation. We also have three exceptions when such information can be accessed:

if the person has given consent for it;

if it is a person, phenomenon or event of public interest, and especially if he is the holder of a state and political function and if the information is relevant to the function performed by that person;

in the case of a person who, by his conduct, particularly in relation to his private life, has caused a request for information.

Requests for access to information of public importance are often unjustifiably denied due to the alleged protection of privacy and private data in the document (telephone number, address, name, surname, etc.), although this data may be shared (anonymized, etc.) and the obligor to do so when possible, under Article. 12. of the Law. Therefore, if the requested information of public importance can be separated from the other information in the document, which the authority is not obliged to provide to the applicant, the authority will provide the requester with access to the part of the document that contains only the extracted information. available. Opinion of the Commissioner for Information of Public Importance and Personal Data Protection No. 071-01-3652 / 2019-03, dated 30 June 2020: The Commissioner had in mind that the submitted request required data, access to which violates the privacy of the person with whom the required data is related, referring mainly to the average grades during schooling, but in this particular case he found that there is an increased public interest to know information about work experience in health institutions and average grades during schooling of admitted candidates, as they are the same, according to the proposal from the proposal for admission of candidates according to the announcement number: 9087/3 from March 26. 2019, were the criteria for the employment of health workers in the Clinical Center Prishtina. "They were paid for their work with public money."

In this example, we have seen that although information that violates privacy (average grades during schooling) is required, it should still be available to the public, because the public interest is paramount, because it is a job vacancy and the conditions to be funded public. Here we have analyzed only one of the so-called prevailing interests (the right to privacy), but the procedure is the same for the others listed in the law, so here we will sublimate once again the way of determining the prevailing interest. It is necessary for the law to foresee the prevailing interest, the application of a test to determine the prevailing interest and to control the possibility of providing the information requested by the document, to anonymize certain information and also to foresee. The Law on Access to Public Documents guarantees the right of every applicant for access to public documents and also prohibits the public institution from refusing access to public documents without first performing a test of harm and public interest for access to the relevant public document. In order to prove that the damage caused by the protected interest exceeds the public interest to access the relevant public document.

Restriction of the right of access to public documents must be exercised in accordance with the principle of proportionality under the Law on General Administrative Procedure and in accordance with Article 17 of the Law on Access to Public Documents and only for the purposes of protecting:

Life, health and public safety;

State security, defense and international relations;

Prevention, investigation and prosecution of criminal offenses in cases where the publication of public documents may impair the investigation process;

Disciplinary investigations, in cases when the publication of public documents may damage the disciplinary procedure;

Inspection, control and supervision by public institutions in cases when they handle classified information;

The right to privacy and the right to delete ('Right to be forgotten');

Commercial confidentiality, such as: business secrets, professional or company secrets;

Documents for which the public institution or third parties enjoy intellectual property rights;

Economic, monetary and exchange policies of the state;

Statistical confidentiality;

Equality of the parties in court proceedings and efficient administration of justice; AND

Discussions within or between public institutions regarding the consideration of an issue, which constitutes a classified document.

If only part of the required public documents is covered by any of these exceptions, either the remaining parts of the document are made public or the party is granted the requested access, especially to it, the right to privacy.

5. Procedure Initiation

The procedure for exercising the right to free access to information of public importance begins with the submission of a request to the authority. Can be submitted in writing or orally. The authority may prescribe a request form, but must also consider a request that was not made on that form. When information is requested orally, the request is communicated in the minutes kept by the authorized person of the public authority for access to information.

The applicant must state in the application:

name of the authority,

his name, surname and address, respectively the seat if the applicant is a legal entity,

a description of the information requested and

other data that make it easier to find information.

If the request does not contain this information, ie. if the request is not correct, the authorized person of the authority is obliged to instruct the applicant without compensation how to eliminate these deficiencies, ie to submit to the applicant instructions for the supplement. The authority is obliged to notify the applicant without delay of the possession of the information and not later than 15 days (or any other deadline in special cases provided in Article 16 of the law), to submit the document containing the required information is, issue or send him a copy of that document. A copy of the document was sent to the applicant on the day of departure from the office of the authority from which the information was requested. If the authority does not respond to the request within the deadline, the applicant may file a complaint with the Commissioner.

"Law on Access to Public Documents - was adopted on October 7, 2010 and guarantees the right of every natural and legal person, without discrimination on any grounds, to have access, upon request, to documents held, drafted or received by public institutions". (Article 1 of Law no.03 / L-215 on Access to Public Documents, 2010) This law replaced the Law on Access to Official Documents no.2003 / 12, which was approved by the Assembly of Kosovo on 16 October 2003 and was in valid for seven years. The rationale for the issuance of a new law was its harmonization with the Constitution of Kosovo, as well as the avoidance of some obstacles that have arisen during the implementation of this law in practice. This law has further advanced the constitutional right of access to public documents.

The Law on Access to Public Documents has several advantages over the Law on Access to Official Documents, which can be summarized as follows:

Shortening the deadline for responding to initial requests from 15 working days to 15 calendar days;

Shortening the deadline for responses to confirmation requests from 15 working days to 7 days;

Designation by law of responsible units / officials to handle requests for access to official documents;

Obligation of public institutions to publish as much information as possible in electronic form on the official websites of institutions;

Application of fines for Public Institutions, as well as responsible persons of the institution who obstruct access to public documents;

Obligation of Units or officials for communication with citizens, to prepare regular reports and to send these reports to the relevant unit of the Government of Kosovo / Office of the Prime Minister which prepares the comprehensive report of public institutions, for realization of the right to access public documents.

