

Legal framework for citizen participation in decision-making processes at the local level - the context of Kosovo

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Abstract

Public participation is essential to the promotion of democratic governance, the rule of law, social inclusion and economic development, including the fulfillment of human rights. Each country should create the legal framework for giving effect to the right to participate in public affairs by ratifying relevant international and regional treaties and incorporated them in national laws, policies and practices in order to ensure that equal right to participate in public affairs is recognized and protected within national legal framework. Despite being a fairly young democracy, Kosovo has a progressive legal framework. It has been developed with a strong support of the international community whereby majority of international instruments are incorporated within constitutional provisions and numerous positive laws. Consequently, the right to participate is entrenched in constitutional provisions, laws and bylaws of Kosovo. This paper explains the efforts undertaken in Kosovo to increase the participation of citizens in decision-making process using: normative legal method and qualitative method, by focusing on the specific analysis of the legal framework for citizen participation by comparing it with established practices which are often in conflict with the legal basis as a result of interference by political institutions.

Keywords: public administration, transparency, political interference, public consultation, public policy.

Introduction

Good governance, rule of law and an accountable and transparent public administration are regarded as key to the realization of sustained economic growth, equity and social justice, and to strengthening implementation of the internationally agreed development goals, including the Millennium Development Goals (MDGs).¹ Public participation plays a crucial role in the promotion of democratic governance, the rule of law, social inclusion and economic development, including the advancement of all human rights. The right to directly and indirectly participate in public life is important in empowering individuals and groups, and is one of the core elements of human rights-based approaches aimed at eliminating marginalization and discrimination. Participation rights are closely linked to other human rights such as the rights to peaceful assembly and association, freedom of expression and opinion and the rights to education and to information.²

¹ United Nations. (2008). People Matter: Civic Engagement in Public Governance - world Public Sector Report 2008. Department of Economic and Social Affairs, New York, pg. 3.

² United Nations Human Rights Office of the High Commissioner. Equal participation in political and public affair. Available at: <https://www.ohchr.org/EN/Issues/Pages/EqualParticipation.aspx> [Accessed on April 28, 2020].

It has been long recognized and affirmed within the United Nations system that civic engagement and participatory processes are vital instruments for addressing the challenges of poverty reduction and achieving internationally agreed development goals, including the MDGs. In recent decades, several major United Nations summits, resolutions and international declarations have focused on the themes of participation and partnership in a wide range of international issues. Several of these resolutions concentrate specifically on the need for more participatory approaches to governance, focusing on partnerships among multiple stakeholders at both the national and international levels, including national governments, civil society organizations, non-governmental organizations, media, businesses and the private sector. For example, in its resolution 50/223, the General Assembly acknowledged the importance of undertaking a participatory approach to public administration as a catalyst for supporting the developmental process. The Economic and Social Council, in its resolution 2006/99, articulated the importance of civic participation when it encouraged “Member States” to strengthen citizen trust in government by fostering public citizen participation in key processes of public policy development, public service delivery and public accountability.” The General Assembly in its resolution 60/34 equally noted that the capacities of public institutions will play a vital role in the ability of Member States to effectively achieve the MDGs and acknowledged that measures that increase participatory and transparent governance will help Member States to build and strengthen state capacity to address development and other challenges.³

The Council of Europe specifically recognizes the “effective and sustainable mechanisms for dialogue, consultation and co-operation between civil society and the authorities at all levels” as important vehicles that are “allowing the participation of all individuals and societal groups in democratic decision making”. Indeed, there is increased recognition in countries of Europe about the need to introduce legislative mechanisms or different models that will facilitate civil participation.⁴

The right to participate requires an environment that values and takes into account the work and contribution of all members of society, supports and encourages their engagement and ensures that they are empowered and equipped with the knowledge and capacity necessary to claim and exercise their rights. States should create the legal framework for giving effect to the right to participate in public affairs by taking the steps necessary to accede to or ratify relevant international and regional human rights treaties, and accept related individual communications procedures. Moreover, states should ensure that those treaties are adequately incorporated in national laws, policies and practices in order to ensure that equal right to participate in public affairs is recognized, protected and implemented in national constitutions and legal frameworks. In addition, laws, policies and institutional arrangements should guarantee the equal participation of individuals and groups in the design,

³ United Nations. (2008). *People Matter: Civic Engagement in Public Governance - World Public Sector Report 2008*. Department of Economic and Social Affairs, New York, pg. 27.

