

Kosovo*

Open Local Government and Public Ethics

HANDBOOK

A tool to promote public
ethics, accountability, transparency,
and citizen participation

KOSOVO*

Handbook on Open Local
Government and Public Ethics

Original:

*Handbook on Open Local Government and
Public Ethics in Kosovo* (English version)*

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The Handbook is part of the series of country-specific Handbooks that aim to preserve and share the lessons learnt and best practices identified during implementation of the co-operation projects. For more information on various Handbooks please refer to the bE-Open tool that has been developed by the Congress to support all local and regional governance actors in their efforts to improve the quality of local democracy in their villages, cities, and regions, as well as any citizen interested in public ethics, accountability, transparency and citizen participation.

** All references to Kosovo, whether the territory, institutions or population, in this text shall be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo.*

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FOREWORD

Governments can function effectively only if they enjoy and sustain the trust of citizens in their commitment to delivering services and policies that serve the citizens. Open local government and a high level of public ethics are key to building confidence in the institutions of government. Local government, municipalities and their elected representatives and civil servants have a crucial role in fostering and sustaining trust-building and participatory decision-making, since they have a certain degree of autonomy over the distribution of resources, play an intermediary role with regards to central governments, and usually represent the first interface between citizens and elected representatives. The professionalism and integrity of elected local government officials and local administrations, and their ability to function in a transparent, responsive, and accountable manner, are a prerequisite for the delivery of enhanced, fair, and equitable services to citizens. Local and regional elected representatives must therefore act as role models in the areas of public ethics, transparency, accountability, and participatory decision-making.

In order to fulfil this role, elected representatives must be well versed in the principles and standards underpinning public ethics. Furthermore, they should understand the legislation in force and the mechanisms and institutions through which the laws are implemented and enforced at the local level. The government authorities should also raise awareness among the public so that they also understand their legal rights and know where they should turn to make a complaint.

However, we cannot ignore the fact that local authorities, as any public authority, are susceptible to corruption, which poses a major threat to the legitimacy of democratic institutions, as well as to the degree of trust that citizens place in their representatives and public officials. A deficit of transparency and shortfalls in public ethics are problems faced by all levels of government, including the local and regional levels. They undermine the provision of services to citizens and businesses alike and pose a threat to the universal access to basic services and to sustainable local economic development. The fight against corruption needs to be a long-term priority for local and regional governments and their associations. Concerted preventive action and the monitoring of corruption risks are both paramount in order to foster economic growth, improve living conditions, and develop citizens' trust.

Where the decentralisation of power and financial resources advances, the quality of local governance becomes even more crucial. Therefore, along with the introduction and consistent application of criminal law provisions against corruption, it is essential to promote public ethics, transparency, accountability, and participatory decision-making in order to reduce the risk of corruption and boost citizens' confidence in local and regional authorities.

The Congress of Local and Regional Authorities of the Council of Europe took a firm step in the promotion of ethical governance by adopting in 1999 the European Code

of Conduct for the Political Integrity of Local and Regional Elected Representatives. An advisory group revised this Code, which was then adopted as the European Code of Conduct for all Persons Involved in Local and Regional Governance in November 2018. The updated text addresses new challenges, including new forms of communication, the impact of digital technology and the need to respect the privacy of data, and enlarges the scope of its application to all actors involved in local and regional governance, and not just elected officials.

In its priorities for 2021-2026¹, the Congress underlines the importance of promoting the quality of local and regional democracy and citizen participation. At the same time, the Congress devotes its attention to the challenges arising from the Covid-19 pandemic and underlines the necessity of adapting work and activities to a new situation, including corresponding social, economic, and political changes. The thematic priorities of the Congress also include reducing social inequalities and ensuring that digitalisation and artificial intelligence enhance citizen participation. The Congress underlines that local and regional authorities should be the main actors for change and points out the importance of the fight against corruption and clientelism, and the participation of citizens in decision-making processes, for the proper functioning of local and regional democracies.

The Congress is determined to sustain a comprehensive, long-term engagement in corruption prevention, and in this spirit has established the position of Spokesperson on Promoting Public Ethics and Preventing Corruption at the Local and Regional Levels. The publication of this Handbook and our intention to actively promote its use are further demonstration of our determination to make this a priority activity for the years to come.

The attitudes and expectations of our citizens with regards to public governance are changing. To renew and sustain confidence in public administration, we need to set up effective mechanisms for the implementation of, and compliance with, standards of ethical conduct. Preventing corruption, reducing its risks, and developing effective, accountable, and transparent institutions at all levels are key components of just and inclusive societies.

With this in mind, this Handbook on Open Local Government and Public Ethics is aimed at local authorities, mayors, local councillors, and civil servants, to support them in their efforts to improve the quality of local governance in their villages, towns and cities. The Handbook provides local authorities with practical guidelines on transparency and citizen participation, identifying the relevant international standards and domestic legislation, and providing case-law examples and good practices that can be applied and promoted by all local authorities.



Andreas Kiefer
Secretary General

Congress of Local and Regional Authorities

PURPOSE AND STRUCTURE OF THE HANDBOOK

Transparency and citizen participation are key concepts in the development of good governance. Both help to create the conditions for citizens to understand and evaluate the decisions that the government is taking on their behalf, as well as to ensure that their own needs and views are taken into account in the decision-making process.

Effective application of tools to promote transparency and citizen participation, coupled with stronger accountability and public ethics, can help to drive out corruption and government malpractice. Both concepts also serve to help generate positive and enabling momentum to foster increased trust in public governance.

Finally, they help governments to draw on the skills, knowledge and experience of citizens to enable more informed decision-making, early identification of negative impacts of prospective policies, greater ownership of the resulting decisions, and the delivery of more effective public services.

The Handbook on Open Local Government and Public Ethics in Kosovo* aims to support local authorities in their efforts to improve the quality of local governance in line with the principles of the European Charter of Local Self-Government (ETS No. 122) and its Additional Protocol on the Right to Participate in the Affairs of a Local Authority (CETS No. 207). It provides them with practical guidance on public ethics and accountability, transparency, citizen participation, and countering corruption, based on Council of Europe principles and guidelines, and drawing on international standards and examples of model legislation.

To fulfil its purpose as a practical reference guide to support local authorities in their daily work, the Handbook on Open Local Government and Public Ethics in Kosovo* includes specific information about domestic anti-corruption legislation and provides examples of mechanisms and tools to raise standards in public ethics and accountability, transparency, and citizen participation. The Handbook provides a concise assessment of the most prevalent corruption risks and a set of good practices to introduce and implement public ethics and open government.

The implementation of the mechanisms included in this Handbook will also help local authorities contribute to attaining the United Nations' Sustainable Development Goals (SDGs)² of the 2030 Agenda for Sustainable Development,³ namely goals 5 (gender equality), 11 (sustainable cities and communities), 16 (peace, justice and strong institutions) and 17 (partnerships for the goals).

In this regard, the implementation of open local government will serve as a powerful driver for deepening the commitment to good governance in the context of sustainable development.

The Handbook is structured in four main chapters:

■ **Chapter 1 – Public Ethics and Accountability:**

This chapter highlights the importance and challenges of public ethics and accountability in Kosovo*. It demonstrates the essential role that public ethics and accountability play in bringing about effective, transparent and participatory governance.

■ **Chapter 2 – Transparency:**

This chapter introduces five transparency mechanisms, which have been selected to represent the diversity of approaches to transparency. The account of each mechanism includes an introductory description and an outline of international standards. This is followed by four sections summarising key domestic laws and presenting practical guidelines and best practices which can serve as examples for local authorities in their efforts to enhance transparency.

■ **Chapter 3 – Citizen Participation:**

This chapter introduces five citizen participation mechanisms, which have been selected to represent the diversity of approaches to citizen participation. Following the same structure as in the previous chapter, an introductory description is provided for each mechanism followed by an outline of relevant international standards. The concluding four sections summarise key domestic laws and present practical guidelines and best practices which can serve as examples for local authorities in their efforts to foster and improve inclusive citizen participation.

■ **Chapter 4 – Corruption Risks:**

This chapter introduces the most common corruption risks identified in Kosovo* and outlines relevant international anti-corruption standards, along with the domestic legal framework pertinent to each form of corruption. This is then supplemented with examples of case law and good practices related to each type of corruption.

PUBLIC ETHICS AND ACCOUNTABILITY

Introduction

Public ethics and accountability are essential concepts underpinning an effective local or regional authority. They refer to the culture, processes, structures and rules that ensure those in public office act in the wider public interest, rather than their own self-interest. They are an essential feature of good governance, and it is important that they are respected and monitored by relevant organisations.

Ethics embody the rules that define the conduct of public officials⁴ in order to ensure that the public is treated fairly and equitably. Ethics help officials make better decisions in the public interest and help people evaluate the decisions taken on their behalf by public officials.

Public accountability ensures that officials are openly answerable for the decisions they are taking on behalf of the public.

In the absence of public ethics and accountability, corruption and malpractice are able to thrive. As outlined in the final chapter, corruption is damaging to individuals, society, the economy, and government in a number of respects. The prioritisation of public ethics and accountability can help curb the worst excesses of power and encourage more responsible and fairer decision-making by local authorities.

Even where corruption is not endemic, the absence of public ethics and accountability can be corrosive to public trust in government, public institutions and officials. While the relationship between public ethics and accountability is complex, consistent and timely application of both can help to build and strengthen trust between the public and government.

Furthermore, public ethics and accountability can contribute to a positive environment where it is recognised that citizens and other stakeholders contribute to the quality of the decision-making process. Combined with citizen participation tools, public ethics and accountability can help to ensure that citizens' personal experiences, expertise, knowledge and scrutiny add value to, and strengthen, decisions taken by government and public officials.

Elected representatives should be aware of the process by which declarations of assets are monitored and by which body, and which sanctions can be applied, and how, in the event that an office-holder makes a false or incomplete declaration. They should know the rules governing whistle-blowing and which official or officials are responsible for considering whistle-blowers' complaints and reports of wrongdoing. Local authorities need to ensure in-house training for newly elected representatives and provide regular refresher training for all elected officials. Knowledge and understanding of the legal and institutional framework are essential if elected representatives are to succeed as role models of political integrity.

Finally, public ethics and accountability are key to improving public services because public services that are more responsive and accountable to people – and benefit from their insights, ideas, energy, and scrutiny – will work better for people and the community as a whole.

Taken together, public ethics and accountability help to ensure that decision-making and resource allocation are fair, efficient and effective, which in turn helps to enable a flourishing democracy, economy and society. To this end, the Congress of Local and Regional Authorities of the Council of Europe adopted the European Code of Conduct for all Persons Involved in Local and Regional Governance,⁵ encouraging local and regional authorities and associations of local and regional authorities to design appropriate educational programmes in integrity management and to implement advisory services to help their staff to identify and deal with potential ethical risk areas and conflict-of-interest situations.

Transparency and citizen participation are important mechanisms for promoting public ethics and accountability in central and local government. A recent report for the European Committee of the Regions on “Preventing Corruption and Promoting Public Ethics at the Local and Regional Level in Eastern Partnership Countries” found that lack of transparency was the main vulnerability in all of the cases assessed.⁶ This handbook outlines a range of transparency and citizen participation mechanisms that can be adopted by local and regional authorities.

General domestic context

Kosovo* is still in the process of building stable and transparent governing structures and institutions. Upholding ethical standards in the course of public duties remains one of the key challenges to creating an administration compliant with the principles of public ethics (i.e. integrity, legality, objectivity, accountability, transparency, honesty, respect and leadership). According to the Council of Europe, “public ethics is at the heart of democracy and good governance, at all levels of government,” and integrity is a core principle and cornerstone of good governance.⁷ Yet, no institution is automatically immune to violations of the ethics code, and so, unethical interactions between public and private actors are possible at all stages of the policy process. Addressing this challenge requires a whole-of-society and whole-of-government approach.

In Kosovo*, in recent years, the lack of professional ethics has become more evident in public administration, public procurement procedures, and the financing of political parties. However, the legislative framework reinforcing ethical standards is being strengthened.

In 2019, Kosovo* issued the Law on the Organisation and Functioning of State Administration and Independent Agencies, to create a more efficient and transparent administration acting on the basis of professionalism and political neutrality in decision-making.⁸ Local government is further regulated by the Law on Local Self-Government.⁹ There were improvements in the performance of local authorities in the Transparency

Index, with an average increase of 12% in transparency reported between 2018 and 2019.¹⁰ Nonetheless, lack of transparency in public procurement procedures remains an issue. These procedures are prone to irregularities and vulnerable to corruption. In 2019, there were six new cases related to corruption in public procurement reported by the Anti-Corruption Agency.¹¹

There are also existing laws that seek to enforce transparency and public accountability, including: Law on Access to Public Documents,¹² Law on Declaration, Origin and Control of Property of Senior Public Officials and on Declaration, Origin and Control of Gifts of All Public Officials,¹³ and Law on Public Procurement.¹⁴ Article 5 of the Law on Prevention of Conflict of Interest in Discharge of Public Function obliges public officials to exercise their function in accordance with the relevant law and code of conduct. Paragraph 1 of this article sets out the principles of ethical conduct for public officials. It states that public officials must perform their functions with “honesty, consciousness, and impartiality,” to maintain the authority of the official and the institution, and to strengthen the trust of the citizens in the institution.¹⁵

1.1. CODES OF ETHICS AND PROFESSIONAL CONDUCT

Codes of ethics establish basic principles by which public servants must abide, such as integrity, selflessness and openness. A code of conduct draws on the code of ethics to formulate standards and practices that should be applied to the particular circumstances of an institution.

A code of conduct sets out specific standards of professional behaviour expected in a host of situations and provides public officials with guidance for handling them. In addition, codes of conduct bring transparency and public accountability into governmental operations.

International standards

Well-designed codes of ethics and codes of conduct will help meet the growing expectations from the public, business leaders and civil society for greater transparency and integrity in government, and will place an onus on governments to ensure high ethical standards amongst public officials and elected representatives. As such, they can support the development of trust between the public and government institutions and officials. It is important that codes of conduct are in place for both civil servants and elected officials, and that training and guidance is provided to ensure a full understanding of the codes by all office-holders. Disciplinary measures and sanctions should be clearly stipulated and consistently applied in the event of noncompliance with the codes.

The following international conventions and standards relate to codes of ethics and professional conduct:

- The **Committee of Ministers of the Council of Europe’s Recommendation on Codes of Conduct for Public Officials**¹⁶ and the **European Code of Conduct for all Persons Involved in Local and Regional Governance**¹⁷ are the reference texts for local and regional authorities in Europe for ensuring political integrity.
- The **Committee of Ministers of the Council of Europe’s Guidelines on Public Ethics**¹⁸ consolidate in one single document Council of Europe core principles, standards and recommendations in this field, covering all categories of public officials, be they elected, appointed or employed. They are complemented by the **Guide on Public Ethics: Practical steps to implementing public ethics in public organisations**,¹⁹ a living document which provides case studies and examples from Council of Europe member states.
- The **OECD Recommendation on Public Integrity**²⁰ shifts the focus from ad hoc integrity policies to a context-dependent, behavioural, risk-based approach with an emphasis on cultivating a culture of integrity across the whole of society.
- The **Transparency International paper on Implementing Effective Ethics Standards in Government and the Civil Service**²¹ provides practical mechanisms for institutionalising high standards of ethical integrity for elected officials and civil servants.

Domestic context

Currently, Kosovo* does not have a single code of ethics and conduct regulating the behaviour of public officials. There is a legal framework, however, consisting of the Law on Civil Service²² and the Regulation on Civil Servant Code of Conduct,²³ both of which regulate the civil service and its behaviours. Given the significance of these laws, each institution and public body in Kosovo* has also issued its own code of ethics and conduct. Adherence to these codes is essential for citizens to have effective access to quality public services, and to increase the transparency and accountability of public administration in Kosovo*. The standards encouraged by these codes also strengthen the professionalism of the public administration and promote public trust in its work. The legal framework also requires that the Anti-Corruption Agency participate in, and advise on, the drafting of codes of ethics in the public and private sectors.²⁴

Legislation

Chapter 7 of the Law on the Civil Service provides for the Principles and Conditions of Professional Conduct of Civil Servants. However, given the importance of professional conduct and ethics in the public administration, Kosovo* has also issued a Regulation on Civil Servant Code of Conduct. This regulation determines the rules of conduct of all civil servants in Kosovo* and raises public awareness of the conduct that civil servants should uphold while exercising their duties. It sets out the fundamental principles that should be respected by civil servants when providing public services. Namely, they must adhere to the principles of legality, non-discrimination, obligation to respond

to requests, effectiveness and efficiency, responsibility, impartiality and professional independence, transparency, avoiding conflict of interest, and equal opportunities for communities and genders.²⁵ Violations of the rules and principles set out in this Regulation lead to disciplinary measures against the public official in accordance with the legislation in force.²⁶

Guidelines

Public bodies, and institutions also have their own codes or regulations of conduct and ethics. For instance, the Assembly of Kosovo* has issued the Code of Conduct of the Members of the Assembly.²⁷ The Kosovo* Judicial Council has enacted the Code of Professional Ethics for Judges, which aims to regulate the rules and conduct of judges in Kosovo*.²⁸ The Constitutional Court has adopted the Code of Conduct for Judges²⁹ with principles to guide and regulate their conduct. The Prosecutorial Council has issued the Code of Ethics and Professional Conduct for Prosecutors.³⁰ At the local level of government, each municipality has a code of ethics that regulates the behaviour and conduct of its officials.