The Law on Access to Public Documents defines the Agency as a second instance body for complaints filed against actions or omissions of public institutions to restrict or deny access to public documents to persons who have requested such access. Complaints of restriction or refusal of access may be lodged with the Information and Privacy Agency, which acts as a second instance against such complaints. The Agency is an independent agency, responsible for overseeing the implementation of legislation on access to public documents and protection of personal data, in order to protect the fundamental rights and freedoms of natural persons, in relation to the processing of personal data, and guaranteeing access to public documents for natural and legal persons. The material competencies of the Agency are defined by Law No. 06 / L-082 on Personal Data Protection and Law No. 06 / L-081 on Access to Public Documents. The Law on Access to Public Documents allows access to public documents to every natural and legal person, without being subject to any discrimination. However, the law, in Chapter V, provides the permissible basis for restricting or denying access to public documents and the cases when access to them is always allowed. The test is done only in cases when the law allows the restriction or refusal of access, while it is unnecessary to be done in cases when access is always allowed on request. (Kosovo, 2007; Jam et al., 2011)

In order for the public institution to increase the credibility of the citizens, it must necessarily justify the refusal or restriction of access, presenting in the justification for restriction or refusal of access both the arguments in favor of access and those against, so that each decision for restriction or refusal of access to be well weighed through the test provided for in this guide. Furthermore, in the reasoning, it should also mention the alternatives considered to enable the party access, as mentioned in Chapter 5 of this guide.

The Law on Access to Public Documents, in paragraph 3 of Article 17, has defined the cases when access to public documents is always allowed. These cases are as follows:

1. the required public document relates to the expenditure of public money;
2. the public document is related to the implementation of public functions or employment relations of public officials, except in cases when personal data is protected or when otherwise specified in the relevant laws;
3. the required public document relates to the environment, waste, hazardous substances or information of environmental safety reports, as provided by the relevant law on environmental protection.

However, if only part of the required public documents is covered by any of the access exemptions set forth in paragraph 2 of Article 17, the remaining parts of the public document shall be made public, which are set out in the following chapter.

6. Control Function

As we can see in practice, democracy as a system based on the rule of the people is increasingly losing its basic physiognomy and idea. All that remains is a letter and a utopian image. While the people show all their "power" once in a couple of years, mainly passively electing someone from power, without entering the real freedom of choice or the possibility of real solution to specific problems and problems of citizens by these representatives of government, the question remains how does he (the people) govern? This situation can be partially mitigated by the possibility of control of public authorities by citizens and this opportunity is provided by the Law on Free Access to Information of Public Importance, but also the Constitution. Even before the adoption of the Law, the Constitution of the Republic of Kosovo provides for freedom of thought and expression and freedom of seeking, receiving and imparting information and ideas through speech, writing, painting or otherwise. Submitting a request for information of public importance can be a very applicable and useful tool in processes where other laws have left the possibility of discretionary decision-making of certain persons (eg competition for employment, execution of procurement contracts). public, etc.), where there are no objective criteria for selecting or amending the contract and the public is excluded. Requests for free access would greatly complicate such treatment in such cases and the public would be at least partially informed and involved. Only by exhausting all legal possibilities can the need to change and limit such excessive powers be affected. It is clear that the authorities themselves, but also the legislator, not only do not want to change such powers and actions, but also use the legal left opportunity to realize their interests (political and other). Although this type of behavior is one of the biggest anomalies in our social and legal system, it could only be changed by using all legal means. And the right of access to information of public importance, albeit to a small extent, may affect this goal.

Legislation guaranteeing the right of access to public documents dates back to the deployment of the United Nations Mission in Kosovo (UNMIK). Initially, in 2003, Law 2003/12 on Access to Official Documents was in force, adopted by the Assembly of Kosovo (Assembly) and promulgated by UNMIK through Regulation 2003/321. With the declaration of independence of Kosovo in 2008, this right was guaranteed by the Constitution of Kosovo through a special article and other articles that guarantee the transparency of public institutions. In 2010, the Assembly approved Law no. 03 / L-215 on Access to Public Documents, which is still in force. Meanwhile, the primary legislation has been further supplemented with bylaws that regulate specific aspects of the implementation of the right of access to public documents such as keeping official records of requests for access to public documents and related fees. At the time of writing, the Assembly of Kosovo is in procedure and has approved in first reading the Draft Law amending the Law on Access to Public Documents. This draft law is expected to be subject to review in the relevant parliamentary committees before being approved in the second reading. At European level, this right is guaranteed by Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. Although this article does not expressly provide for the right to request public information, this right has been developed through judgments of the European Court of Human Rights.

7. CONCLUSION

By submitting requests for access to information of public importance, citizens are given the opportunity to make almost all decisions and actions of public authorities transparent, opposing corruption but also to criticize the same bodies and their actions. This is one of the rare ways that enables every citizen to participate in issues of public interest, only before that he should be aware of this opportunity, which is one of the reasons for writing this text. It should be noted that the only

limitation would be the other extreme and the abuse of free access to information of public importance (Article 13 of the Law).

Kosovo has one of the best legal frameworks in terms of access to information, at least on paper. In reality, the law needs change root causes that would address problems in the already challenging and fragmented implementation. The law obliges all institutions that accept requests for access to public documents to respond within seven days, starting from the moment or date of registration of the request and requests that the relevant documents requested be provided.

In case of rejection of the request or when the authority in question fails to respond within the prescribed deadlines, then the applicant may appeal the case to the Ombudsman or in the courts. Exceptions may be made in cases related to: national security, defense or international relations, public safety, detection or investigation of criminal offenses, inspection, control or oversight by public institutions, privacy and other legitimate private interests.

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