⁴ Secretary General of the Council of Europe. (2015). *State of Democracy, Human Rights and the Rule of Law in Europe - A shared responsibility for democratic security in Europe, 2015*. Council of Europe, Strasbourg, page 53. Available at: <https://edoc.CouncilofEurope.int/en/an-overview/6455-state-of-democracy-human-rights-and-the-rule-of-law-in-europe.html> [Accessed on April 28, 2020].

implementation and evaluation of any law, regulation, policy, program or strategy affecting them. While the responsibility and accountability for taking decisions ultimately rests with public authorities, the participation of various sectors of society allows the authorities to deepen their understanding of specific issues; helps to identify gaps, as well as available policy and legislative options and their impact on specific individuals and groups; and balances conflicting interests. As a consequence, decision-making is more informed and sustainable and public institutions are more effective, accountable and transparent. This in turn enhances the legitimacy of States' decisions and their ownership by all members of society.⁵

Thus, it is clear that citizen participation in decision-making processes is characteristic of societies with functional democracies. Moreover, civic participation in decision-making improves the accountability of the authorities by increasing their responsibility in relation to the social contract itself.

Despite being a fairly young democracy, Kosovo has a progressive legal framework. It has been developed with a strong support of the international community whereby majority of international instruments protecting human rights are incorporated within constitutional provisions and numerous positive laws. Consequently, the right to participate is entrenched in constitutional provisions, laws and bylaws of Kosovo. Overall, despite the good legal basis for guaranteeing the right of citizens to participate in decision-making processes at the municipal level, this important process is being neglected in the context of Kosovo. Improving decision-making through citizen participation has remained within the framework of empty statements by political representatives discouraging citizens from getting involved in the process. Moreover, the awareness of a large segment of citizens is still "enslaved" as a result of inheritance from the previous monistic system where the decisions of the authorities are not challenged and are not judged by the citizen.

Civil society organizations are making efforts to change this situation in the daily activities of local authorities by opposing the decisions of the latter. Meanwhile, local authorities and political institutions show a strong tendency to instrumentalize civil society organizations in an attempt to deprive them of this power guaranteed by constitutional and legal provisions. Not infrequently, these organizations are treated as if they were "parallel powers" and not as groups of citizens who articulate the need to address various problems.

1. Legal framework on citizen participation in Kosovo

EU law has influenced the establishment of the legal system in Kosovo as a result of the country's aspirations for EU membership and as a result of international administration by UNMIK (United Nation Mission in Kosovo) and other international missions (ICO, EULEX) that have assisted in building the legal system in Kosovo while respecting the advanced international standards deriving from the main acts of

⁵ United Nations High Commissioner for Human Rights. (2018). Draft guidelines for States on the effective implementation of the right to participate in public affairs. Available at: https://www.ohchr.org/Documents/Issues/PublicAffairs/GuidelinesRightParticipatePublicAffairs_web.pdf [Accessed on April 28, 2020].

the UN, the EU and the EC. Consequently, there is a form of transposition of EU law and standards into the local legal system. All laws adopted after 1999 and in particular those adopted by the Institutions of Kosovo have had the obligation to respect EU criteria, respectively *acquis communautaire*. A number of basic laws have been drafted with the help of international experts in compliance with EU law provisions. Another form was the direct application of some international instruments through the Constitution of the Republic of Kosovo.⁶

As a new country, Kosovo's legal framework was developed with strong support of the international community *in the spirit of democratic values*. Starting with the Constitution of the Republic of Kosovo⁷, citizen participation in decision-making is set forth as a constitutional category. As per per the Constitution, *"the activity of local self-government bodies is based on this constitution and the laws of the Republic of Kosovo and respects the European Charter of Local Self-Government (Strasbourg, 1988). The Republic of Kosovo shall observe and implement the European Charter on Local Self Government to the same extent as that required of a signatory state"*.⁸ Thus, Kosovo is obliged to adhere to the Charter even though it cannot sign it without becoming the member of the Council of Europe. The Chapter X of Kosovo's Constitution (Local Government and Territorial Organization) sets out the basic principles of the local self-government. Furthermore, it establishes that *"the basic unit of local government in the Republic of Kosovo is the municipality. Municipalities enjoy a high degree of local self-governance and encourage and ensure the active participation of all citizens in the decision-making process of the municipal bodie"*.⁹ As it is expected with the highest governing acts, Kosovo's constitution is not too specific as to how the municipalities may *encourage and ensure the active participation of all citizens*, however, the laws which will further specify the obligations of the municipalities are foreseen by the Constitution. In addition, Article 79 of the Constitution provides for the possibility for citizens to affect legislation processes at the highest governing level: *"The initiative to propose laws may be taken by the President of the Republic of Kosovo from his/her scope of authority, the Government, deputies of the Assembly or at least ten thousand citizens as provided by law."* Kosovo's Constitution has a rare provision imbedded in the article 81 which lists the so-called Legislation of Vital Interest. This article is the result of Kosovo's strivings to become a multi-ethnic state with full respect on the rights on the non-majority communities. It is designed to protect the interest of the non-majority communities by ensuring that no changes in the legislation which is of some impact to the rights of non-majority communities can be made without a "double majority". This means that the Legislation of Vital Interest can be adopted, amended or repealed only if it has the majority votes in the parliament and the majority votes amongst MPs who represent the non-majority communities recognized by the constitution.¹⁰ Furthermore, the Legislation of Vital