There are sanctions for violating these codes and regulations. For example, according to the Law on Disciplinary Responsibility of Judges and Prosecutors, when a judge or prosecutor does not act in compliance with the Code of Conduct, that action is considered a violation of the duties of judges. In those situations, the judge commits a disciplinary offense.³¹ Disciplinary proceedings are conducted before the Kosovo* Judicial Council or Kosovo Prosecutorial Council.³²

However, despite the solid legal framework that regulates the conduct of public officials, the institutional mechanisms to ensure implementation are missing, and so is data monitoring implementation.

Good practices

In 2020, the Municipality of Ferizaj enacted its own Code of Ethics to regulate the behaviour of municipal officials and set out the professional and moral ethical standards of the municipality. The purpose of this Code is to develop an organisational culture within the municipality and to promote the basic principles of ethics. According to this code, municipal officials are obliged to exercise their duties in accordance with the laws that are in force, and they are always required to act according to the public interest rather than private or party interest. This code also regulates the dress and appearance code of municipal officials by determining appropriate office attire. Any public official who violates the provisions set out in this code, will face disciplinary measures in accordance with applicable law. To ensure the implementation of this code, the municipal assembly of Ferizaj established the Code of Ethics Commission. Measures for violating the provisions of the code of ethics include a public reprimand and a penalty of up to 15% of up to three months' wages.³³

1.2. COMPLAINTS MECHANISMS

Complaints mechanisms allow citizens to provide feedback to public authorities on the standards of services they receive. They provide an important accountability mechanism which allows civil servants and elected officials to identify where public services are being delivered ineffectively, inefficiently or inequitably. When such mechanisms result in the prompt and effective handling of complaints, they can help to create the conditions for increased trust of citizens in government administration.

International standards

To ensure confidence in the mechanisms, local authorities should endeavour to consider and resolve each complaint promptly and comprehensively. Complaints mechanisms can be made more accessible by applying a one-stop-shop approach so that citizens do not need to search among different offices and websites.

If government takes a proactive approach to pre-empt the repeat of similar causes for complaint, complaints mechanisms can also help governments to identify new approaches to service delivery and to increase citizen participation. To this end, complaints mechanisms should be combined with periodic evaluations of service delivery, including the use of public opinion surveys, and exchange of experience and tools with other local authorities to encourage wider adoption of good practice and tried and tested tools.

There are no specific international standards for complaints mechanisms relating to public services. However, mechanisms and procedures for responding to complaints are incorporated into an international legal guarantee to the right to participate in the affairs of a local authority, and there are a number of helpful civil society guidelines and handbooks. See for example:

- The **Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207)**³⁴ provides an international legal guarantee to this right, including the establishment of mechanisms and procedures for dealing with and responding to citizen complaints and suggestions.
- **Transparency International's Complaints Mechanisms: Reference Guide for Good Practice**³⁵ sets out guiding principles and good practices for establishing and implementing complaint mechanisms that provide safe channels for citizens to alert a public or private institution about any corruption risks or incidences.
- The **Danish Refugee Council's Complaints Mechanism Handbook**³⁶ describes how to set up and manage a complaints mechanism.
- **World Vision's Overview of NGO-Community Complaints Mechanisms**, with an overview of mechanisms and tools used by development agencies to receive complaints.³⁷

Domestic context

In Kosovo*, the right to appeal and to use legal remedies is a constitutional right that is regulated by the Constitution of Kosovo*.³⁸ The use of legal remedies is regulated under the Law on General Administrative Procedure, which allows citizens to “question” administrative acts that they think violate their rights and legal interests. However, due to prolonged court proceedings, citizens face challenges in exercising their rights and using these mechanisms in practice.

The Constitution establishes the Ombudsperson as an independent institution. Its role is to monitor, defend and protect the rights and freedoms of individuals from the unlawful or irregular actions of public authorities.³⁹ The competences and responsibilities of the Ombudsperson are regulated by the Law on the Ombudsperson.⁴⁰ The Ombudsperson plays a significant role because many citizens turn to this independent institution to protect their rights and legal interests when other means have proven unsuccessful.

Another important mechanism available where citizens can complain and address issues is the Committee on Human Rights, Gender Equality, Missing Persons and Petitions within the Assembly of Kosovo*. The scope of this committee includes co-operation with the Ombudsperson and reviewing petitions that are addressed to the Assembly. Every petition is therefore initially reviewed and analysed by this committee. Not later than two weeks after the date of receipt of a petition, the chairperson of the committee submits it to the committee, proposing the legal settlement or rejection of the said petition. If the committee deems it appropriate, they may authorize the chairperson of the committee to submit a statement at the plenary session of the Assembly.⁴¹

Legislation

In Kosovo*, the use of complaint mechanisms is regulated by the Law on General Administrative Procedure.⁴² This Law aims to protect the rights and legal interests of people when public authorities provide services of public interest. It is applicable every time a public body, while exercising its public authority, issues a decision on the rights, obligations, or legitimate interest of a person, concludes an administrative contract, or exercises their competencies through other administrative actions.⁴³

This law provides for the following forms of legal remedies: administrative appeal, administrative objection and reopening of proceedings. In its Chapter 2, this law regulates the entire procedure of administrative complaints. It sets out the general rules for filing an appeal against administrative acts and the conditions that a complaint must meet to be permissible. Chapter 3 regulates administrative objection, which must be filed against a real act or against the non-performance of a real act requested by the party. Finally, Chapter 4 refers to the reopening of a proceeding, under certain cases, if the party has not lodged a complaint within the deadline defined by the law.⁴⁴

Guidelines

As of the beginning of 2021, there is no national or local guideline on complaints mechanisms. A possible reason for the lack of such guidelines is because the Law on General Administrative Procedure regulates in detail the procedure for lodging and managing complaints.

Good practices

Between June and September 2020, the Kosovo Democratic Institute / Transparency International Kosovo*, submitted six requests for access to public documents and information from the University Hospital and Clinical Service of Kosovo*. These requests were confirmed, on the phone, to have been received. Under the Law on Access to Public Documents,⁴⁵ public institutions are obliged to issue a decision on the approval or rejection of the request within seven days, and the non-response of the public institution within this deadline is considered a negative response. In this case, they did not meet the legal deadline and KDI/TI lodged a complaint to the Ombudsperson, asking to decide on the admissibility of KDI/TI's access to public documents as per the request. The Ombudsman responded positively.

1.3. GRIEVANCE REDRESS MECHANISMS

Grievance redress mechanisms (GRMs) are tools that go beyond complaints mechanisms and other feedback channels as citizens can use a GRM to address government institutions and local municipalities with concerns about the impact of policies and their implementation on the citizens themselves. When the policy of a public agency affects the interests of the citizens, or the decision made by the central or local governmental bodies causes a grievance on the part of the citizens, interested parties can use the redress system created by the government agencies and local municipal bodies to present their grievance. A grievance redress mechanism is not used to replace the court or audit system or formal investigation; nor is it the appropriate mechanism for grievance about potentially criminal acts, such as instances of corruption. GRMs are designed for collaborative solutions of grievances.

International standards

Redress mechanisms serve as a frontline service to be used by citizens to effectively resolve complaints and/or grievances. Furthermore, business organisations can use GRMs to mitigate risks to their business operations and GRMs can become a prompt and effective mechanism for dispute settlement short of legal action.

Effective redress mechanisms can serve to identify patterns of corruption and malpractice, and to forge corruption prevention policies. To ensure greater access, it is important to raise public awareness about GRMs and to provide free advice to citizens on the formulation of grievance claims and how to proceed when seeking redress.

Standards for grievance redress mechanisms are mostly set by international organisations such as the World Bank, Asian Development Bank (ADB), Organisation for Economic Co-operation and Development (OECD), United Nations Development Program (UNDP) and European Commission. These standards are mostly connected with setting the legal framework for the protection of citizens' rights. These standards are presented in the following guidelines:

- **Reliability of Public Services: Ensuring Citizens' Rights**⁴⁶ from the OECD addresses citizens' rights to be heard using the legal framework established by state institutions.
- **OECD, Recommendation of the Council on Public Service Leadership and Capability, OECD/LEGAL/0445**⁴⁷ – the recommendation has 14 principles and defines the responsiveness of public service.
- **How to make a complaint at EU level by European Commission**⁴⁸ is a pamphlet outlining the opportunity for citizens to contact and submit a complaint to the European Commission.
- Guidance developed by the international institutions on the protection of citizens' rights during the implementation of a business project includes the **ADB's Building Capacity for Grievance Redress Mechanisms**.⁴⁹

Domestic context

Redress mechanisms, or grievance redress mechanisms, are one of the tools used to ensure accountability from public bodies toward citizens. Citizens access such mechanisms when a public body adversely affects the rights of citizens in any form. Kosovo* has no law that regulates redress mechanisms or their procedures. However, cases in which an administrative act of a public body causes direct or indirect harm to a person are foreseen in the Law on Administrative Conflicts.⁵⁰ This law regulates the competencies, composition of the court, and rules of procedure when deciding on the lawfulness of administrative acts. As per Article 18, the plaintiff in an administrative conflict may be a natural person, legal entity, Ombudsperson, or other association and organisation which protects the public interest. In all these cases, injured parties can submit a complaint to the competent court and may also request an extraordinary review of the legal decision by the Supreme Court of Kosovo*.

As of 2021, in Kosovo* there is no administrative court that specifically addresses administrative conflicts. However, within the Basic Court of Pristina, the Department for Administrative Matters is competent to deal with administrative conflicts from all over Kosovo*. This department adjudicates and decides in the first instance on administrative conflicts based on lawsuits filed against final administrative acts and other issues defined by the Law on Administrative Conflicts.⁵¹ As there is only one Department for the whole territory of Kosovo*, it is hard for citizens to address their issues. Accessing this Department is not easy and traveling from different parts of Kosovo* to submit a complaint is not always rational or feasible for many citizens. This has resulted in citizens not being able to raise their issues and therefore not receiving compensation for their damages.

Legislation

Compensation for damages is regulated by the Law on Administrative Conflicts. The law regulates an administrative conflict before the court in cases when a party files a suit against an administrative act. This law states that the administrative conflict begins with an indictment or lawsuit. Injured parties have the right to ask for compensation for the damages that were caused by the execution of the administrative act. Besides the compensation of damages, the plaintiff has the right to request restitution.⁵²

Guidelines

Although there are currently no guidelines that regulate redress mechanisms in Kosovo*, the mechanism can adopt international best practice. According to Transparency International "Complaint Mechanisms - Reference Guide for Good Practice,"⁵³ effective complaint mechanisms are a key tool to identify and prevent corruption and other malpractice. The sooner the Kosovo* institutions establish an effective complaint mechanism, the stronger the potential to strengthen their credibility and reputation.

Good practices

Kosovo* has created the Free Legal Aid Agency to provide free legal support to citizens who cannot afford to pay.⁵⁴ Free legal aid is provided in different procedures in civil, criminal, administrative and misdemeanour proceedings. Free legal aid is also provided for legal information and advice regarding legal proceedings, compilation of documents and all other technical assistance related to the completion of subject matter and representation in civil, criminal, administrative and misdemeanour proceedings.⁵⁵ In 2019, 5,539 citizens received free legal aid, over 90% of which was provided by the Agency's officials, while about 8% of beneficiaries were represented by a lawyer.⁵⁶

1.4. PROTECTION OF WHISTLE-BLOWERS

Corruption and other actions harmful to the public interest, including to public health, are more prevalent in organisations that lack a culture of transparency and oversight. A whistle-blower is a person who exposes information on illegal or unethical activities in a private or public organisation, and the rights of a whistle-blower who discloses wrongdoing, or acts and omissions harmful to the public interest, should be protected under "whistle-blowing" laws. Although usually an employee, the whistle-blower could also be a sub-contractor, supplier, unpaid trainee or volunteer. The protection of whistle-blowers is important also in the private sector, not least where they might uncover bribery to public officials or practices damaging to the environment or public health and safety.

International standards

Most whistle-blowers raise their concerns internally or with regulatory or law enforcement authorities rather than blowing the whistle in public. The protection of whistle-blowers, and an organisational culture that prioritises transparency and dialogue, serves to promote accountability, builds confidence in the integrity of government, and encourages the reporting of misconduct and corruption. Whistle-blower protection can motivate employees to report wrongdoing without fear of reprisals, and fosters transparency and trust within an organisation as well as outwards to citizens that ethics are upheld and misconduct detected and remedied.

The rights of whistle-blowers can be strengthened by stipulating clear processes and providing secure confidential channels for disclosure. Explicit remedies, including penalties, to redress reprisals against whistle-blowers should be introduced and consistently applied. Training of human resources staff in local government and government agencies needs to be complemented by awareness-raising among the public so that citizens and government employees alike understand the positive results from whistle-blowing in terms of sustained value for money, trust in public authorities, and quality of services.

The following international conventions and standards relate to the protection of whistle-blowers:

- Creating comprehensive and effective mechanisms to protect those who disseminate information in the public interest is a recommendation of both the United Nations and the Council of Europe,⁵⁷ as well as the Organization for Economic Co-operation and Development (OECD).⁵⁸ The **Congress of the Council of Europe's resolution and recommendation on *The protection of whistle-blowers Challenges and opportunities for local and regional government*** call on "local and regional authorities to establish and disseminate a whistleblowing policy, with appropriate internal and anonymous reporting channels and to ensure that independent designated institutions exist to oversee and process the disclosure of information".⁵⁹

- The **United Nations Convention against Corruption**⁶⁰ is the only legally binding universal anti-corruption instrument.

It is supported by the **Technical Guide to the Convention**.⁶¹

- The **EU Directive on the Protection of Persons who Report Breaches of Union Law** requires EU governments to meet minimum standards for establishing reporting channels and ensuring legal protection for whistle-blowers.⁶²

- The **Council of Europe's Criminal Law Convention on Corruption (ETS No. 173)**⁶³ aims to co-ordinate criminalisation of corrupt practices and to improve international co-operation in the prosecution of offences.

- The **Council of Europe's Civil Law Convention on Corruption (ETS No. 174)**⁶⁴ defines common international rules for effective remedies for persons affected by corruption.