⁶ Bajrami, A., & Hasani, E., & Kuçi, H., & Islami, I., & Gashi, H., & Morina, I., & Puka, A., & Hajdari, A., & Batalli, M., & Istrefi, R. (2019). *Hyrje në sistemin ligjor në Kosovë*. Akademia e Drejtësisë së Kosovës, Prishtinë, page 88.

⁷ Constitution of the Republic of Kosovo, Assembly of Republic of Kosovo.(2008). Available online at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=3702> [Accessed April 29, 2020].

⁸ Article 123.3 of the Constitution of Republic of Kosovo.

⁹ Article 124.1 of the Constitution of Republic of Kosovo.

¹⁰ Out of 120 MPs of Kosovo Assembly, 20 are representatives on non-majority communities: 10 are Serbs, 3

Interest may not be a subject of a referendum. Amongst the legislation of vital interest are also laws related to the local self-government: *Laws changing municipal boundaries, establishing or abolishing municipalities, defining the scope of powers of municipalities and their participation in inter-municipal and cross-border relations.*

Thus, in compliance with constitutional provision, citizen participation is defined and supported in:

- 1) Law on Local-Self Government;
- 2) Law on Empowerment and Participation of Youth;
- 3) Law on Access to Public Documents;
- 4) Law on the Use of Language;
- 5) Law No. 04 / L-174 on Spatial Planning;
- 6) Regulation No.05/2016, on Minimum Standards for Public Consultation Process;
- 7) Administrative Instruction No.2008/08 on Memorandums of Cooperation of Municipalities with Villages, Settlements and Urban Quarters;
- 8) Administrative Instruction on procedure of establishment, organization and competencies of the consultative committees in the municipalities;
- 9) Regulation MF - NR - 04/2017 on criteria, standards and procedure on public funding of NGOs;
- 10) Regulation No. 01/2017 On The Procedure For Drafting And Publishing Municipal Acts;
- 11) Administrative Instruction No. 05/2014 on Procedures of Public Participation in Spatial Planning;
- 12) Administrative Instruction No. 06/2018 on Minimum Standards of Public Consultation in Municipalities;
- 13) Administrative Instruction (MLGA) No.04/2018 on the Transparency in Municipalities;
- 14) Municipal Statutes.

Parts of the legal framework in Kosovo directly relate to citizen participation, such as the Law on Local Self-government, while others, such as the Law on Access to Public Documents define preconditions necessary for effective citizen participation. Finally, Article 40 and 41 of the Constitution guarantee the right of citizens to receive information, respectively the rights of citizens for access to documents of any public institutions.

The Law on Local Self-Government is the basic law on the organization and functioning of the local governments in Kosovo.¹¹ It professes high regard of the non-majority community rights and recognizes the importance of the municipalities in upholding these rights; it also bounds Kosovo to several international chapters and treaties, such as:

- *European Charter of Local Self Government and its Protocols;*
- *Framework Convention for the Protection of National Minorities*
- *European Charter for Regional or Minority Languages;*

Boniaks, 2 Turkish, 1 Gorani and 4 representatives of Roma, Ashkali and Egyptian community.

¹¹ Law Nr. 03/L-040 on Local Self Government, (Official Gazette of Republic of Kosovo, Year III / No. 28 / 04 June 2008). Available online at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2530> [Accessed April 30, 2020].

- *European Outline Convention on the Trans-frontier Co-operation between Territorial Communities or Authorities and its Protocols.*
- *The Law on Local self-Government in the Chapter II, article 4 defines general principles of governing at the local level, including the following two provisions directly related to the citizen participation:*

4.5. *Citizens of the municipality shall have the right to participate in the activities of the municipality, as prescribed by law.*

4.6. *Municipalities shall be entitled to enter into agreements with villages, quarter or settlements within their territory to offer services closer to citizens in accordance with Article 35 and their statutes.* This law provides many obligations to local government institutions, broadly grouped in the following aspects/elements.

The first aspect has to do with the right of citizens to participate in the activities of the municipality. The law provides for open meetings of the Municipal Assembly and all its committees and requires that notices of the meetings of the Municipal Assembly are made public.¹²

The second aspect relates to the obligation of municipalities to organize public meetings. Article 68 regulates access to information at the local level and provides for a regular mechanism for information and public consultation: at least twice a year, every municipality should organize public meetings (Article 68.1 2) where municipal representatives shall inform citizens about the activities of the municipality and citizens may ask questions and make proposals to the elected representatives of the municipality (Article 68.22). In addition, the municipality must notify citizens about 'important plans or programs for public interest' (Article 68.3); and the Municipal Assembly should "adopt municipal regulation promoting the transparency of the legislative, executive and administrative bodies of the municipalities, enhancing the public participation in the decision making at the local level, and facilitating the public access to official documents of the municipalities." (Article 68.4).

The third aspect has to do with direct democracy form of participation, which includes the right of citizens to petition (Article 71), citizen initiatives to propose municipal regulations (Article 70), referendum and citizen initiative to remove a mayor from the office (Article 71). Any petition (proposed regulation) signed by 15% of the registered voters in the municipality must be considered by the municipal assembly. Furthermore, a referendum must be organized on any decision of the municipal assembly if the request for referendum is signed by 10% of the registered voters in the municipality and submitted no later than 30 days from the date of adoption of the regulation.

The fourth aspect provides the right of municipal assemblies to establish consultative committees for the purpose of enabling citizen in the decision-making processes. The status of these committees is advisory and membership to these committees must include exclusively citizens and representatives of non-governmental organizations of the respective municipalities.¹³ According to the law, the municipalities are obliged to hold, at least twice a year (one in the first half and the other in the second half of the year), a public meeting open to all citizens of the respective municipality.

¹² Article 45 of the Law Nr. 03/L-040 on Local Self Government.

¹³ Article 73 of the Law Nr. 03/L-040 on Local Self Government.

Furthermore, the Government of Kosovo adopted Administrative Instruction for the Transparency in Municipalities in 2018, which elaborates on methods and mechanisms for advertising meetings of the Municipal Assembly and Committees,¹⁴ meetings with the public¹⁵ and public consultation.¹⁶

In addition, the article 34 of the LLSG sets background for better citizen access to local government by allowing the possibility for the municipality to enter into agreements with their own villages or settlements:

34.1. *Each municipality may make arrangements with villages, settlements and urban quarters within its territory to ensure that the services are offered closer to all citizens of the municipality.*

34.2. *With the approval of the municipality, villages, settlements and urban quarters may carry out activities that are within the responsibilities and powers of the municipality. In this event, municipalities shall provide sufficient resources to the villages, settlements and urban quarters.*

When it comes to non-majority communities' rights, apart from the fact that the LLSG obliges municipalities to adopt internal regulations for the respect of the Law on Use of Language (article 9), it also guarantees that the post of the Deputy Chairperson of a Municipal Assembly be held by a representative of a non-majority community (if that community comprises at least 10% of the population in the municipality). Similarly, article 61 of the LLSG obliges the municipalities in which at least 10% of the populations are member on non-majority community to have a Deputy Mayor for Communities. This post is fulfilled at the recommendation of the Mayor and the double majority vote by the municipal assembly. The Deputy Mayor for communities assists *the Mayor and provides him/her advice and guidance to the Mayor on issues related to the non-majority communities.*

The Law on Empowerment and Participation of Youth promotes youth involvement in decision-making processes through establishing of local youth action councils. According to this law, municipalities are required to consult with Local Youth Councils on development of youth policies¹⁷, as well as to include young people in decision making processes in areas of: education, jobs, public health, social issues, culture sport and recreation, civic education and democracy, environment, spatial planning and rural development.¹⁸

The Law on Access to Public Documents establishes that effective citizen participation is not possible without access to information. The Law on Access to Public Documents guarantees the right of every citizen to access documents maintained, drawn or received by the public institutions. Under this law, all public institutions, including municipalities, are obliged to assign units or officers who will be responsible for receiving and reviewing applications for access to documents, with some exceptions

¹⁴ Article 4 of the Administrative Instruction No. 04/2018 for the Transparency in Municipalities. Available at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=18373> [Accessed April 30, 2020].