Domestic context

In Kosovo*, the legal framework that regulates the protection of whistle-blowers is well defined and is broadly in line with international standards. In 2018, Kosovo* enacted a new law that regulates the protection of whistle-blowers. The Council of Europe has provided ongoing support for whistleblowing and the drafting of this new law. Indeed, the new Law on Protection of Whistle-blowers is a direct outcome of the Council of Europe's Project against Economic Crime (PECK II).⁶⁵ It expands the framework of whistle-blowers' protection to cover both the public and the private sector. It includes a three-tier approach, as envisaged by the Council of Europe standards, and offers clear procedures for the protection of whistle-blowers.⁶⁶

Although Kosovo*'s Law on the Protection of Whistle-blowers⁶⁷ is seen as the most advanced law in the region,⁶⁸ it lacks proper implementation. Officers have been appointed in over 175 public institutions to handle whistle-blower complaints, but whistle-blowing mechanisms and protection requirements need to be strengthened.⁶⁹ Regarding this issue, the Council of Europe held a meeting in October 2020 with representatives of civil society organisations (CSOs) active in the field of protecting whistle-blowers. The purpose of this meeting was to develop strategic partnerships with the CSO sector to support the establishment of a functioning whistle-blower mechanism in Kosovo*.⁷⁰

Currently, whistle-blowers lack effective protection and are exposed to retaliation. For example, Murat Mehmeti was the team leader of the Tax Investigations Unit within the Tax Administration of Kosovo*. One of his investigations showed that before 2012, over 300 Kosovo* businesses claimed tax deductions by filing fake invoices issued by shell companies. Mehmeti claimed that tax fraud had reached "an industrial scale," and had cost the Kosovo* budget millions of euros. He decided to report the issue to the anti-corruption platform Kallxo and reveal the scheme on the BIRN television program "Jeta ne Kosove." Mehmeti brought criminal charges against the companies at the Kosovo Special Prosecutor, which in turn started an investigation. Because of his reporting, Mehmeti was threatened and transferred from his job.⁷¹

Legislation

Since 2019, Kosovo* has regulated whistle-blowing with the Law on the Protection of Whistle-blowers.⁷² The purpose of this law is to enable the whistle-blowing of violations that might happen in the public and private sector, as well as to ensure the protection of those whistle-blowers.⁷³ This law defines whistle-blowers as a, "*person who reports or discloses information on a threat or damage to the public interest in the context of own employment relationship in the public or private sector*".⁷⁴ This law sets out the rules and procedures on whistle-blowing, the rights of whistle-blowers, and the obligations of public institutions and private entities regarding whistle-blowing.⁷⁵

Guidelines

The Law on the Protection of Whistle-blowers stipulates that the Government of Kosovo*, at the proposal of the Ministry of Justice, must issue a sub-normative act within six months from the date of entry into force of this law (which dates from 23 November 2018) to determine the procedure for receiving and handling whistle-blowing cases.⁷⁶ Despite this provision, the Government has not yet enacted any sub-normative act.

Article 17 also imposes obligations on the employer, namely:

- A public employer with more than 15 employees, and a private employer with more than 50 employees must appoint a responsible official, as well as define and publish internal procedures for receiving and handling whistle-blower complaints.
- The employer must take all necessary measures regarding whistleblowing, including the protection of relevant documentation and evidence from disappearance, concealment, alteration, falsification, and other actions aimed at its destruction or extinction.
- The employer must protect the whistle-blower from any detrimental acts and take all necessary measures to stop and remove any consequence of a detrimental act.

The European Union / Council of Europe Project against Economic Crime in Kosovo* (PECK II), published the *Handbook on the Protection of Whistle-blowers*, which provides practical guidance for both institutions and potential whistle-blowers on reporting violations and processing complaints.⁷⁷

Good practices

A.T.'s case, a former cashier at ProCredit Bank, is an example of how whistle-blowers are treated or might be treated if they report. In 2015, A.T. leaked information that raised suspicions that the Director of Education in the Municipality of Prizren illegally benefited from the Municipality's budget. Following the publication of this information, criminal proceedings were initiated against the Director for abuse of an official position and that among other activities he used this money to pay off his loan instalments and rent. The bank fired A.T. and filed a criminal report against A.T. for disclosing confidential information. A.T. was sentenced for leaking the bank's information and fined €5,000.⁷⁸

1.5. DISCLOSURE: DECLARATION OF ASSETS AND CONFLICTS OF INTEREST

Disclosure is the act of routinely publishing and updating particular types of information, sometimes required by law, such as the financial interests of public officials. It can support anti-corruption measures by requiring the routine publication of assets and interests that could represent a conflict of interest. A conflict of interest arises, or can be perceived to arise, when the private assets or interests of public officials can improperly influence policies and decisions taken during the exercise of their official duties.

International standards

Disclosure requirements can build citizens' trust in the transparency and integrity of local decision-making. They also assist public officials in having regularly updated information that prevents conflicts of interest arising among employees. Disclosure of financial assets also provides important information to help clarify if elected officials or civil servants do not have wealth that is disproportionate to their income, either protecting them from false accusations or serving as evidence in the case of suspected illicit enrichment.

Service delivery at the local government level, whether it be construction or tendering of waste-management services, is often subject to conflicts of interest due to the proximity of local entrepreneurs to government officials.

Confidence of the public and business that competition for local government tenders, for instance, is open to all without discrimination will be much greater if both elected officials and civil servants involved in design of the tenders and assessment of tender submissions have completed declarations of assets and interests (including of close family members).

It is important that the institutions responsible for gathering and monitoring declarations are provided with protection against political or other interference in their work, for instance through oversight by independent ethics committees. Likewise, local government officials should be provided with clear guidance on what to declare, and also on prevailing anti-corruption legislation. A well-implemented and regularly updated and monitored assets declaration system can complement the work of an effective prosecution service.

Disclosure is an important element in the conventions and standards against corruption listed elsewhere in this handbook. Of particular relevance are:

- The **Committee of Ministers of the Council of Europe's Recommendation on Codes of Conduct for Public Officials**⁷⁹ and the **European Code of Conduct for all Persons Involved in Local and Regional Governance**⁸⁰ require private interests to be declared, made public and monitored.

- The **Congress of the Council of Europe’s Resolution and Recommendation on Conflicts of interest at local and regional level**⁸¹ call on local and regional authorities to promote the proactive disclosure of declarations of interest prior to public request and to ensure that disclosure policies are accompanied by appropriate measures for resolving conflicts of interest.
- The **OECD’s Managing Conflict of Interest in Public Service: Guidelines and Country Experiences**⁸² provides practical instruments for modernising conflict-of-interest policies.
- The **OECD’s Asset Declarations for Public Officials: A Tool to Prevent Corruption**⁸³ identifies the key elements of asset declaration systems.
- **Consultation, Participation & Disclosure of Information**, International Bank for Reconstruction and Development / The World Bank.⁸⁴

Domestic context

Declaration of assets, property and gifts is a method of fighting corruption. It is a vital tool to ensure transparency and to increase oversight of the origin of property. Since January 2013, non-declaration of assets has been recognized as a criminal offense. Proper prosecution of the non-declaration of assets is extremely important in fighting corruption in Kosovo*.⁸⁵ In 2010, Kosovo* enacted a law that regulated this issue, and since then Kosovo* has been working on creating a culture of disclosure. In 2019, almost 99% of public officials submitted their annual declarations of assets on time. Despite this high percentage, 62 cases were investigated for false declarations and another 60 cases for irregularities detected in asset declarations.⁸⁶

Legislation

The Law on the Declaration, Origin and Control of Property of Senior Public Officials and on the Declaration, Origin and Control of Gifts of All Public Officials regulates the obligation to declare, and the procedure for the declaration of assets and gifts of public officials.⁸⁷ This law obliges public officials to declare their assets, revenues, and gifts, including their origins, to the Anti-Corruption Agency. This declaration can be made upon taking office, as a regular annual declaration, at the request of the Anti-Corruption Agency and after termination or dismissal from office.⁸⁸ All declarations are sent to the Anti-Corruption Agency. The Law on Declaration and the Law on the Anti-Corruption Agency assigns this agency as the sole competent authority for the maintenance, registration, and administration of these declarations.

Article 17 provides sanctions for anyone who violates the obligations set out in this law and does not declare their assets and property within the legal deadline. If these violations are not criminal offences, then public officials commit a misdemeanour and are sanctioned with a fine depending on the violation committed. In addition to fines, other protective measures can be imposed, such as a ban on exercising public office for up to 1 year.⁸⁹ In cases where violations of provisions constitute a criminal offence, then

the Anti-Corruption Agency files a criminal report. In situations when non-declaration constitutes a criminal offence, Article 430 of the Criminal Code of Kosovo* is applicable. This article also sanctions false declarations as a criminal offence. Besides the fine, imprisonment and confiscation of assets will be imposed as punishments.

Guidelines

Currently there is no specific guideline on the declaration of assets and gifts. However, the Law itself provides instructions and explanations on what should be declared and when. The Anti-Corruption Agency provides declaration forms which are accessible online for anyone who is required to complete a declaration (www.akk-ks.org/deklarimi_i_pasuris/). But although the asset declaration covers all substantial types of income and assets, and declaration forms allow for year-on-year comparisons of officials' finances, the Anti-Corruption Agency lacks the manpower, expertise, technical capacity, and legal authority for meaningful oversight.

Good practices

Public officials' declarations of assets and gifts are submitted to the Anti-Corruption Agency. This agency registers and maintains those declarations. They are published on their official website (www.akk-ks.org/deklarimi_i_pasuris/) and everyone has access to them, which increases transparency and accountability. However, there are cases when public officials do not declare their assets on time, or when they fail to honestly declare their property and gifts; in those situations, the Anti-Corruption Agency initiates a procedure for minor offences or files a criminal report. For example, in 2018, F.R., a member of the Municipal Assembly of Podujeva, did not declare assets and property for the period from 01-31 December 2017. The Basic Prosecution in Pristina filed charges against F.R. for committing the criminal offense of, "Failure to report or false reporting of assets, income, gifts, other material benefits or financial obligation". F.R. pleaded guilty to the criminal offense and the Basic Court in Pristina sentenced F.R. to imprisonment for three months and a fine of €250.⁹⁰

TRANSPARENCY

Introduction

The principle of transparency is applied to ensure that those affected by administrative decisions have comprehensive information about the results and implications of policies and about the process of decision-making. The public availability of information about government policies, programmes and activities enables citizens and local communities to gain a clear understanding of government actions, make informed choices, and participate in local decision-making processes. It also enables elected officials, those in government and those in opposition, to take informed decisions and to exercise effective scrutiny and hold the executive to account for their actions. In addition, access to information is essential for journalists and civil society representatives to effectively perform their watchdog functions and hold the government accountable.

Local government should make data available to the public in an accessible format and do so in a timely manner. This enables citizens and stakeholders to participate in decision-making processes from an informed perspective, and to monitor and evaluate government implementation of policies and decisions in order to hold public officials accountable for their actions. Transparency is achieved through a range of mechanisms, building on the right of citizens to access information. These include the disclosure of the financial assets and interests of senior public officials and elected office-holders, and the publication of information in accessible, intersearchable open-data formats.

According to the definition of the Open Knowledge Foundation, “open data is data that can be freely used, re-used and redistributed by anyone – subject only, at most, to the requirement to attribute and share alike.”⁹¹ Therefore, the concept of open data goes beyond the availability of public information and focuses on its use, out of which additional economic, social and political benefits are generated.⁹² To make it happen, the data published should be complete, permanent, non-exclusive, non-discriminatory, and non-proprietary, as well as provided by primary sources, in a timely manner and in machine-readable formats.⁹³

Limited access to public information negatively affects public trust towards public institutions, increases potential corruption risks, and restricts opportunities for various stakeholders to monitor government performance. It also inhibits citizens and stakeholders’ efforts to participate in policymaking and to design evidence-based policy recommendations for positive changes. The practice shows that access to information legislation and proper enforcement measures are an essential part of the enabling environment for citizens’ access to information.

Public procurement is considered to be one of the key areas susceptible to corruption. It accounts for around 12 percent of global gross domestic product,⁹⁴ and in most

high-income economies the purchase of goods and services accounts for one-third of total public spending. In short, public procurement is a significant area for potential corruption, collusion, and other illegal practices. To avoid public procurement-related corruption risks, electronic means and platforms operating through open data solutions are increasingly available and used by government authorities to reform state procurement tendering procedures. Combined with open contracting (where bids and contracts are made public), the increase in fully accessible, well-publicised procurement processes opens tendering to more bidders and reduces the scope for anti-competitive practices and bribery.

Another important component of transparency principles is the openness of the financing of political parties and election campaigns, as it is important for the electorate to know the sources of financing, and how the money is spent, in order to make informed decisions and to understand which financial, political or other interests are supporting particular candidates or parties. The transparency of political donations is a preventive measure against the use of money emanating from illicit and criminal sources in politics and elections.

Finally, to ensure that state resources are used in an economical, efficient and effective way, the independence and institutional capacity of the body responsible for external audit should be secured. Members of the wider public should have the possibility to familiarise themselves with reports and major recommendations issued by the auditor. External audit is important to identify major challenges in the public sector, improve transparency and performance of public institutions, and design evidence-based policies.

General domestic context

From the outset, Kosovo* has faced the challenge of fighting corruption and increasing transparency. Unfortunately, these two challenges have negatively affected efforts to build well-functioning institutions and political stability. Transparency in the public sector is essential to public trust in governing institutions and increasing accountability.

In recent years, Kosovo* has improved institutional transparency. These improvements have been achieved in part by enacting new laws and amending current laws to comply with European legislation and international standards. For example, in 2019, Kosovo* adopted a new law on Access to Public Documents that regulates the right to access to public information and open data.

Kosovo* has also achieved more transparency through open data and e-government programmes. Every public institution, and agency, and every municipality, has their own website where they publish information about their organisation, functions, and activities. It has become easier to access information and data through those websites and platforms.

The Assembly of Kosovo* provides a good example of the progress achieved regarding transparency. The Regional Index of Openness developed by Open Data Kosovo analyses the degree of openness of Western Balkan institutions based on transparency, accessibility, integrity, and awareness. In the index, the Assembly of Kosovo* was assessed as increasingly open and transparent between 2016 and 2019. In 2016, the Assembly scored 60% in indicators of openness, and although this percentage dropped in 2017 to 49%, when it was not evaluated as satisfactory, the trend improved subsequently, rising to 73% in 2018, and 80.5% in 2019. On indicators of accessibility, the Assembly scored 68% in 2019, which was 13% higher than the previous year; it scored 88% on indicators of transparency; 75% on awareness, and 96% on integrity.⁹⁵

2.1. ACCESS TO INFORMATION

Access to information is the legal right for citizens to request and receive information from public authorities. It is often enacted by Freedom of Information legislation. As an integral part of the right of freedom of expression, access to information is a human right⁹⁶ and everyone should have the right to access information from public bodies and public agencies in accordance with the principle of maximum disclosure subject to only a narrow, clearly defined, set of exceptions proportionate to the interest that justifies them (e.g. grounds of security or data privacy).

International standards

Access to information supports accountability, oversight of government, and monitoring of corruption. It is also critical to informed citizen participation in decision-making, and is therefore fundamental for the effective functioning of democracies. Free access to information empowers civil society to monitor and scrutinise the actions of local authorities, it serves to prevent abuse of power by public officials and provides data for informed public debate.

The proactive publication of the maximum amount of information in the most accessible formats serves to reduce the need for citizens and stakeholders to file individual requests for the release of information. As well as providing the maximum amount of information electronically, local authorities should prioritise the designation of Freedom of Information officers in their municipalities. Such officers should prepare and publish detailed recommendations for both citizens and local authorities, and provide clear guidance on the appeals process in the event that a request for information is not granted. It is also important to analyse information requests from citizens and stakeholder groups, in particular trends and duplication, so that the authorities can subsequently release such information on a proactive basis.

Access to information is a fundamental component of a number of the conventions and standards against corruption listed elsewhere in this handbook. It also underpins a number of key UN human rights documents. The following specifically relate to Access to Information:

- The **Council of Europe’s Convention on Access to Official Documents (CETS No. 205)**⁹⁷ affirms an enforceable right to information.
- The **Congress of the Council of Europe’s Resolution and Recommendation on Transparency and open government**⁹⁸ call upon local and regional authorities to increase the use of open data and records management by their administrations, and to publish these in comprehensive, accessible and reusable ways.
- The **Aarhus Convention**⁹⁹ grants rights, including access to information, in decisions concerning the environment.
- The **OECD Recommendation of the Council on Open Government**¹⁰⁰ identifies on-demand provision of information and proactive measures by the government to disseminate information as an initial level of citizen participation.
- **Resolution 59 of the UN General Assembly** adopted in 1946, states that “freedom of information is a fundamental human right”; and Article 19 of the **Universal Declaration of Human Rights** (1948) states that the fundamental right of freedom of expression encompasses the freedom to “to seek, receive and impart information and ideas through any media and regardless of frontiers”.¹⁰¹
- **Directive 2003/98/EC on the re-use of public sector information, nowadays called the Open Data Directive**,¹⁰² previously known as the PSI Directive, encourages EU member states to make as much public sector information available for re-use as possible.

Domestic context

Access to public information increases transparency and accountability, it enables public participation in decision-making processes and improves trust-building between institutions and citizens. In Kosovo*, access to information is a constitutional right guaranteed by the Constitution, which establishes that every person is entitled to the right to access public information and that documents held by public institutions and authorities are public.¹⁰³ The Law on Access to Public Documents regulates this right. This law came into force in 2019 and includes changes in comparison with the old law,¹⁰⁴ such as the introduction of the principle of proactive disclosure of data and the establishment of the Agency for Information and Privacy. The law provides two methods of accessing public documents: by requiring institutions to proactively publish data, and through direct requests.¹⁰⁵ However, this right is not always respected in practice. Citizens, civil society, and the media encounter difficulties in securing public information, data, and documents. The problem lies in the failure to publish public documents and in the refusal to allow access to these documents when requested.