¹⁵ Article 11 of the Administrative Instruction No. 04/2018 for the Transparency in Municipalities.

¹⁶ Article 12 & 13 of the Administrative Instruction No. 04/2018 for the Transparency in Municipalities.

¹⁷ Article 7.1.4 of the Law No. 03/L-145 on Empowerment and Participation of Youth. (Official Gazette of Republic of Kosovo, Year IV /No. 60 / 05, November 2009). Available at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2654> [Accessed April 30, 2020].

¹⁸ Article 13 of the Law No. 03/L-145 on Empowerment and Participation of Youth.

as outlined by the law. The Law also stipulates that public institutions have to inform the public on their rights to access official documents, as well as methods of exercising those rights. Institutions are also required to keep the public abreast of their compliance with the Law, within the annual reports, and other forms they use for informing the citizens.¹⁹

The Administrative Instruction for Transparency in Municipalities regulates public participation in meetings of the Municipal Assembly and its bodies, obligation for public notification, consultation with public on municipal polities. It promotes openness of municipal assembly sessions and all its commissions and it promotes the publication of all decisions, regulations and other documents of the Municipal Assembly. Further, the Administrative Instruction provides mechanisms for citizen participation, such as meetings with the public, meetings of the Mayor with the citizens, public consultation prior to the adoption of acts. Key points covered by the Administrative Instruction include publication of acts²⁰, requests for information, citizens' initiatives and petitions, public meetings, meetings of the Mayor with citizens, public consultation before approving the acts, access to public documents, reporting to oversight bodies, the action plan for transparency in municipalities, as well as functioning of the official websites of municipalities.²¹ Administrative Instruction obliges the Municipalities to draft the four year Action Plan for Transparency in the municipalities. The Action Plan in Transparency aims to provide to public access on the monitoring and implementation of municipal acts including management of public finances, procurement and other areas of interest for the public.²²

Administrative Instruction No. 06/2018 on Minimum Standards of Public Consultation in Municipalities aims to promote and ensure the participation of the citizens and other interested parties by the local authorities at the local level of the policy-making and decision-making process, to promote municipal transparency, as well as influence the development of sustainable policies of the general interest. This Administrative Instruction sets out the rules, principles, forms, procedures and the minimum standards of public consultation in municipalities during the drafting of the municipal policy and bylaws. Furthermore, AI determines what documents and bylaws should undergo the public consultation,²³ including forms, techniques, planning and phases of it. In addition, the AI gives the instruction on how to include the interested parties in working groups, monitoring of public consultation process,

¹⁹ Article 5, Law No. 06/L-081 on Access to Public Documents. (Official Gazette of Republic of Kosovo, No. 13 / 04 JULY 2019). Available at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=20505> [Accessed April 30, 2020].

²⁰ Article 5, Administrative Instruction (MLGA) No.04/2018 on the Transparency in Municipalities. (Official Gazette of Republic of Kosovo,). Available at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=18373> [Accessed April 30, 2020].

²¹ Article 8, 9, 10, 12, 13, 14 of the Administrative Instruction (MLGA) No.04/2018 on the Transparency in Municipalities.

²² Article 6, 7, 15, 18, 19, 20 of the Administrative Instruction (MLGA) No.04/2018 on the Transparency in Municipalities.

²³ Article 6, 7 of the Administrative Instruction (MLGA) No.06/2018 on Minimum Standards of Public Consultation in Municipalities. Available at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2530> [Accessed April 30, 2020].

coordination, cooperation and reporting procedures.²⁴

Administrative Instruction No.02/2019 on the Organization, Functioning and Cooperation of the Municipalities with Villages, Settlements and Urban Quarters, in accordance with the Law on Local Self-Government, article 34, paragraph 4²⁵, stipulates that any municipality in Kosovo may adopt a Regulation on cooperation of the municipality with the villages, settlements and urban zones within the territory of the municipality. This mechanism aimed at making the municipal services more accessible as well as consultation process more inclusive and efficient is an excellent tool for the larger municipalities with the considerable number of villages. The scope of the agreement between the municipality and the settlements within the given municipality is broadly defined by the administrative instruction and can cover any competency of the municipality, especially the following areas: Urban and rural planning; Water supply, sewage system regulation and drainage system; Public health; Environment protection; Tourism; Regulation of the public spaces and cemeteries; Cultural and sport activities.²⁶

Administrative instruction No.01/2016 on the procedure of establishment, organization and competencies of the consultative committees in the municipalities²⁷ creates opportunities for active participation of citizens and other stakeholders in the decision-making process. Previously mentioned in the context of the LLSG, the Consultative Committees (CC) are bodies of the municipal assembly which are to ensure that municipal bodies are more transparent efficient and accountable. CCs are bodies established on the decision of the Municipal Assembly, but the members of CC are "citizens and representatives of non-governmental organizations with relevoant knowledge in the respective field" and cannot be the members of the assembly. CCs have 5-7 members and should be gender balanced. The members of CC are chosen based on the criteria set in the open call of the municipality and the members must be residents of the municipality. The best candidates are selected by a tri-partite commission of which one member must be from the civil society. CCs must organize at least 6 meetings per year and they may: Give proposals on regulations; Conduct research; Offer opinions on initiatives taken by the Mayor, Committees or Assembly; Present citizens' views; Give proposals for the solution of identified problems, etc.

Administrative Instruction on Principles and Procedures for Public Participation in Spatial Planning²⁸ regulates the responsibilities of both local and national level

²⁴ Article 10, 11, 12, 19, 20, 21 of the Administrative Instruction (MLGA) No.06/2018 on Minimum Standards of Public Consultation in Municipalities.

²⁵ The Statute and local municipal regulations shall stipulate the form of co-operation between the municipality and villages, settlements and urban quarters and the scope of work and organization of villages, settlements and urban quarters. All villages, settlements and urban quarters shall comply with the applicable law when carrying out activities by arrangement with the municipality.

²⁶ Article 8 of the Administrative Instruction No.02/2019 on the Organization, Functioning and Cooperation of the Municipalities with Villages, Settlements and Urban Quarters. Available at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2530> [Accessed April 30, 2020].

²⁷ Administrative instruction No.01/2016 on the procedure of establishment, organization and competencies of the consultative committees in the municipalities. Available at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=12979> [Accessed April 30, 2020].

²⁸ Administrative Instruction No. 05/2014 on the Responsibilities of Spatial Planning Authorities as well as Principles and Procedures for Public Participation in Spatial Planning. Accessed at: <https://gzk.rks-gov.net/>

spatial planning authorities, but for the purposes of this analysis only local authority's responsibilities will be scrutinized. According to the article 4, paragraph 3 of the AI, the municipal authorities are responsible for ensuring public participation in design, implementation and review of: Municipal development plan; Municipal zoning map; detailed regulatory plans. Article 6 of the AI prescribes the minimum requirements for public participation in drafting spatial planning documents. According to this article, the authorities are obliged to organize at least one *public hearing* in each stage of the planning process. In addition, the authorities must organize a *public discussion* with all the relevant stakeholders (citizens, public, private, NGO sector, experts). Articles 7 and 8 of the AI define the obligations related to organization of the *public review*. The public review is called by the decision of the municipal assembly which should contain further details on the forms of public participation during the review. The public review must be announced in at least three different media, municipal website and other forms of communication with the general public. The review is announced at least 8 days in advance with the information containing dates, place and the duration of the review, as well as links to the drafts of the spatial planning documents and clear instructions for on-line submission of comments. The review of the first draft must last at least 30 days. Whereas the reviews of the changes made after the initial consultations can last at least 15 days. Public review reports must be published on the municipal website after each phase of the public review. The reports include the participants who have submitted remarks and justification for adopting or rejecting a certain remarks/recommendations.

Municipal Statute is the highest legal act approved within Municipal Assembly and as such governs general aspects of the functioning of the municipality in accordance with the national legal framework that regulates the functioning of local government. The Statute provides on many local governance matters, including participation of citizens in decision-making on matters of public interest and participation of citizens in the meetings of the Municipal Assembly. Almost all Kosovo municipalities in their Statutes have provisions regulating citizen participation in decision-making processes. Statutes of some municipalities are more detailed about the issue of citizen participation while others refer to laws and other by-laws that refer to the issue of participation.