Balkan Investigative Reporting Network has published a report on access to public information in the Western Balkans with the aim of promoting the transparency and accountability of public institutions. During the reporting period, January 2017 to June 2019, BIRN submitted 854 official requests to institutions requesting access to public

documents. Out of the total requests sent, 337 were sent to different institutions such as municipalities, departments, Kosovo Telecom, the Prosecutorial Council, the Judicial Council, the Office of the President, the Office of the Prime Minister and the Public Procurement Review Body. Of these requests, 188 were approved, 27 received partial responses, and 122 were rejected.¹⁰⁶

Legislation

In Kosovo*, the right to access to information is regulated by the Law on Access to Public Documents,¹⁰⁷ which guarantees the right to access public documents to every person. This right covers all public documents that are produced, received, maintained, or controlled by public institutions. Public documents are defined as, *“any act, fact or information, stored in electronic form or on sound, in print, in visual or audio-visual recordings produced or maintained by a public institution”*.¹⁰⁸ Access to public documents is done through proactive publication of public documents by public institutions, which should be done electronically on the official website of each public institution. The law also allows for publications to be printed, broadcast, or published in any other form that enables access to the largest possible number of members of the public. The law requires that each public institution create an official e-mail address for public communication and nominates one person to manage and control access to public documents.

Article 10 of this law stipulates that everyone has the right to access public documents upon request. Within 7 days, the institution should issue a decision to grant access to the document requested. If it does not issue a decision, then its silence is considered a negative response.¹⁰⁹ If they issue a decision refusing a request, this restriction of the right of access to the public document should be exercised in accordance with the principle of proportionality.¹¹⁰ Before refusing someone’s request, the public institution should do a “Damage and Public Interest Test” to determine if the damage caused to the protected interest outweighs the public interest in accessing that public document.¹¹¹

If the public institution refuses the request to access a public document, the applicant has the right to use legal remedies. The law regulates that the applicant can file a complaint within the Information and Privacy Agency.¹¹² Procedures before the Agency and the way it manages complaints are regulated by Article 20 of the Law on Access to Public Documents. If the Agency issues a decision that refuses the request, the applicant can file a lawsuit at the Court. Finally, the applicant can file a complaint to the Ombudsperson.¹¹³

Guidelines

Currently, there is no general and unified guideline on access to information. However, based on the Law on Access to Public Documents, the Ministry of Local Government has issued Administrative Guidance on Transparency in Municipalities.¹¹⁴ This administrative guidance aims to increase transparency in municipalities and municipal bodies by publishing normative acts and documents that are in the public interest. It also aims to strengthen citizen participation in decision-making. Besides publishing public acts

and documents, meetings of the Municipal Assembly and Committee are required to be open to the public and media and prior to the adoption of acts, municipal assemblies must hold public consultations and meetings with the public.

Good practices

The Municipality of Pristina has developed a portal that gives the public access to its activity and information. The portal informs citizens on their rights of access to public information by publishing the Law on Access to Public Information. There is a form, prepared by the municipality, to request access to public information and it has the names and emails of contact persons for access to public documents. The municipality publishes annual reports on requests for access to public documents.¹¹⁵ According to these reports, in 2020 there were 30 requests for public documents and the municipality granted access to all of these requests.¹¹⁶

2.2. OPEN DATA

Open data is the publication of data and information in a format that may be freely used, modified and shared. The OECD states that open data is “a set of policies that promote transparency, accountability and value creation by making government data available to all”. By making data generated through the activities of public bodies available, government becomes more transparent and accountable to citizens. It also supports business growth and the development of services centred on citizens, and provides important data for research and innovation by public bodies, the private sector, and civic stakeholders.

International standards

The promotion of open data through one-stop portals can further increase the scope for interoperability of datasets in terms of search and analysis. The results can improve the efficiency and reach of service delivery and reduce corruption. Awareness-raising among stakeholder groups, the media, businesses, and the wider public can result in effective co-operation among different stakeholders and improvements in solutions on transportation, recreation facilities, parking zones, health services, and much more.

It is important to adopt consistent open data standards for all open data to ensure maximum interoperability and searchability of data. Local authorities should also ensure that qualified staff manage the municipality’s open data publication, and train relevant employees in open data standards.

Open data is a relatively new phenomenon without officially endorsed standards. However, a number of useful guidelines exist:

- The **Congress of the Council of Europe’s Resolution and Recommendation on Open data for better public services**¹¹⁷ explain its importance for improving local democracy.

- The **Congress of the Council of Europe’s Resolution and Recommendation on Transparency and open government**¹¹⁸ call upon local and regional authorities to increase the use of open data and records management by their administrations.
- The **United Nations Guidelines on Open Government Data for Citizen Engagement**¹¹⁹ introduce policy guidelines and good practice recommendations.
- This **World Bank Toolkit**¹²⁰ starts from the basics, through to planning and implement, as well as avoiding common pitfalls.
- The **Five Star Open Data Deployment Scheme**¹²¹ provides five steps to fully opening data, explaining the costs and benefits of each.
- The **International Open Data Charter**¹²² sets out six principles for open, timely and interoperable government data.
- The **OECD Recommendation of the Council on Open Government**¹²³ identifies on-demand provision of information and proactive measures by the government to disseminate information as an initial level of citizen participation.

Domestic context

Open data in Kosovo* is generated by all public institutions, allowing citizens to have oversight of the activities of public bodies and institutions. However, publication of open data is more common in central government, than local government. Kosovo* is ranked 58 (out of 94) in the Global Open Data Index.¹²⁴ Kosovo* is ranked 68th in the 2017 Open Data Inventory, although an improvement on its 2016 rank of 82nd.

Civil society organisations like Open Data Kosovo, founded in 2014, have taken the initiative in publishing or encouraging publication of data in Kosovo*. Most of the Kosovo* government’s efforts to publish open data has been driven by the leadership and expertise of the Kosovo Chamber of Commerce, including data on procurement, air quality, water surface quality, election monitoring, asset declaration, and other types of data.¹²⁵

All the laws, international agreements, by-laws, decisions of the Constitutional Court and judicial institutions, presidential decrees, and municipal acts are published on the Official Gazette of the Republic of Kosovo (gzk.rks-gov.net) and are open for access to everyone.

Legislation

Legal regulation of open data is included in the Law on Access to Public Documents.¹²⁶ Article 1.4 defines open data as, *“the data produced, received, maintained or controlled by public institutions, which can be freely used, modified and distributed by any person, provided that they remain open and attributable to the source”*. Article 8 states that open data should be published at the initiative of public institutions themselves without

need for a request submitted by the interested parties. The law requires open data to be published in a central open data portal, which is developed and managed by the ministry responsible for public administration. Open data should be published in such a way that it allows all interested parties to use it freely. The law requires that open data should be published in open format, which allows interested parties to read and modify it without technological obstacles.¹²⁷

Guidelines

According to the Law on Access to Public Documents, the Government of Kosovo* has adopted the Regulation on the Government Public Communication Service.¹²⁸ The purpose of this regulation is to set out the functioning of a coherent and co-ordinated system for government public communication. According to this regulation, the Public Communication Office within the Office of the Prime Minister and in each Ministry receives and conducts the initial handling of requests for access to open data.¹²⁹

Good practices

Open Data Kosovo is a non-profit organisation that was founded in 2014 to promote the openness and transparency of the work of the public institution through technology. Open Data Kosovo promotes the idea that governance data should be freely available for everyone to use and republish as they wish, without restrictions of copyright, patents, or other mechanisms of control. Open Data Kosovo runs highly efficient and innovative projects and each of these projects offers digital solutions. Open Data Kosovo aims to convey the importance of information technology in increasing transparency and solving various problems within society.¹³⁰

2.3. PUBLIC PROCUREMENT

Public procurement refers to the process by which public authorities, including local authorities, purchase work, goods or services. As public procurement is an essential part of public service provision for local and regional authorities, efficient, cost-effective procurement is key to good governance.

International standards

As procurement involves a large proportion of public expenditure and the transfer of public resources to the private sector or non-profit organisations, it is particularly vulnerable to corruption. Public authorities should deploy new technologies to increase transparency over public procurement and encourage new economic actors to enter bidding processes in the confidence that free and fair competition is applied. By posting all tenders on a common online platform, the occurrence of unpublished tenders and direct awards will be minimised. Use of open contracting and open bidding solutions also allows greater scrutiny of the process, further reducing the scope for corrupt

practices. Open contracting systems include a preventive effect because officials will refrain from manipulating the contracting process if they know that comprehensive disclosure of the bidding and contracting processes will be revealed.

Local authorities should ensure that there is a comprehensive system in place to monitor compliance with public procurement legislation, and that there is a responsive mechanism for reviewing appeals and complaints, including prompt and comprehensive replies. Authorities should also monitor contract implementation, in particular time extensions and cost increases, to ensure that the benefits in terms of value for money and quality of delivery are not compromised during contract implementation.

The following international conventions and standards relate to public procurement:

- The **Congress of the Council of Europe’s Resolution and Recommendation on Making public procurement transparent at local and regional levels**¹³¹ and the **OECD Checklist for Enhancing Integrity in Public Procurement**¹³² provide guidance for enhancing transparency and promoting integrity in procurement.
- The **OECD Recommendation of the Council on Public Procurement**¹³³ promotes a strategic and holistic use of public procurement systems across all levels of government and state-owned enterprises. The online **Public Procurement Toolbox**¹³⁴ provides policy tools, specific country examples as well as indicators to measure any public procurement system.
- The **WTO Agreement on Government Procurement**¹³⁵ establishes rules requiring that open, fair, and transparent conditions of competition be ensured in government procurement.
- The **EU Directive on Public Procurement**¹³⁶ ensures the best value for money for public purchases and guarantees the respect of the EU’s principles of transparency and competition.
- The **UNCITRAL Model Law on Public Procurement**¹³⁷ is a legal template available to governments seeking to introduce or reform public procurement legislation for their internal market.
- The **European Bank for Reconstruction and Development (ERBD) Guide to Electronic Procurement Reform**¹³⁸ provides information on and assistance with designing and implementing domestic eProcurement reforms.
- **Open Contracting Data Standard (OCDS)**,¹³⁹ providing open data standard for publication of structured information on all stages of a contracting process: from planning to implementation.
- **UNODC’s (United Nations Office on Drugs and Crime) Guidebook on anti-corruption in public procurement and the management of public finances**,¹⁴⁰ which provides good practices in ensuring compliance with article 9 of the United Nations Convention against Corruption.

■ **World Bank's Annual Reports**¹⁴¹ – Benchmarking Public Procurement, which have been assessing public procurement regulatory systems in different countries.

Domestic context

Public procurement has been for a long time one of the sectors most criticised by civil society and the media in Kosovo* due to various corrupt affairs through public tenders. However, after the creation of the e-procurement system, Kosovo* has taken a step forward in increasing transparency and accountability. Lack of control over the quality of works or material goods, services and everything else that the public authorities procure through public tenders remains a concern. But Kosovo* has been trying to amend the Law on Public Procurement¹⁴² to improve the transparency and accountability of public officials, contracting authorities and the contractors.

At the local level, procurement is conducted by municipal procurement offices while, at the central level, it is conducted by the Central Procurement Authority.¹⁴³ The competencies of this Authority are to develop joint procurement for Contracting Authorities, to perform procurement activities on their behalf, and to assist in carrying out procurement activities. The Public Procurement Regulatory Commission (PPRC)¹⁴⁴ is an independent institution established by law, with the mission to develop, operate and oversee the public procurement system in Kosovo*. Its mission also includes the operation and oversight of the electronic public procurement system in Kosovo* (EProcurement).

Another authority with an important role in the public procurement system is the Procurement Review Body.¹⁴⁵ This body is established by decision of the Assembly of Kosovo* in line with the Law on Public Procurement. The competencies of this body are the review of public procurement activities that are carried out by the Contracting Authorities after a party has filed a complaint.

Legislation

The Law on Public Procurement, which regulates this specific field, has been amended several times in a short period of time. It has been amended and supplemented by Law No. 04/L237, Law No. 05/L068 and Law No. 05/L092.¹⁴⁶ Article 2 of the law clearly obliges all contracting authorities to carry out all procurement activities based on this law and subsequent amendments. Chapter II of the law sets out the general principles on which Public Procurement should be carried out in Kosovo*, which are: economy and efficiency, equality in treatment and non-discrimination.

Guidelines

The website of the Public Procurement Regulatory Commission (e-prokurimi.rks-gov.net) assists contracting authorities and economic operators to conduct public procurement.¹⁴⁷ Contracting authorities have a detailed manual,¹⁴⁸ a video manual,¹⁴⁹ and a contract management manual and performance evaluation¹⁵⁰ which includes

an explanatory video. Economic operators also have a manual,¹⁵¹ which explains in a detailed way the registration process, the preparation of bids, advanced search, etc.

Good practices

Kosovo* has established the Public Procurement Regulatory Commission (PPRC) as an independent regulatory agency as per the Law on Public Procurement.¹⁵² The PPRC is responsible for the development, operation and overall oversight of the public procurement system in Kosovo* and other responsibilities stipulated by this law.¹⁵³ The PPRC uses an e-procurement platform (e-prokurimi.rks-gov.net) to publish public contracts, which can also be published by the contracting authorities themselves.

E-procurement¹⁵⁴ allows all public institutions to conduct procurement activities online. Businesses can apply and receive information on public contracts. Such transparency protects the acceptance of bids and accompanying materials required for the tender, from possible manipulation. In 2019, there were 12,461 public contracts registered on the platform, around 7,650 economic operators and 20,500 users.¹⁵⁵

Citizens have access to this portal and can monitor the activities of public institutions. This platform has played a key role during the COVID-19 pandemic as it allowed public institutions to continue functioning.

2.4. EXTERNAL AUDIT

External audit is the regular, independent scrutiny of accounts and financial information to ensure that public money is used appropriately and effectively. External audits are undertaken in accordance with relevant laws and rules to support those external to government to hold it to account. As well as audit of the financial statements of local budget institutions, external audit can look beyond finances to assessing the performance of government against its own objectives, or in providing programmes and services.

International standards

- The **International Public Sector Accounting Standards**¹⁵⁶ focus on the accounting, auditing, and financial reporting needs of central, regional, and local governments, related governmental agencies, and the constituencies they serve.
- The **International Standards of Supreme Audit Institutions**¹⁵⁷ website contains a complete collection of professional standards and best practice guidelines for public sector auditors.

- A number of the conventions and standards for combatting corruption include provisions and clauses relating to external audit.

Domestic context

The Auditor General of Kosovo* is the highest institution of economic and financial control, and the National Audit Office (NAO) is an independent institution that supports the Auditor General in performing their duties. Auditing activities play an important role in ensuring that the interests of taxpayers and other stakeholders are maintained while enhancing public accountability.

The Auditor General reports to the Assembly of Kosovo* and is entitled to oversight of all financial and administrative processes, as well as other activities, programmes and projects managed by public institutions, including the process and proceeds from the sale of assets, privatisation, and concessions. The reports compiled by the National Audit Office promote accountability and provide a solid basis to hold the managers of each budget organisation into account, thus increasing public trust in how public funds are spent.

The National Audit Office (NAO) was established by the United Nations Interim Administration Mission in Kosovo (UNMIK). One of the most important institutions in Kosovo*, for more than 10 years the National Audit Office has been chaired by an international auditor, who performed their mandate with the support of local personnel.

In 2019, the NAO continued to increase the audit portfolio, by auditing more publicly owned enterprises and budget organisations. In total, the NAO completed 119 Regularity audits, including the Annual Financial Report of the Kosovo* Budget of 2019, 95 budget organisations (27 central level institutions, 30 independent institutions and 38 local level institutions), 14 publicly owned enterprises, 9 audits of projects (funded by donors), and 13 Performance Audits.

Full membership in the International Organisation of Supreme Audit Institutions (INTOSAI) is considered one of the greatest achievements in the history of public sector external audit in Kosovo*. This membership enables the exchange of knowledge and experiences with Supreme Audit Institutions of the 194 member states supporting the development of the institutional capacity to implement duties and responsibilities with high professional integrity.