It is obvious that for the involvement of citizens in decision-making at the municipal level, an advanced normative approach has been used, regulating this issue through a large number of legal and sub-legal acts. Given that these legal provisions are scattered everywhere, it has been and continues to be difficult for any civil servant to have a clear picture about legal obligations on citizen participation in decision-making. On the other hand, the normative acts that regulate the participation of citizens in decision-making processes at the municipal level are not well harmonized with each other, causing dilemmas for civil servants during their implementation. Also, the applicability of these legal provisions, in most cases has been and continues to be at the discretion of political institutions which are quite reluctant towards the participation of citizens in decision-making processes.

2. Citizen participation practices in Kosovo

A very strange feature of the citizens of Kosovo, in the post-war period, is the obvious lack of civic activism, claiming that all needs, priorities and problems should be recognized by the local government and consequently addressed automatically. Such a thing is impossible even in countries with very advanced democracies. While in war-torn countries that seek to consolidate the democratic system, increased civic activism is required to address the needs, priorities and problems of the community. In the meanwhile, various mechanisms have been established in Kosovo that are supposed to encourage the involvement of citizens with a strong sense of activism for the common good of the community. These mechanisms are far from being neither consolidated nor fully functional. Consolidation and functioning of citizen participation mechanisms helps the country's transition to a society with democratic values.

However, little progress has been made in involving citizens in decision-making processes. Initially, the legal infrastructure is present as well as the administrative bodies that are responsible for the involvement of citizens in decision-making. However, the difficulties in implementing the legal provisions are great. Citizens, for various reasons, do not express any interest in this process.

In the Municipality of Vushtrri, during 2018 and 2019, a numerous public debates were organized on draft-municipal policies in which case a very symbolic number of citizens have expressed their interest for participation, and consequently failing to obtain suggestions and constructive comments that would increase the quality of public policy and decision-making at the municipal level.²⁹

Usually, during public debates, a moderate presence of Non-Governmental Organizations is observed which have an expertise regarding the issues raised for debate. Citizens attend these public meetings very rarely and are usually groups that do not give any added value to the consultation. Efforts have been made to change this phenomenon but no success has been achieved yet. Civil Society Organizations can help in this matter by mobilizing their capacities in raising the awareness of citizens regarding the importance of participation in decision-making processes. The main cause of this phenomenon should be sought in the mentality formed during the past system when the decision-making of the authorities has never been challenged.³⁰ The announcement of the citizens for holding public meetings is made 8 to 15 days in advance, by posting the announcement on the municipal website, in public places even through the local radio station. However, this has not enabled any progress in participation. The reasons are related to the perception of the citizens that they do not have the opportunity to influence the decision-making at the municipal level.³¹ The so-called sub-municipal structures of government have been and continue to be among the safest forms of bringing citizens closer to decision-making processes

²⁹ Interview with Ismet Gashi: Legal office representative of Vushtrri Municipality. The interview was conducted on April 30, 2020 in Vushtrri/Kosovo.

³⁰ Interview with Avdi Muzliukaj: Legal office representative of Mitrovica Municipality. The interview was conducted on April 30, 2020 in Mitrovica/Kosovo.

³¹ Interview with Blerim Zhabari: Public Information Office in Vushtrri Municipality. The interview was conducted on April 30, 2020 in Vushtrri/Kosovo.

in the municipality. In addition, these structures can efficiently perform some tasks that are within responsibility of municipalities and for the implementation of which municipalities may have difficulties. Kosovo's legal framework for local self-government, although it does not address many of its elements, provides the basic framework on which co-operation between the municipality and sub-municipal levels can be shaped. The sub-municipal level of government in Kosovo is met with different names: somewhere it is known as a local community, somewhere as a local council and somewhere else as a village council. However, it is important that municipalities in Kosovo also have the right to cooperate with these councils. Such an action must be followed with the official approval of the Municipal Assembly, and this step must be preceded by a very complex process of selecting village councils.³² In addition, the role of village councils is mainly related to the consideration of issues in the interest of the community; drafting and approving the work plan of the council and internal rules of operation; organizing, following up and planning local development plans and programs; organizing meetings of citizens with municipal officials; and other similar issues. However, one of the biggest challenges of the functioning of village councils in Kosovo remains the financing of these mechanisms. Municipalities are struggling to find the way for financial support with the sole purpose of having the village councils functional.³³