Legislation

The institution of the Auditor General was integrated into the Constitution of Kosovo* in 2008 and, shortly after, the Law on the Establishment of the Office of the Auditor General of Kosovo* and the Audit Office of Kosovo* was adopted.¹⁵⁸

In June 2016, the Assembly of Kosovo* promulgated the Law on the Auditor General and the National Audit Office, which replaced the previous law.¹⁵⁹ It marked the completion of the legal framework on auditing and full ownership of these local institutions.

Guidelines

An audit is a qualified examination of legal and financial compliance or performance, carried out to satisfy the requirements of management (internal audit), or an external audit entity, or any other independent auditor, to meet statutory obligations (external audit). In addition to the Law on the Auditor General and the National Audit Office, the Office of the Auditor General drafted the Audit Quality Management Guide¹⁶⁰ and Performance Audit Guide.¹⁶¹

Good practices

Based on the NAO Annual Report 2019¹⁶² the Office completed Regularity Audits in 38 municipalities and provided 488 recommendations for local level institutions. The declining trend of the number of recommendations over the last 3 years (600 in 2017 and 585 in the following year) is an indication that the municipal authorities are taking NAO recommendations more seriously and are making efforts to address them. The same report shows that over half of the recommendations given in 2018 were completely or partially implemented by the municipal authorities (217 recommendations are complete and 78 partially implemented).

2.5. FINANCING OF POLITICAL PARTIES

Financing of political parties and election campaigns is a necessary component of the democratic process. It enables the expression of political support and competition in elections.

Principles governing the financing of political parties should include fairness in the distribution of state funding, strict rules concerning the transparency and limits on the size of private donations, ceilings on campaign expenditure, full transparency of funding and expenditure, independent election commissions, independent audit of campaign finance, and the consistent imposition of proportionate sanctions on candidates and political parties that violate the rules (such as fines or a reduction in state contributions to future election campaigns).

International standards

Clear rules and transparent reporting of political campaign financing and expenditures are essential to sustain trust in political candidates, political parties, and government institutions. An imbalance in funding of political parties may result in an unfair advantage, handing undue influence to powerful narrow interests, running the risk that policies will be “captured” by narrow private interests, serving their goals over the public interest.¹⁶³

Mechanisms and rules on limits on party political financing, and on state financing of political campaigns, should be designed in a way that provides a level playing field for the different political candidates and parties competing in elections and serves to preserve the political forces’ independence from financial supporters.

The following international conventions and standards relate to the financing of political parties:

- The **Congress Resolution 402 (2016) on “The misuse of administrative resources during electoral processes”**,¹⁶⁴
- The **Guidelines and report on the financing of political parties** (Council of Europe, Venice Commission, 2001),¹⁶⁵
- The **Compilation of Venice Commission Opinions and Reports concerning Political Parties** (Council of Europe, Venice Commission, 2013),¹⁶⁶
- The **Recommendation Rec(2003)4 of the Committee of Ministers to member states on common rules against corruption in the funding of political parties and electoral campaigns**.¹⁶⁷

Domestic context

The financing of political parties is one of the most topical issues in Kosovo*. Despite the legal framework, the financing of political parties and their campaigns lack transparency, and the relevant legislation is weakly implemented. Civil society and the international community have criticised political parties in Kosovo* for a lack of transparency when it comes to reporting revenues and expenditures.¹⁶⁸

The Law on Financing of Political Parties¹⁶⁹ was amended and completed in 2012 and in 2013 to increase the transparency and accountability of political parties. One of the changes adopted concerns the financial control of political parties. The amended law stipulates that the Assembly of Kosovo* audits annual financial reports and campaign financial statement reports of political parties before they are published by the Central Election Commission. To implement this legal obligation, the Assembly of Kosovo* together with the Committee for the Oversight of Public Finance, selects at least 10 licensed auditors to audit these reports, in a public competition.¹⁷⁰ However, this legal amendment did not improve transparency because the Assembly failed to select the external auditors. Consequently, the Central Election Commission did not publish the reports of the political parties for years.

As a result, civil society, and international organisations in Kosovo* recommended that the Law on Financing of Political Parties be amended again. In June 2020, 100 civil society organisations protested against the draft law on financing of political entities, claiming that it violated the Constitution and international party funding regulations.¹⁷¹ Since 2017, the Agenda for European Reform has emphasised the need to amend the Law on Financing of Political Entities. The European Commission report on Kosovo* also emphasises the need to further strengthen the electoral process and the adoption and implementation of laws to address high-level corruption in accordance with the opinions of the European Commission for Democracy through Law (Venice Commission).¹⁷²

In 2018, the Government of Kosovo* established a working group to amend the Law on Financing of Political Parties and the Law on General Elections.¹⁷³ After the working group drafted a new law on the financing of political parties, it was sent to the Venice Commission for their opinion.¹⁷⁴ Following receipt of the opinion of the Venice Commission, the Government proceeded with the draft for approval in the Assembly of Kosovo* after making some changes regarding the allocations to the democratisation fund.

In the Assembly, the draft law was reviewed by the Committee on Budget and Finance, which established a working group for the draft. Civil society, international organisations and members of the Assembly were excluded from this working group, making it closed to the public. This working group made major changes to the proposed draft – many of them contrary to the opinion of the Venice Commission. Later, in 2019, civil society requested the withdrawal of the draft law, on the basis that the interventions made by the working group reduced the transparency and accountability of political parties to the public.

Eventually, the Government withdrew the law from the Assembly. In July 2020, the new Government reactivated the drafting of the law, requiring in advance the opinion of civil society. In September 2020, the Government sent the draft law to the Assembly, where it was expected to be reviewed and voted on by the end of 2020; however, due to the dissolution of the Assembly, it is expected that the draft law will be voted on in the following legislature.

Legislation

Currently, the financing of political parties is regulated by the Law on Financing of Political Parties. This law sets out the manner and condition of funding political parties in Kosovo*, and regulates the administration, monitoring and reporting on the spending of the incomes of political parties to increase transparency.

According to this law, the financial and material sources of political parties are membership fees, donations, financing from the budget of Kosovo*, assets and income from the activities of the political entity, such as publications, publications, sale of advertising materials, etc.¹⁷⁵ Political parties are requested to submit an annual financial report to the Central Election Commission. This financial report includes balance sheets, profit and loss statements and a statement showing every payment made to another person during the reporting period.

Public financing of political parties is done through the Budget of Kosovo*, from the Fund for Support of Political Entities.¹⁷⁶ As per the Law on Financing of Political Parties, the Assembly of Kosovo* may allocate up to 0.05% of the Budget for financing of central and local election campaigns.¹⁷⁷

The law also provides for penalties in cases where political parties violate the provisions and obligations set forth therein. To increase transparency, the amending laws increased the fines for violating the provisions of the law.¹⁷⁸ In cases when political parties do not

pay obligations such as fines imposed by the Central Election Commission, tax liabilities, or liabilities arising from the execution of final court decisions, then that amount is deducted from the budget allocated to the political party by the Fund for the Support of Political Entities.¹⁷⁹

Guidelines

The Central Election Commission enacted the Electoral Rule for Financing of Political Parties and Sanctions¹⁸⁰ and the Election Rule for Limiting Campaign Expenses and Financial Declaration.¹⁸¹ The former regulates in detail the procedures for the financing, administration, supervision, and transparency of all political parties. It also regulates the reporting of political parties. Furthermore, it sets out the penalties that the Central Election Commission can impose when the Law on Financing Political Parties and the Law on General Elections are violated in any form.

According to the Election Rule for Limiting Campaign Expenses and Financial Declaration, the Central Election Commission determines the maximum amount of expenses in a political campaign and no political party can exceed them. Every political entity is obliged to submit a report on the financial declaration of the campaign. This rule regulates in detail what this report must include, and it sets out sanctions that should be imposed in cases where provisions of this rule are violated.

Good practices

The Central Election Commission publishes the annual financial reports and financial declarations of political parties. Usually, the Central Election Commission publishes the annual financial reports after the audit is conducted, which takes time. In 2020, unlike prior years, the Central Election Commission published unaudited annual financial reports of each political party before the elections were held. The fact that those reports were published before election day was considered an action that increased transparency regarding the work and spending of political parties.¹⁸²

CITIZEN PARTICIPATION

Introduction

“The right of citizens to participate in the conduct of public affairs”, including at the local level, is explicit in the European Charter of Local Self-Government,¹⁸³ the Additional Protocol to which states that “the right to participate in the affairs of a local authority denotes the right to seek to determine or to influence the exercise of a local authority’s powers and responsibilities”.¹⁸⁴ When local authorities consult with, and engage, citizens on the design of, and evaluation of, public services, they pave the way for better policy outcomes and also for greater mutual trust between citizens and government.

Citizen participation involves outreach to a range of local stakeholders, such as civil society activists, journalists, members of academia, business representatives, local communities, and active citizens. It is important that it is inclusive, taking into consideration the views of the wider public, expert stakeholders, and representative groups, including the vulnerable and marginalised. Moreover, stakeholder engagement must include outreach to those whose lives and interests will be affected by the implementation of the decisions under consideration. To ensure that such stakeholders are identified, public consultations should be launched before a commitment to action has been made or before a draft decision has been tabled. A more open consultative process first invites stakeholders to discuss and identify the problems, challenges and opportunities, then examines the different policy scenarios, before any decisions are drafted.

Participatory mechanisms can be grouped in the following categories that reflect different levels of engagement:

- informing the public about local priorities, government programmes and plans;
- holding consultations with the public and/or particular groups of people regarding public policies and collecting their experience or expertise;
- collaborating with the public and/or particular groups of people to develop solutions to local problems (including co-creation processes such as in the formulation of Open Government Partnership (OGP) Action Plan commitments);
- engaging local communities in decision-making processes through deliberative processes, voting (such as participatory budgeting and referenda), and other decision-making tools.

According to the Additional Protocol, “the law shall provide means of facilitating the exercise” of the right of citizens to participate. In order to ensure that the above-mentioned forms of participation are genuine engagement rather than token exercises, the consultation process around the formation of new policies and legislation needs to be backed up by laws, regulations and guidelines, and also by strong political will.

Inclusive policymaking must at the same time be effective, and the public should be well informed about their rights, opportunities and ways they can participate in local decision-making. The policymaking processes need to be clearly stated well in advance to enable citizens and stakeholder groups to prepare their submissions and interventions. Timeframes with clear entry-points for citizen engagement need to be published to ensure that citizen participation is a meaningful exercise, and the local authorities should provide feedback to those who make policy proposals or recommendations. The local authority should ensure that the viewpoints and positions of stakeholders are properly reflected and considered when adopting policies, and feedback should provide clearly stated reasons for the decisions to adopt proposals, or not to adopt them. This inclusive approach ensures that policies are relevant, evidence-based, cater to intersectional needs, and are responsive to public demands.

Local authorities also need to employ officials trained in managing public consultations and ensuring that the feedback to citizens is prompt and comprehensive.

Such inclusive approaches ensure that local authorities make better and more relevant decisions that reflect public interests and are well understood by all citizens. In tandem, local communities can develop a sustained capacity to voice their concerns, design solutions and monitor their proper implementation, resulting in improved public trust towards local service delivery.

General domestic context

Since 2008, Kosovo* has begun a gradual decentralisation of government. Local self-government is regulated by the Constitution of Kosovo* in Article 123¹⁸⁵ and the Law on Local Self-Government.¹⁸⁶ The basic unit of local self-government is the municipality. Currently, local government is exercised in 38 municipalities.

In Kosovo*, local government is exercised on the principles of good governance, transparency, subsidiarity, and efficient and effective service delivery, paying special attention to the specific needs and concerns of non-majority communities and their members.¹⁸⁷ Citizen engagement and participation in government is also important for the good functioning of local self-government. The importance of this participation is also expressed in the Constitution of Kosovo*, which obliges municipalities to encourage and ensure active participation of all citizens in the decision-making process of municipal bodies.¹⁸⁸ It is important to create effective mechanisms for citizens to engage in local decision-making. Their engagement affects the level of governance and functioning of the municipality in a way that is beneficial for its citizens. It is important to engage citizens not only during the decision-making process, but also during policymaking. This participation benefits not only the municipality, but the whole community. Citizen participation above all is a key tool to increase the transparency and accountability of local and central authorities.

Mechanisms for citizen participation and direct democracy are defined by the Law on Local Self-Government.¹⁸⁹ Those mechanisms include public information, public

consultation, the right to petition, citizens' initiative, referendum, recall of the mayor, and consultative committees. To achieve both transparency and civic engagement, Kosovo* has issued the Administrative Instruction on Transparency in Municipalities,¹⁹⁰ the Administrative Instruction on Minimum Standards of Public Consultation in Municipalities,¹⁹¹ and the Regulation on the Procedure for Drafting and Publishing Municipal Acts.¹⁹² The aim of these acts is to increase transparency, accountability, and the good functioning of the municipalities, which is beneficial for its citizens.

When it comes to citizen participation, the legal framework is well defined and provides a wide range of mechanisms in line with European and international standards. However, those mechanisms are not always applied in practice. While public consultation and public information are often used, other forms such as petitions, initiatives, referenda, or the recall of the mayor, are less common because the public is less aware of these options.

In recent years, municipalities in Kosovo* have increased their level of transparency and accountability, thus enabling citizens to access public information and participate in local policymaking. Every municipality has its own website that allows citizens access to the municipality's activity, organisations, board, and decisions taken. Almost all municipalities broadcast live sessions of the Municipal Assembly through various platforms. Due to the COVID-19 pandemic and the related precautionary measures, municipalities are holding public consultations online and therefore still enabling their citizens to exercise their rights.

Concerted efforts to improve and strengthen the capacity of municipalities to provide cost effective and accountable services are in line with the Strategy on Local Self-Government 2016-2026.¹⁹³ More specifically, objective 2 of the Strategy seeks to establish a better governance framework to ensure democratic representation of citizens and an efficient municipal administration, while the fourth objective requires the strengthening of partnership between local government, civil society, and businesses to create an active, comprehensive and cohesive citizenship.

3.1. OPEN POLICYMAKING

Open policy making is a broad term describing policy development that is transparent and participatory. It describes a way of making policy and decisions that draw on the latest interactive tools that open up policymaking to different stakeholders in an increasingly digital world. There is no one-way to do open policy making: different policy decisions will need different approaches.

International standards

Open policy making approaches enable governments to reach more informed and better designed policy outcomes through collaborative approaches that draw on a variety of perspectives and expertise. Different digital tools and analytical techniques are deployed so that policy is more evidence-based and data-driven. Models of engagement can include a representative citizens panel, crowdsourcing of policy ideas, or the use of collective intelligence to draw on the knowledge and expertise of a diverse public.

By the use of open data and citizen engagement, more informed, inclusive decisions can be reached, and more innovation applied in both the policymaking process and the resulting policy decisions. To maximise the possible gains of open policy making, local authorities could set up an open policy making team that publishes the data used to inform and shape policy decisions. and trains public officials in working with data to inform policymaking.

Although there are no specific open policy making standards, the following are useful points of reference:

- The **Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207)**¹⁹⁴ provides an international legal guarantee to this right, including the establishment of measures to ensure citizen participation.
- The **Council of Europe's Guidelines for civil participation in political decision making**¹⁹⁵ sets out standards for engaging with citizens and civil society.
- The **Committee of Ministers of the Council of Europe's Recommendation on the participation of citizens in local public life.**¹⁹⁶
- The **Congress of the Council of Europe's Resolution and Recommendation on Transparency and open government**¹⁹⁷ provide standards and mechanisms to enhance transparency and promote the involvement and participation of citizens in the local public life.
- The **Code of Good Practice for Civil Participation in the Decision-Making Process**, adopted by the Conference of International NGOs of the Council of Europe.¹⁹⁸
- **Civil Participation in Decision-Making Processes. An Overview of Standards and Practices in Council of Europe Member States**, European Center for Not-for-profit Law (ECNL) for the European Committee on Democracy and Governance.¹⁹⁹
- The **OECD Recommendation on Open Government**²⁰⁰ helps to design and implement successful open government strategies and initiatives.
- The **OECD's Guiding Principles**²⁰¹ support the development of a culture of openness.