Village councils, for sure, are extremely important mechanisms for involving citizens in decision-making processes at the local level. Through them, the needs and priorities of residents are articulated in a more structured way and guarantee higher efficiency in addressing problems. However, these village councils, despite the legal obligation, in some municipalities have not yet been formed, while in others they are almost dysfunctional. The apparent decline in the functioning of village councils has been caused by a lack of financial and logistical support but the bylaws adopted during 2019, regarding the cooperation between the municipality and the village councils, have provided solutions to the issue by delegating the responsibility of financial support to the municipal authorities. On the other hand, citizens have very little knowledge about the role and importance of village councils, including their competencies guaranteed by legal provisions. Not infrequently, these councils are misused by political entities exclusively to achieve daily political objectives. Therefore, their credibility in relation to citizens is quite shaky.³⁴

So far, most Kosovo municipalities have overlooked the inclusion of certain social groups in decision-making, especially when it comes to municipal budgeting for the needs of young people, women and people with disabilities. Despite the fact that these groups are also organized as NGOs they have not managed to have a sufficient impact on budgeting according to their needs. Addressing the needs of the youth has been ignored with the constant justification of the lack of funds, so this category feels extremely marginalized in most of the municipalities of Kosovo. Moreover, there is a tendency for misusing the NGOs due to their financial dependence on funds

³² Swiss Cooperation Office Kosovo. (2016). *Doracak për anëtarët e Kuvendit të Komunës*. SCO, Prishtinë, page 17.

³³ *Ibid.*

³⁴ Interview with Xhavit Mehmeti: Executive Director of NGO "FODEM". The interview was conducted on April 30, 2020 in Vushtrri/Kosovo.

allocated by authorities.³⁵

One of the mechanisms established to increase the participation of citizens in decision-making processes is the Consultative Committee composed of citizens and civil society. These committees have the right to conduct researches, collect data on thematic issues and suggest issues to be dealt with by the municipal administration. These committees function partially and in very small numbers in different municipalities. The main reason for the non-functioning of the Consultative Committees is the lack of financial and logistical support for these mechanisms.³⁶

Thus, despite the legal framework that guarantees the participation of citizens in decision-making processes, a little progress has been made in this regard. Functionality of these mechanisms is extremely important both for the democratization of society as well as for the European integration processes of Kosovo.

Conclusions

Good governance has been said to include: full respect for human rights, the rule of law, effective citizen participation, multi-actor partnerships, political pluralism, transparent and accountable processes and institutions, efficient and effective public sector, legitimacy, access to knowledge, information and education, political empowerment of people, equality, sustainability and values that promote accountability, solidarity and tolerance. In this context, citizen participation should be understood as a pathway for all citizens to articulate their voice and influence decisions that affect their neighborhoods and quality of life.

Since 2006, Kosovo has drafted three public sector reform strategies, in which case, among other things, it has envisaged empowering citizens through their participation in decision-making processes at the central and especially at the municipal level. This goal is incorporated into a large number of different legal provisions. The process of reforms in the public administration of Kosovo continues to be a project generating high expenditures with slow and minimal results. Addressing public administration reform issues, including citizen participation, are more a response to the European Commission's frequent demands and pressure than a will and awareness of Kosovo's governments and political leaders.

Monitoring performance and set objectives is focused on the process and not on the results, while the lack of political will and bureaucratic resistance to change continues to grow. Moreover, the lack of vision for administrative reform in general, is one of the reasons that have turned the process of administrative reform into an endless project, which swallows millions of Euros of budget each year and does not yield results. Thus, the reform in the public administration is being followed exclusively by cosmetic improvements of the legal framework, low applicability and shortcomings in the provision of services to citizens, causing growing dissatisfaction among the citizens of Kosovo.

³⁵ Interview with Remzi Aliu: Representative of Youth Organizations of Mitrovica Region. The interview was conducted on May 04, 2020 in Mitrovica.

³⁶ Interview with Gentijana Zeqiri: NGO "IQS" representative. The interview was conducted on May 04, 2020 in Mitrovica.

Kosovo institutions, like in many countries in transition, are mistaking by focusing on quantitative indicators while trying to increase citizen participation in decision-making processes at the municipal level. The case of Slovenia and Croatia shows that focusing on quantitative indicators is insufficient to improve governance, but we must also focus on quality indicators. Success in this approach requires political will and the interaction of a large number of stakeholders.

The reform of public administration, and consequently the increase of citizens' participation in decision-making processes, should not only be seen as a legal obligation to meet the standards set by the EU but also as a mechanism that improves decision-making and promotes a sense of ownership in development processes. Ultimately, these reforms, including civic participation, will only be successfully completed when the leading political class in Kosovo is freed from the mindset of past governing systems.

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