- The **OECD's Focus on Citizens: Public Engagement for Better Policy and Services**²⁰² explores how to put open policy making into practice.
- The **OECD's Observatory of Public Sector Innovation**²⁰³ lists useful toolkits and resources.
- The **Open Government Partnerships Guide**²⁰⁴ and **Toolbox**²⁰⁵ provide an extensive range of support.
- The **OECD Background Document on Public Consultation**²⁰⁶ defines consultation and provides a summary of consultation tools.
- Both **Australia**²⁰⁷ and the **UK**²⁰⁸ have both produced useful **toolkits**.
- The Royal Society of the Arts, UK, and the Forum for Ethical AI addressed some of the AI challenges posed by new technology in **Democratising decisions about technology. A toolkit**.²⁰⁹

Domestic context

Open policymaking is a crucial element for transparency and democracy. The main purpose of open policymaking is to increase citizen participation in decision-making and governance, which enhances the transparency and accountability of public authorities. Open policymaking is important during the policy development process so that citizens have a say in the creation of those policies that affect their needs and interests.

Kosovo* has created a good legal framework that promotes open policymaking, in compliance with European and international standards. Citizen participation is enshrined in the Constitution of Kosovo*, which obliges municipalities to encourage and ensure active participation of all citizens in the decision-making process of municipal bodies.²¹⁰ Open policymaking is also foreseen in the Law on Access to Official Documents,²¹¹ which requires all public institutions to make public their activities and publish every document that is of interest for the citizens of Kosovo*. The Law on Local Self-Government also regulates open policymaking in its Chapter IX.²¹²

Legislation

Open policymaking in local government is regulated by the Law on Local Self-Government. To ensure transparency, this law regulates that the Municipal Assembly and its committees hold meetings open to the public and all members of the public are allowed to follow and participate in them.²¹³

The law regulates exceptional cases when the public can be legally excluded from attending meetings of the Municipal Assembly or any of its committees. The public may be excluded in cases where an open meeting might lead to public disorder or violence, threatens to reveal information and documents which are classified as confidential according to the Law on Access to Official Documents, or threatens to disclose sensitive personal or commercial information or information on current or future litigation.²¹⁴

Chapter IX of the Law on Local Self Government defines mechanisms for citizen participation and direct democracy. This chapter foresees and regulates public information and consultation, the right to petition, citizens' initiatives, referenda, recall of the mayor, and consultative committees. All these mechanisms directly increase transparency and participation in policymaking as they foresee the engagement of citizens in the governing procedures of their municipalities.²¹⁵

Open policymaking is also regulated by the Law on Access to Official Documents. According to this law, all public institutions are obliged to proactively publish all public documents. In particular, they are required to publish daily data on the public activities of local authorities to keep citizens informed about their activities. The law also regulates the possibility for citizens to request public institutions to publish or give them access to public documents.²¹⁶

Guidelines

Based on the Law on Local Self-Government,²¹⁷ the Ministry of Local Government enacted the Administrative Instruction on Transparency in Municipalities. Its purpose is to increase transparency in municipalities and its bodies through the publication of normative acts, decisions and documents that are of interest for citizens. Most importantly, this administrative instruction aims to enhance public participation in decision-making.²¹⁸

This Administrative Instruction regulates that municipalities must hold at least two meetings per year with citizens on issues of general interest. Besides those two meetings, the law regulates that municipalities must hold other consultative meetings in neighbourhoods, settlements or any location within the municipality to discuss issues regarding the budget, projects, local economic development, usage of municipal property or any other issues of general interest.²¹⁹ Article 12 regulates forms of citizen participation in decision-making, allowing citizens of the municipality to participate in all phases of the drafting and implementation of local policies: planning, discussion, decision-making, implementation and monitoring. Article 13 of this Administrative Instruction adds that all acts that concern citizens should be subject to public consultation before their adoption.

Good practices

Building upon the Regulation on Minimum Standards for the Public Consultation Process,²²⁰ the Office of Good Governance within the Office of the Prime Minister has created an online platform (konsultimet.rks-gov.net) which is used by all public bodies to identify stakeholders to develop public consultations. This platform provides an opportunity for citizens, civil society organisations and all relevant parties to take part in the public consultation process on legislative initiatives and in the decision-making and policymaking process.

3.2. PARTICIPATORY BUDGETING

One of the crowdsourcing forms of citizen participation, participatory budgeting invites citizens and community groups to propose new initiatives or improvements to public services that should be funded by the local authority. Different models include voting by citizens, often online, on different projects. It provides a way for community members to have a direct say in how public money should be spent. It creates opportunities for engaging, educating, and empowering citizens. It can also promote transparency, which in turn can help reduce inefficiency and corruption.

International standards

Participatory budgeting began in Porto Alegre, Brazil, in the late 1980s and has spread worldwide. To ensure that participatory budgeting is inclusive and reaches out to different groups, including minority groups and the disadvantaged, both online and in-person information events need to be organised, and support provided to citizens and different community groups and stakeholders in how to prepare a proposal for consideration. The introduction of gender-sensitive participatory budgeting can increase outreach and accessibility and can be planned in close co-operation with local civic groups with a focus on inclusion.

Although there are no specific standards for implementing participatory budgeting, the following serve as important reference materials:

- The **Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207)**²²¹ provides an international legal guarantee to this right, including the implementation of measures that would facilitate its exercise.
- The **Congress of the Council of Europe's Resolution on Gender budgeting**²²² recommends introducing gender budgeting methods in the annual budgets at local and regional levels.
- The **OECD Policy Brief No. 22**²²³ provides a series of policy recommendations for how key stakeholders can contribute to successful participatory budgeting.
- The **World Bank's book *Participatory Budgeting***²²⁴ provides an overview of the underlying principles, analyses current practice, and includes seven in-depth case studies.
- The **UN Habitat's 72 Frequently Asked Questions about Participatory Budgeting**²²⁵ explores how to implement participatory budgeting.
- The **World Atlas of Participatory Budgeting**²²⁶ represents the widest compilation of data on the situation of these processes worldwide.

- The **UK's Participatory Budgeting Unit** has a useful list of resources and toolkits.²²⁷
- The **Subnational Open Budget Survey Questionnaire**²²⁸ of the International Budget Partnership sets out a range of metrics for measuring the openness of local government budgets.
- The **Principles of Public Participation in Fiscal Policy**²²⁹ of the Global Initiative for Fiscal Transparency.

Domestic context

Citizen participation in the budget-making process is another important factor that positively contributes to the level of transparency and accountability of governing bodies. Central and local authorities function based on the Budget of Kosovo*, which is gathered from taxes and duties as well as other forms of revenue paid by the citizens of Kosovo*. Therefore, it is important to create mechanisms that allow citizens to be part of the budget-making processes so that they can be informed about where and how their money is spent. In the local level of government, municipal budgets have five categories: wages and salaries, goods and services, utilities, subsidies, and capital investments. That is why the budget is the most important municipal act because it directly affects the quality of life of citizens.²³⁰

The Law on Local Self Government regulates the participation of citizens in the budget-making process in Kosovo*.²³¹ Article 69 (Right of petition) stipulates that any person or organisation with an interest in the municipality has the right to present a petition to the Municipal Assembly on matters relating to the responsibilities and powers of the municipality. While article 70 (Citizens' Initiative) ensures that citizens can initiate a regulation within the competencies of the municipality, for adoption by the assembly, or by a vote of the citizens in accordance with the applicable law, article 73 (Consultative Committees) obliges Municipal Assembly to establish consultative committees within sectors for the purpose of enabling citizen participation in the decision-making process.

According to a 2019 Report on Transparency in Local Governance by KDI, the municipalities of Kosovo* have improved transparency around the publication of the budget by 19%, investment plan by 17%, quarterly expense reports by only 1%, Annual Summary Report of the municipality's budget for the previous fiscal year by 12%, midterm budgetary framework by only 2%, and the external audit report by 13%.²³²

Legislation

According to Article 24 of the Law on Local Self Government, the municipal budget consists of its own source revenues, grants from the Government of Kosovo*, donations and other revenues. Further, it states that the budget and finances of municipalities are regulated by the Law on Local Government Finance.²³³ As per Article 52, every municipality must have its own Policy and Finances Committee, which is legally responsible for reviewing all policies, fiscal and financial documents, the annual midterm budget, and any budget changes during the fiscal year.²³⁴

The Law on Local Government Finance determines the financial resources that are available to municipalities in Kosovo*, including municipal own source revenues, grants and other financial resources that are necessary for the exercise of municipal competencies.²³⁵ According to this law, municipalities have the right to sufficient financial resources, which they can freely distribute, and that are sufficient for their municipal competencies.²³⁶ This law regulates in detail municipal taxes, rents, fines, co-payments and other municipal own source revenues, and it determines other grants and transfers for delegated competencies.

Guidelines

The Administrative Instruction on Transparency in Municipalities obliges municipalities to provide for transparency in their spending. Each municipality is required to publish on its official website the approved Budget Plan, Quarterly Budget Reports, the Midterm Budget Expenditure Framework, and a Financial Summary Report of the previous fiscal year.²³⁷ Moreover, the Ministry of Finance issues the Budget Circular, which is the guiding document that the Ministry of Finance sends to the municipality for the preparation of the budget proposal and other budget allocation requests.²³⁸

The budgeting process in Kosovo* includes some steps which require the participation of citizens. On 15 May of each year, the First Budget Circular is issued. During May and June, municipalities hold open hearings with citizens. The aim of these hearings is to identify citizens' needs for future investment planning. On 30 June, the Midterm Budget Expenditure Framework is approved and published online. On 1 September, the mayor approves the Budget Proposal and sends it to the Assembly of Kosovo*. The Municipal Assembly is required to hold at least one public hearing before approving the budget proposal. The purpose of holding public hearings is to ensure that the planned investments are in line with the needs and requirements of citizens. By 30 September, the municipal budget proposal is approved by the Municipal Assembly. After its approval, the Municipal Assembly sends it to the Ministry of Finance. The next step includes the approval of the budget proposal by the Government of Kosovo* by 31 October and then it is sent to the Assembly of Kosovo*. The final budget of Kosovo* must be approved by 31 December by the Assembly of Kosovo*.²³⁹

Good practices

The Municipality of Pristina has created an online platform²⁴⁰ that publishes every activity and document of general interest for its citizens. Due to the COVID-19 pandemic, the Municipality decided to hold online public meetings with citizens and avoid meeting in person, including for budget planning. Thus, the Municipality published the "Schedule of 'Online' Public Hearings with Citizens for the Budget Planning for 2021", which includes a table with the dates of the five meetings to be held. The Municipality has provided instructions on how to access the meetings, the time they will be held, the agenda of each meeting and the link to access them.²⁴¹

3.3. PUBLIC CONSULTATION

Public consultation is a formal, often legally required, process for citizens and other stakeholders to give their views at key stages of the policy process. It can be both online and offline, or a mixture of both. Its main goals are to improve efficiency, transparency, and public involvement in important decisions. Done in a timely and effective way, public consultation can increase the quality of decision making, improve cost-effectiveness, render more sustainable policy solutions, and generate greater public trust in decision-making.

International standards

Different forms of consultation range from informing and consulting citizens to crowdsourcing ideas for policies, deliberative debates and assemblies where citizens can develop potential policy solutions to inform decision-making, and collaboration where social enterprises, civil society organisations or expert groups either participate in the design or delivery of services.

To improve both the inclusiveness and efficiency of public consultations, each local authority should aim to have a unit that takes responsibility for co-ordinating the guidelines and procedures for implementing public consultations, and for ensuring that they are in accordance with the prevailing legislation. Such a unit could also train officers in different departments on running public consultations. In the case of smaller local authorities with more limited resources, a unit in the central government's responsible ministry, such as a ministry of regional development, could provide such training and support on co-ordinating and updating guidance and procedures for public consultations at the local level.

Although there are no specific standards for implementing public consultations, the following are useful reference materials:

- The **Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207)**²⁴² provides an international legal guarantee to this right, including the establishment of measures to ensure citizen participation, such as consultative processes and local referendums.
- The **OECD Background Document on Public Consultation**²⁴³ defines consultation and provides a summary of consultation tools.
- The **Council of Europe's Guidelines for civil participation in political decision making**²⁴⁴ set out the different types of civil participation in decision making.
- The **Committee of Ministers of the Council of Europe's Recommendation on the participation of citizens in local public life**.²⁴⁵

- The **OECD Recommendation of the Council on Open Government**²⁴⁶ supports initiatives for designing and delivering public policies and services, in an open and inclusive manner.
- **Reaching Out: Guidelines on Consultation for Public Sector Bodies** sets out good practice in the Republic of Ireland.²⁴⁷

Domestic context

Public consultation is considered a form of communication between governing bodies and the public. The public consultation process is a vital element of a transparent government, because it enables citizens to discuss and monitor the work of local government.

Kosovo*'s framework is well defined and regulates public consultation at both central and local levels of governance. At the central level, public consultation is governed by the Regulation on Minimum Standards for the Public Consultation Process, which defines the standards, principles and procedures of the public consultation process between public authorities and interested parties in the policymaking and decision-making process.²⁴⁸ At the local level, it is regulated by the Law on Local Self-Government, the Administrative Instruction on Minimum Standards of Public Consultation in Municipalities and the Administrative Instruction on Transparency in Municipalities.

KDI's *Transparency Index in Municipal Governance 2019* shows that 29 out of 38 municipalities have published their draft decisions and agendas for public consultation. Also, 28 municipalities published the draft budget for public consultation. In general, municipalities have been very active regarding public hearings on budget approval.²⁴⁹

Legislation

The right to public consultation is regulated and protected by the Law on Local Self-Government. According to Article 68, *"Each municipality shall hold periodically, at least twice a year, a public meeting at which any person or organisation with an interest in the municipality may participate."*²⁵⁰ The purpose of these open meetings is to inform citizens of the activity of the municipality and to give participants the chance to ask questions and make proposals to local elected representatives. Municipalities are obliged to inform citizens about any important plans or programmes of public interest.

Guidelines

Public consultation is also regulated with the Administrative Instruction on Transparency in Municipalities.²⁵¹ Article 13 of this Administrative Instruction establishes that, *"municipal acts of benefit to citizens are subject to public discussion prior to adoption, including the organisation of debates in rural areas."* This article also instructs that municipalities should act in compliance with the Administrative Instruction on Minimum Standards of Public Consultation in Municipalities when it comes to public consultations,²⁵² which

aims to promote and ensure the participation of citizens and other stakeholders in the policymaking and decision-making process at the local level. This Administrative Instruction, “defines the rules, principles, forms, procedures and minimum standards of public consultation in municipalities during the drafting of municipal policies and by-laws”.²⁵³

The Government of Kosovo* has created a platform (konsultimet.rks-gov.net) which is used by all public bodies for the development of public consultation. The Administrative Instruction on Minimum Standards of Public Consultation in Municipalities requires the municipalities to publish project proposals on their official websites and on the Public Consultation Platform at the central level. Each municipality should have a unit/officer for public communication responsible for co-ordinating the public consultation process.²⁵⁴

As per the Administrative Instruction on Minimum Standards of Public Consultation in Municipalities, the municipality must hold public consultations for all local policy documents and by-laws.²⁵⁵ It also sets out the forms and techniques of public consultation, which should include public consultative meetings, written and electronic public consultation, publication on the municipal website and relevant platforms, and other forms of public consultation like conferences, interviews, consultations with certain group of interests, opinion surveys, panels with citizens, stands on the streets, meetings with councils of villages, neighbourhoods and urban settlements.²⁵⁶ This Administrative Instruction, which works as a guideline, also regulates the standards, stages and deadlines of public consultations.

Good practices

The Municipality of Kamenica, due to COVID-19 precautionary measures, decided to hold public consultations online. In November 2020, the Municipal Commission for Harmonisation of the Municipal Regulation had completed a Draft Regulation which required a public consultation. The mayor issued the decision that this public consultation would be held online and open to all citizens of the municipality. The decision also stated that citizens could address their comments and ideas in written form, thereby not limiting them only to joining the online meeting.²⁵⁷

3.4. PUBLIC PETITIONS

Public petitions enable citizens to raise issues with public authorities. The number of signatures collected can indicate the level of support for the issues raised. They aim either to raise the profile of the issue or to demand that specific actions be taken. Petitions are often inspired by civil society activity, but they are increasingly submitted through official, often online, platforms whereby petitions with a defined number of signatures will receive an official response.

International standards

It is important that the official response is provided promptly, and that clear and well-argued reasons are provided for the decisions taken or not taken in response to a public petition.

For public petitions to become a tool that resonates with the wider public, local authorities and civil society organisations should raise awareness of the nature of petitions and the procedures for gathering signatures and submissions of the petitions in their municipalities. Clarity should also be given on the status of electronic signatures to ensure that there is full transparency about the conditions that a public petition must satisfy to receive an official response.

The following international conventions and standards relate to public petitions:

- The **Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207)**²⁵⁸ provides an international legal basis for this right, including the establishment of measures to ensure citizen participation, such as public petitions.
- The **OECD's Promise and Problems of e-Democracy**²⁵⁹ provides information on the value and challenges of establishing an online petitioning platform.

Domestic context

Public petitions are another mechanism that is used to achieve citizen participation. The right to petition must be guaranteed and included within the legal framework for the public to be able to propose the adoption, amendment, or repeal of any act of concern. Fortunately, the right to petition is well regulated in Kosovo*. The Law on Local Self Government and the Administrative Instruction on Transparency in Municipalities foresee and regulate this right, allowing the citizens of Kosovo* to address their municipalities whenever they have a request or concern.

Legislation

The Law on Local Self Government regulates the right to petition. According to Article 69, *"any person or organisation with an interest in the municipality shall have the right to present a petition to the Municipal Assembly about any matter relating to the responsibilities and powers of the municipality"*. Those petitions should be reviewed by the Municipal Assembly in accordance with its statute and rules of procedure.²⁶⁰

Guidelines

The Administrative Instruction on Transparency in Municipalities regulates the right to petition in more detail. Article 9 allows citizens to file a petition about any issue within the municipality's responsibility. These petitions should be addressed to the Municipal Assembly. Citizens have the right to address an unlimited number of petitions to the

Municipal Assembly on issues related to the regulation of the city, the maintenance of city order and infrastructure, urbanisation of the city and village, the maintenance of the living environment, the implementation of self-governance and any other issue important to the lives of the local population. The Municipal Assembly should review petitions within the legal deadline of 30 days.²⁶¹

Good practices

The Islamic Community of Kosovo* (BIK) has requested the construction of a large mosque in the centre of Pristina. After negotiations that have lasted several years, the Municipality of Pristina and BIK agreed that the mosque would be built in the Dardania neighbourhood and in 2012 the first construction works for the mosque began. In 2017, an online petition was launched by an informal group of citizens to oppose the construction of a new mosque in the Municipality of Pristina. They campaigned for public support. According to petitioners, the planned mosque was not in harmony with the buildings of the neighbourhood as a whole and they objected to the construction of the mosque in the proposed form. However, this petition was not successful, and the construction of the mosque started in 2020.²⁶²

3.5. LOCAL REFERENDA

Local referenda, which are widespread in Council of Europe member States, provide a mechanism for local authorities to sound out the citizens' will on concrete issues that directly affect their everyday lives or for citizens to propose an initiative that they would like to see implemented, or even to block a planned decision.²⁶³

International standards

When initiated by citizens or groups of stakeholders, a referendum might form part of a campaign against a perceived harmful impact on their livelihoods or the natural environment, such as a plan for a new industrial park, a tunnel to re-route cars under a river or some other urban development.

Where there is both legislation providing for local referenda, and guidelines on how to hold referenda, there is usually a minimum percentage of the eligible voting population whose signatures are required to initiate a referendum. In some cases, the mayor or elected council can also decide to formulate a question for a local referendum. Depending on the legislative framework, the referenda may be binding on the local government or consultative, where the final decision rests with the elected council.

It is important that the legislation and procedures are clear, so that citizens know the framework within which the results of a referendum will be acted upon, and what response is required from the executive or elected council of the local authority. As with public petitions, it is important to raise awareness of the procedures for gathering signatures and the status of electronic signatures to ensure that there is full transparency about the conditions that

need to be met before a referendum will take place. Transparency on political party financing should also be applied to the funding of a referendum campaign, including ceilings on expenditure, and an independent audit of funding and expenditure.

The following international conventions and standards relate to local referenda:

- The **European Commission for democracy through law (Venice commission), code of good practice on referendums**²⁶⁴ – provides the principles of holding referendums and practical advice on how to implement those principles.
- **The Council of Europe Committee of Ministers' Declaration on the Code of Good Practice on Referendums**²⁶⁵ – invites public authorities in the member states to be guided by the Code of Good Practice on Referendums.
- The **Congress of Local and Regional Authorities, Resolution 472 (2021) on Holding referendums at local level**²⁶⁶ – provides guidelines for member States to use local referendums responsibly and according to Council of Europe standards,
- **UN Sustainable Development Goal 16: Peace, Justice and Strong Institutions; Target 16.7:**²⁶⁷ Ensure responsive, inclusive, participatory and representative decision-making at all levels.

Domestic context

The right to a referendum is regulated by the Constitution of Kosovo*, which states that a referendum should be announced and held in compliance with the applicable law.²⁶⁸ However, the Assembly of Kosovo* has never issued a law that would regulate specifically the process of holding a referendum. The Law on Local Self-Government includes a referendum as a mechanism for citizen participation and direct democracy, but as there is no law regulating referenda, they cannot currently be held in Kosovo*.

Legislation

Local referenda are regulated by the Law on Local Self-Government. Article 71 sets out that the citizens of a Municipality may request that a regulation adopted by the Municipal Assembly be submitted to a referendum. The request should be submitted to the Chairperson of the Municipal Assembly within 30 days from the date of adoption of the regulation and must be signed by 10% of the registered voters of the municipality.

Guidelines

Currently, there is no single guideline approved which regulates local referenda. In cases of local referenda, the Municipality will decide on the referendum based on Article 71 of the Law on Local Self-Government.²⁶⁹

Good practices

Due to the lack of a law on referenda, there are no cases or good practice examples for this issue.

CORRUPTION RISKS

Introduction

In the absence of ethics and public accountability, corruption and malpractice are allowed to thrive, which undermines the foundations of a peaceful, prosperous, and just society.

Corruption is a major challenge to democracy and the rule of law. It results in decisions and resource allocation that do not reflect the interests of the public and concentrates political power in the hands of the few. It in turn causes political leaders and institutions to lose legitimacy and public trust, which reduces their ability to govern.

Corruption poses a great threat to sustainable development, increasing poverty and inequality. Consequently, strengthening local self-government and their active participation in the fight against corruption is one of the essential preconditions for democratic development. Corruption at the local level is a specific phenomenon and requires a specific approach tailored to municipalities.

Corruption also causes local and regional authorities to be inefficient and ineffective in exercising their duties. It results in decisions being made not on the basis of what is in the interests of society at large, but what is in the self-interest of decision-makers and their associates. It leads to public money being misspent, with contracts being awarded to inferior providers and budgets being misallocated. At its worst, it enables public officials to misappropriate money and resources, using their position to get rich to the cost of those they have a duty to serve.

One of the major challenges for societies worldwide is the development of accountable and transparent systems that provide effective public services. Because of their proximity to the public, local governments are well positioned to deal with this challenge and to fight and prevent corruption at local level.

Under the current trend of decentralisation, local authorities are given not only resources, but also the discretionary power to use those resources. Thus, local governments have the potential to either reduce corruption and improve public services at the local level or, conversely, increase corruption and worsen the quality of service delivery.

Corruption can also result in public officials being appointed on the basis of favouritism rather than merit, meaning that local and regional authorities do not have access to the brightest and best talent. This in turn creates a fertile environment for further corruption and reduces even more the efficiency and effectiveness of the administration.

Inefficient and ineffective organisations, staffed by individuals who gained their positions on the basis of criteria other than merit, result in poor-quality public services

and infrastructure, thereby eroding public trust and the legitimacy of public institutions. More importantly, however, they result in significant human costs, including poverty, deaths, illness, and restricted life chances.

Finally, corruption harms economic development. It leads to public money being directed to uncompetitive businesses, rather than those that offer more innovative or cheaper products and services. Uncompetitive markets, coupled with the negative impact of corruption on the quality of local public services and infrastructure, means that businesses do not have a solid foundation (of staff, security, investment, etc.) on which to build. In the end, this may cause private and international investors to avoid investing in an area.

General domestic context

In Kosovo*, for many years the fight against corruption has been listed among the top priorities of both the domestic institutions and assistance programmes provided by various international organisations. The adoption of a number of laws, regulations and strategies have had limited impact in fighting this phenomenon.

Concrete results in the fight against corruption are only a few of the preconditions reiterated in the Kosovo* 2020 Report of the European Commission.²⁷⁰ The Corruption Perception Index 2020²⁷¹ published by Transparency International shows that for the second year in a row, the performance of Kosovo* has worsened. It is now ranked at 104 (out of 180 countries), with 36 points. In 2017 its score was 39, in 2018 it fell to 37, and in 2019 its score was 36 (a lower score indicates more perceived corruption). With this score, Kosovo* lags behind the global average of 43, and the European average of 66. This lower score is attributed to weak rule of law and impunity in corruption cases. The Global Corruption Barometer (GCB)²⁷² also reports that two-thirds of citizens rank corruption as one of the three biggest problems in Kosovo*.

The number of corruption-related cases brought to justice in Kosovo* is relatively small, while the grand corruption cases that come to a final verdict are scarce. Judges blame prosecutors for poor investigation and weak indictments. Reports from the EU Rule of Law Mission²⁷³ (EULEX) and civil society organisations (Kosovo Law Institute, the Balkan Investigative Reporting Network and Group for Legal and Political Studies) reiterate the low profile of defendants in corruption cases in Kosovo*, frequent changes of prosecutors and judges, unclear sentencing policies, recurrent court session adjournments and prolonged proceedings that may lead to statutory limitations. Since the establishment of special departments for dealing with corruption and organised crime in July 2019, the Special Prosecution of Kosovo* has not filed a single indictment against any high-profile individual. The European Commission repeats that the “judicial system is at an early stage of preparation” and that “corruption is widespread and remains an issue of serious concern. There is a need for strong political will to effectively address corruption issues, as well as a robust criminal justice response to high-level corruption.” However, it recognises some progress with the new system for the disciplinary liability of judges and prosecutors, and progress in the rollout of an electronic case management system and central criminal record registry.²⁷⁴

The Anti-Corruption Strategy and Action Plan 2018-2022, drafted by the Anti-Corruption Agency (the core administrative institution responsible for preventing corruption in Kosovo*), was finally adopted by the government in May 2019, but failed to gain the support of the Assembly of Kosovo* due to a perpetual political crisis. The Action Plan aims at conducting a follow-up on previous similar strategies dating back to 2004 by sustainably reducing corruption, strengthening institutional integrity, promoting good governance, and properly implementing measures listed in the Action Plan. More specifically, the Anti-Corruption Strategy and its Action Plan include measures to combat the illegal financing of political parties and terrorism, the informal economy, money laundering and financial crimes.

In November 2020, the Anti-Corruption Agency finalized the Anti-Corruption Strategy 2021-2023. Several local and international reports on corruption in Kosovo* were considered during the drafting process of this strategy. As a result of the research conducted, the strategy is divided into four sectors, with problems and major challenges in the fight against corruption. These four sectors are: Political Sector, State Administration and Local Governance, Law Enforcement and Judiciary, and Public Procurement and Public Finance Management. The main objectives of this Strategy are to develop a “zero tolerance” approach to corruption, building integrity, responsibility, and transparency in the work of public administration bodies, strengthening citizens’ trust in public institutions, improving legislation and strengthening institutional capacities for prevention and the fight against corruption, as well as raising public awareness and education regarding anti-corruption.²⁷⁵

4.1. BRIBERY

Bribery is the promise, offer, acceptance or solicitation of a personal advantage (e.g. gift, loan, reward, favour, etc.) in exchange for an unethical or illegal action. Bribery results in decisions not being taken in the public interest, which reduces public trust in institutions and leads to poor public services.

International standards

The following international conventions and standards relate to bribery:

- The **OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions**²⁷⁶ establishes legally binding standards to criminalise bribery of foreign public officials in international business transactions. It is the first and only international anti-corruption instrument focused on the ‘supply side’ of the bribery transaction.
- The **International Anti-Bribery Standard 37001**²⁷⁷ specifies a series of measures to help organisations prevent, detect and address bribery.
- The **OECD Good Practice Guidance on Internal Controls, Ethics, and Compliance**²⁷⁸ which supports the convention on combating bribery.

Domestic context

Bribery remains one of the most common forms of corruption in Kosovo*. According to Transparency International, the bribery rate in Kosovo* is at 10%.²⁷⁹ Bribery remains widespread in almost all areas of the public sector, thus undermining the proper functioning of public institutions and affecting the vital interests of citizens of Kosovo*. Citizens are continuously exposed to situations where they must pay a bribe to get a good quality service. Usually bribes are paid in cash, but other forms of bribery are frequently used as well, such as gifts. In addition to its spread in the public sector, bribery is also found in the private sector, especially in the business sector. Most businesses that are in direct or indirect contact with a public official have been asked or have offered to pay a bribe to receive a service. The rate of bribery among those businesses which had contacts with public officials is 3.2%.²⁸⁰

Legislation

In Kosovo*, bribery as a form of corruption is regulated and sanctioned by the Criminal Code of Kosovo*.²⁸¹ It recognises corruption in the private sector²⁸² and the public sector.²⁸³ Differences between bribery in these two sectors lie in who initiates or accepts the bribe, and the punishment that is imposed. In both cases, the Criminal Code penalises both active and passive bribery.

In the public sector active bribery happens when someone, *“promises, offers or gives, directly or indirectly, any undue gift or advantage to an official person, for himself or herself or for another person, so that the official person acts or refrains from acting in accordance with his or her official duties or in violation of his or her official duties”*.²⁸⁴ Whereas passive bribery happens when an, *“official person requests or receives, directly or indirectly, any undue gift or advantage, for himself, herself or for another person, or accepts an offer or promise of such gift or advantage, so that the official person acts or refrains from acting in accordance with his or her official duties or in violation of his or her official duties”*.²⁸⁵

According to the Criminal Code, active bribery in the private sector is punished by a fine and imprisonment of 6 months to 8 years and passive bribery is punished by a fine and imprisonment of 1 to 15 years (Article 421 and 422). In the private sector, both active and passive bribery is punished also by a fine, imprisonment of 6 months to 5 years and the gift or advantage gained will be confiscated (Article 309 and 310).

Example of case law

In September 2020, the Kosovo* Police arrested the Construction Inspector of the Municipality of Pristina for committing the criminal offence of “taking a bribe”. He was accused of requesting a €12,000 bribe from the owner of a construction company to issue a permit to continue construction work. The accused pleaded guilty to bribery and the Basic Court of Pristina sentenced the accused to 1 year in prison and a fine of €3,000.²⁸⁶

4.2. CONFLICT OF INTEREST

A conflict of interest is where an individual is in a position to derive personal benefits from the actions or decisions they take in an official capacity. Conflicts of interest – either if they are actual, perceived, or potential²⁸⁷ result in decisions that are, or are considered to be, unfair and self-interested. This reduces public trust in institutions and results in worse outcomes for the public.

International standards

- The **Committee of Ministers of the Council of Europe’s Recommendation on Codes of Conduct for Public Officials**²⁸⁸ and the **European Code of Conduct for all Persons Involved in Local and Regional Governance**²⁸⁹ cover the general issues normally thought to be necessary for avoiding such conflicts.
- The **Congress of the Council of Europe’s Resolution and Recommendation on Conflicts of interest at local and regional level**²⁹⁰ propose a set of measures to mitigate the risks of conflict of interest and ensure that it is identified at an early stage.
- The **OECD Guidelines for Managing Conflict of Interest in the Public Service**²⁹¹ identify principles and standards for developing policies.
- The **Congress of the Council of Europe’s Resolution and Recommendation on Making public procurement transparent at local and regional levels**²⁹² and the **OECD Checklist for Enhancing Integrity in Public Procurement**²⁹³ provide guidance for enhancing transparency and for promoting integrity in procurement.

Conflict of interest is also covered by the following international standards and guidelines:

- The **United Nations Convention against Corruption**²⁹⁴ is the only legally binding universal anti-corruption instrument.
- It is supported by this **Technical Guide to the Convention**.²⁹⁵
- The **Council of Europe’s Criminal Law Convention on Corruption (ETS No. 173)**²⁹⁶ aims to co-ordinate criminalisation of corrupt practices and to improve international co-operation in the prosecution of offences.
- The **Council of Europe’s Civil Law Convention on Corruption (ETS No. 174)**²⁹⁷ defines common international rules for effective remedies for persons affected by corruption.
- The **European Union’s Convention against Corruption Involving Officials**²⁹⁸ aims to fight corruption involving officials from the EU or its Member States.

- The **OECD Recommendation on Public Integrity**²⁹⁹ shifts the focus from ad hoc integrity policies to a context dependent, behavioural, risk-based approach with an emphasis on cultivating a culture of integrity across the whole of society.

Domestic context

Although Kosovo* has a clear legal framework to combat conflict of interest, this phenomenon continues to be present in public authorities. Conflict of interest is punished by the Criminal Code of Kosovo* as a criminal offence and the Law on Prevention of Conflict of Interest in Discharge of a Public Function for cases that do not constitute a criminal offence.³⁰⁰

The legal framework includes other laws aimed at combatting corruption, such as: Law on the Prevention of Money Laundering,³⁰¹ Law on the Protection of Whistle-blowers,³⁰² Law on Prevention of Conflicts of Interest in Discharge of a Public Function,³⁰³ and Law of Extended Powers on Confiscation of Asset.³⁰⁴ In addition to laws, Kosovo* has adopted strategic documents to strengthen the fight against corruption. Among them are the National Strategy for Development 2016-2021,³⁰⁵ State Strategy against Corruption and Action Plan 2018-2022,³⁰⁶ Strategic Plan of the National Audit Office 2018-2021³⁰⁷ and Anti-Corruption Strategy 2021-2023.³⁰⁸

The Anti-Corruption Agency has been operating in Kosovo* since 2010. This agency was established by the Law on Anti-Corruption Agency³⁰⁹, which regulates its organisation and functioning. The Agency has competencies related to reporting, detection, and investigation of corruption. The Agency conducts a preliminary investigation procedure in cases of suspected corruption in the performance of official duties or based on information received from natural and legal persons. One of its main responsibilities is to supervise and prevent cases of conflict of interest.³¹⁰ In 2020, the Anti-Corruption Agency handled more than 160 cases of conflict of interest, a number slightly lower than the year before (167 cases in 2019). Out of 160 cases, 27 of them were cases reported in the local government.³¹¹

Legislation

In Kosovo*, conflict of interest as a corrupt phenomenon is regulated by the Criminal Code³¹² and more specifically by the Law on Prevention of Conflict of Interest in Discharge of a Public Function.³¹³

The Criminal Code regulates the situation when a conflict of interest causes a criminal offence. According to this Code, a conflict of interest is defined as the situation in which, *“an official person participates personally in any official matter in which he or she, knew or reasonably should have known, that he or she, a member of his or her family, or any related legal person, has a financial interest”*. Based on the Code, conflict of interest is punished by a fine and imprisonment up to 3 years.

Conflict of interest is regulated in more detail by the Law on Prevention of Conflict of Interest in Discharge of a Public Function. The Law defines conflict of interest as, *“the situation in which, because of the circumstances, an official has a private interest which influences, might influence or seems to influence the impartial and objective performance of official duties”*.³¹⁴ This Law regulates conflict of interest as a form of corruption in cases where it does not constitute a criminal offence. The Law determines the principles, rules, and procedures regarding the permitted and prohibited behaviour of officials during the performance of public duty. It also sets out the punitive measures in cases where the principles and provisions of this Law are not respected.³¹⁵

Article 23 of the Law on Prevention of Conflict of Interest regulates that any violation of those obligations that does not constitute a criminal offence is considered as a misdemeanour, punishable with a fine between €600 up to €15,000. Besides the fine, protective measures can be taken such as the prohibition of the exercise of public functions for a period of 6 months to 2 years.

To facilitate the fight against conflict of interest in Kosovo*, the Council of Europe PECK 2 published a toolkit on Managing Conflict of Interest (2019). This toolkit was designed to assist officials and public institutions in recognizing conflict of interest and complying with requirements of the Law on Prevention of Conflict of Interest in Discharge of a Public Function.³¹⁶

Example of case law

In July 2020, the University of Pristina “Hasan Prishtina” opened a call for applications for the position of Rector of the University. The Rector of the University is elected by the Steering Council of the University of Pristina.³¹⁷ During this process, the Professional Commission verifies whether the candidates running for the position of rector meet the required conditions. The Commission eliminated one of the candidates running for this position because he used to work as a member of the University’s Steering Council. The candidate left that position before running for the position of rector. The Commission emphasised that the candidacy and potential election of the individual as rector would violate the provisions of the Law on Prevention of Conflict of Interest in Discharge of a Public Function. The Steering Council of the University of Pristina sent the case to the Anti-Corruption Agency for evaluation and opinion. The Anti-Corruption Agency decided that this candidate should be eliminated.³¹⁸

4.3. EMBEZZLEMENT

Embezzlement is the illegal appropriation of money, goods or other resources by an official to whom they have been entrusted. This results in the loss of public money, which reduces the capacity of authorities to act in the interests of the public, resulting in worse services and outcomes for people. It also undermines public trust in government.

International standards

As one type of corruption, embezzlement is covered by the following international standards and guidelines:

- The **United Nations Convention against Corruption**³¹⁹ is the only legally binding universal anti-corruption instrument.
- It is supported by this **Technical Guide to the Convention**.³²⁰
- The **Council of Europe's Criminal Law Convention on Corruption (ETS No. 173)**³²¹ aims to co-ordinate criminalisation of corrupt practices and to improve international co-operation in the prosecution of offences.
- The **Council of Europe's Civil Law Convention on Corruption (ETS No. 174)**³²² defines common international rules for effective remedies for persons affected by corruption.
- The **European Union's Convention against Corruption Involving Officials**³²³ aims to fight corruption involving officials from the EU or its Member States.

Domestic context

In addition to its negative impact on the implementation of the national and municipal budget, embezzlement can have grave consequences for the business sector and economic performance and can become a barrier to private and foreign investment, trade, and economic development. Private companies may also be affected further by the impact of crime on their operations. This can range from extortion by organised criminal groups, to serious fraud and embezzlement of funds by managers, each of which has the potential to cause serious damage to the business environment in which companies operate and to increase the cost of doing business.

Legislation

Embezzlement is considered a criminal offence and it is regulated by the Criminal Code of Kosovo*. According to Article 418 of the Code, *"an official person, who intentionally obtains an unlawful material benefit for himself, herself or another person, appropriates property entrusted to him or her because of his or her duty or position shall be punished by a fine and imprisonment of six (6) months to five (5) years."*

In cases when the damages of this offence are greater, the law provides for other sentences of imprisonment. When the loss exceeds €5,000, the offender will be punished by a fine and imprisonment of 1 to 8 years, whereas when the loss exceeds €50,000, the offender will be punished by a fine and imprisonment of 3 to 12 years.

Example of case law

In 2019, the Basic Prosecution Office of the municipality of Mitrovica, filed charges against a cashier who was working at the Mitrovica Post. He was accused of embezzling €1,270.68 while he was performing his duty. The defendant pleaded guilty to the criminal offence. The Court of Mitrovica sentenced the defendant to 6 months in prison and a fine of €500.³²⁴

Another example is the sanction of a Kosovo* member of parliament. The member was supposed to start his sentence on 9 March 2020 but asked to postpone the start for health reasons. The court postponed the sentence twice for four months. Following the Appeals Court's final verdict on 1 July, he should have begun serving his sentence, but failed to report to a detention centre. In August, an arrest warrant against him was issued. He gave himself up on September 29 and started to serve his sentence on 1 October.³²⁵

4.4. FRAUD

Fraud is the use of deceit in order to gain an unfair or illegal advantage. Fraud erodes public trust in government and reduces the capacity of government to act. It often results in the loss of public money, which harms public services and the ability of governments to address the public's needs and aspirations.

International standards

As one type of corruption, fraud is covered by the following international standards and guidelines:

- The **United Nations Convention against Corruption**³²⁶ is the only legally binding universal anti-corruption instrument.
- It is supported by this **Technical Guide to the Convention**.³²⁷
- The **Council of Europe's Criminal Law Convention on Corruption (ETS No. 173)**³²⁸ aims to co-ordinate criminalisation of corrupt practices and to improve international co-operation in the prosecution of offences.
- The **Council of Europe's Civil Law Convention on Corruption (ETS No. 174)**³²⁹ defines common international rules for effective remedies for persons affected by corruption.
- The **European Union's Convention against Corruption Involving Officials**³³⁰ aims to fight corruption involving officials from the EU or its Member States.

Domestic context

In Kosovo*, fraud is part of the group of official corruption offences and criminal offences against official duty.³³¹ Fraud in public office, like other forms of corruption, continues to be an obstacle to institutional and sustainable development. Fraud in public institutions and by officials results in the loss of public money, distortion of public expenditure and may deter foreign investment. All these actions negatively affect the effectiveness and efficiency of government actions.³³² In most cases, fraud is committed in conjunction with other offences such as embezzlement and abuse of official position. Cases of fraud are found among those who hold important public positions such as mayors or public officials.³³³ Despite its spread, according to the 2016 Public Pulse survey on Corruption, fraud remains one of the least common forms of witnessed corruption reported by citizens, with just 14% of respondents reporting this form of corruption.³³⁴

Legislation

Fraud is punishable under the Criminal Code of Kosovo*. According to Article 323, fraud is defined as the presentation of false facts, concealment of facts or the use of other fraudulent methods for the purpose of unlawful gain or material damage to another. A person who commits fraud will be punished by a fine and imprisonment of 3 months to 5 years. This article regulates the situation when the object of fraud is to obtain an unlawful benefit from public funds or a public institution. In this case, the offender will be punished by a fine and imprisonment of 2 to 8 years.³³⁵

The Criminal Code regulates fraud in office as a form of criminal offence. According to Article 419, a public official commits fraud when s/he obtains material benefits for himself/herself or someone else, by creating, using, or presenting a false statement of an account. Fraud also happens when a public official deceives an authorized person into making an unlawful disbursement of money, transfer of property or other rights. The Criminal Code punishes fraud with a fine and imprisonment of 6 months to 5 years.³³⁶

Example of case law

In 2017, the Kosovo* Police arrested a former Director of Budget and Finance in the Office of the Prime Minister. He was arrested on suspicion of committing the criminal offence of fraud. According to the Prosecution's indictment, the accused met several times with the injured party E.M., who had been sentenced to three years imprisonment by the Court of Appeals of Kosovo*. The accused promised the injured party that, because of his position, he could influence the Court of Appeals to overturn his sentence for a price of €10,000. After the injured party paid the money requested, the Court of Appeals did not overturn the sentence. According to the injured party, after he realised that he had been deceived, he asked for his money to be returned, but the accused would not and instead, asked for an additional €10,000. The injured party informed the Police of the fraud and co-operated with them to get the accused arrested. Following his arrest and detention, the Office of the Prime Minister suspended the accused pending a final court decision. In 2019, he was sentenced to 1 year in prison and a fine of €5,000.³³⁷

4.5. NEPOTISM

Nepotism is the exploitation of an official position to unfairly benefit a family member or friend (e.g. through giving a job or favour). Nepotism, and other forms of favouritism, results in local and regional authorities not having access to the brightest and best talent. This in turn creates a fertile environment for further corruption and reduces the efficiency and effectiveness of the administration.

International standards

As one type of corruption, nepotism is covered by the following international standards and guidelines:

- The **United Nations Convention against Corruption**³³⁸ is the only legally binding universal anti-corruption instrument.
- It is supported by this **Technical Guide to the Convention**.³³⁹
- The **Council of Europe's Criminal Law Convention on Corruption (ETS No. 173)**³⁴⁰ aims to co-ordinate criminalisation of corrupt practices and to improve international co-operation in the prosecution of offences.
- The **Council of Europe's Civil Law Convention on Corruption (ETS No. 174)**³⁴¹ defines common international rules for effective remedies for persons affected by corruption.
- The **Congress of the Council of Europe's Resolution and Recommendation on Fighting nepotism within local and regional authorities**³⁴² sets out standards for good practice and presents strategies for preventing corruption in the recruitment procedures of European local and regional governments.
- The **European Union's Convention against Corruption Involving Officials**³⁴³ aims to fight corruption involving officials from the EU or its Member States.

Domestic context

One of the main concerns of the citizens of Kosovo* continues to be nepotism. Most citizens have been victims or witnesses of nepotism, especially during the employment process. Opinion polls done by Public Pulse XIX, show that 21.9% of respondents consider that employment in the public sector is merit-based while 78.1% consider that employment in the public sector is not based on merit. Public Pulse also shows that the respondents consider the following main factors necessary to gain employment in the public sector: party allegiance 23.3%, family connections 23.2%, bribe 20.3%, education 11.2%, friends 8.9% and to a lesser extent vocational training 6.6%, professional experience 4.1% and appearance 2.1%.³⁴⁴ As a result, it is common for people to be

recruited even though they lack the appropriate qualifications. This ongoing problem undermines public trust in the work of government bodies.

Legislation

Currently, Kosovo* does not have a specific law that regulates or prohibits nepotism. Nevertheless, Article 414 of the Criminal Code is used to prosecute and punish nepotism as a form of corruption. This article punishes an official person in cases when s/he takes advantage of his/her position or authority to acquire any benefit for himself/herself or another person, to cause damage to another person or to seriously violate the rights of another person.³⁴⁵ For example, this article is applied in cases when a public official abuses his or her position by hiring a family member or friend, offering employment that exceeds his/her competencies and violates the rights of other applicants.

Article 414 is also used in conjunction with Article 219 of the Criminal Code.³⁴⁶ This article establishes the violation of employment and unemployment rights as a criminal offence. Based on this article, *“anyone who denies or restricts to other persons the right to employment under the same conditions, as defined by law, shall be punished by a fine or by imprisonment of up to two (2) years”*. Since nepotism results in the violation of a person’s right to employment on an equal basis with others, Article 219 is also used to detect and punish this form of corruption.

Example of case law

In 2018, the Anti-Corruption Agency filed a criminal complaint with the Basic Court in Peja, against the Mayor of Klina. He was accused of nepotism for employing his daughter at the Family Medicine Centre in Klina. Before starting the recruitment process, the mayor formed a Commission to carry out the recruitment process for this position. According to the prosecution, the mayor knew beforehand that his daughter had applied for that position. Then, the Commission elected the mayor’s daughter for that position. In 2020, the Basic Court of Peja found the Mayor of Klina guilty and fined him €4,000 and banned him from holding public office for two years.³⁴⁷

CONCLUSION

Local government plays a critical role in sustaining the well-being of citizens, delivering services, and providing the first point of contact between people and public administration. The proximity with citizens can help ensure that public authorities and services are truly responsive and accountable, attuned to people's needs and aspirations, improving people's lives and strengthening their trust and confidence in local institutions.

Local governments are taking important strides in improving the legal framework towards more open and inclusive decision-making. It is essential to involve citizens and other residents in decision-making from a very early stage in the policymaking process. Local governments should translate laws and policies on open government into practice and increase their efforts to ensure transparency, accountability, and the meaningful participation of citizens in policy- and decision-making. As well as being important qualities of local democracy, transparency and civic participation can help deliver effective public services, combat and prevent corruption, and build citizens' trust in government.

The mechanisms outlined in this handbook present a variety of ways in which local and regional authorities can prevent corruption, reduce its risks, and develop effective and accountable institutions at all levels. Other reforms, such as the protection of whistleblowers and support for independent media and civil society, are equally critical to building open government, public ethics and accountability.

The Congress of Local and Regional Authorities of the Council of Europe is committed to supporting local governments in their efforts to improve the quality of local democracy, prevent corruption, raise standards of public ethics and accountability, and promote transparency and citizen participation.

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This handbook aims to support local and regional authorities in their efforts to make communities more open, ethical and citizen-oriented. It provides easy access to relevant international standards and domestic context, legislation, case law, guidelines and examples of good practice relating to public ethics, accountability, transparency, and citizen participation. It also includes a concise assessment of the most prevalent corruption risks.

Effective application of tools to promote transparency and citizen participation, coupled with stronger accountability and public ethics, can help to drive out corruption and government malpractice. They help governments to draw on the skills, knowledge and experience of citizens to enable more informed decision-making, early identification of negative impacts of prospective policies, greater ownership of the resulting decisions, and the delivery of more effective public services.

The Handbook is also available online and as part of the bE-Open online tool.



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The Council of Europe is the continent's leading human rights organisation. It comprises 47 member states, including all members of the European Union. The Congress of Local and Regional Authorities is the institution of the Council of Europe, responsible for strengthening local and regional democracy in its member states. Composed of two chambers – the Chamber of Local Authorities and the Chamber of Regions – and three committees it brings together 648 elected officials, representing more than 150,000 local and regional authorities.

