

# Analysis of opportunities for CSO's engagement through case studies in media

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 **ActionSEE**



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**ACTION SEE** (*Accountability, Technology and Institutional Openness Network in the South East Europe region*) is a network of civil society organizations that jointly work on promoting and ensuring government accountability and transparency in the region of South-East Europe, raising the potential for civic activism and civic participation, promoting and protecting human rights and freedoms on the internet and building capacities and interest within civil society organizations and individuals in the region in using technology in democracy promotion work.

The core members of the network are Metamorphosis from Macedonia, Center for Democratic Transition from Montenegro, Center for Research, Transparency and Accountability from Serbia and CA Why Not from Bosnia. ActionSEE works with partners from Albania MJAFT and from Kosovo Open Data Kosovo, well as partners from other countries in Europe and the world.

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2. <http://bit.ly/2JhNV8s>

Based on the electronic registry of civil society organization<sup>1</sup>, Kosovo counts 9432 local registered CSO and 538 international CSO, in a total of 9,970 registered CSO. However, the number of active CSO in Kosovo is only around 1,000 based on the Index for Civil Society of Kosovo Civil Society Foundation, about a third of the organization are focused in the capital Prishtina while the rest are spread across Kosovo.<sup>2</sup>

Civil Society sector in Kosovo it is considered to be very independent in its nature. Most of the projects run by the local CSO are funded by international donors (EU, USAID, GIZ etc.), while other donations come by government funds for civil society or memberships fees.

Civil society sector in Kosovo has managed to become an important factor in the democratization of the country, by creating its place on becoming as one of the policymakers in Kosovo. CSOs are seen as most active in transparency and accountability of public institutions and democratization, the rule of law, gender equality and the European Integration. They also raise important societal causes by working with citizen groups from local CSOs, engaging with citizens in raising their cases.

CSO engagement in the work of the Government is done throughout the Office for Good Governance within the Prime Ministers Office, which coordinates the whole process. Moreover, the legal backgrounds in this engagement are set within the Regulation No.05/2016 on minimum standards for public consultation process<sup>3</sup> Based on the regulation Office for Good Governance has developed the online platform for public consultations<sup>4</sup>. The platform aim is to assist the ministries and agencies of the Government of the Republic of Kosovo to facilitate the public consultation process by including public and nongovernmental authorities, civil society organizations and other relevant partners in the policy and decision-making process.

This platform ensures the communication process between public authorities, stakeholders and the public for inclusive participation in the decision and policy-making the process of public interest and the improvement of the transparency and accountability of public authorities towards stakeholders and the public. Moreover, the platform allows registering and requesting participation in stakeholder meetings, becoming part of working groups.<sup>5</sup>

**The monitoring phase for the analysis of CSO's engagement was conducted from 1st of May 2018 until 31st of December 2018.**

3. <http://bit.ly/2LFHEEK>

4. <http://bit.ly/2JyJ4yW>

5. <http://bit.ly/2JiTOll>

## II. INITIATIVES IN KOSOVO

### New Law on Civil Society Organizations

The right to establish NGOs is currently regulated by the 2011 Law on Freedom of Association in Non-Governmental Organizations. However, the law got under amended during 2018, which the draft law was approved by the Kosovo Government in January 2018. However, on 7 November 2018, the draft law was returned for second reading to the Assembly with many recent changes that endanger the functioning of the non-governmental sector.

It is important to note that from the 37 amendments proposed by the Commission, 36 were voted by the Kosovo Assembly during the second reading, becoming part of the final version of the Law. The only amendment that was not voted is amendment 12, which was foreseen the doubling of fines for NGOs. Civil society organizations have asked the President to turn the law into the Assembly, which happened on 23rd November but the President did not decree it, as according to President Thaçi's Office, nine articles of this law were in violation of Article 44 of the Constitution.

Despite everything, the new law on non-governmental organizations is being challenged by civil society. Around 300 non-governmental organizations oppose the voting of the Draft Law on Civil Society.

The main problem of the adopted law is the violation of the sector's non-profit main principle, which states that all the income and assets of an NGO should only be used to fulfill the mission of the organization. According to the draft law, as it stands, Article 41, section 2 after an NGO shuts down, its income and assets will be privatized and transferred to other institutions. Earlier it stated that the extinguished NGO could distribute its assets to another similar NGO, and now adds the phrase "or institutions", which means that the assets and income of these NGOs can be transferred to private institutions, even businesses. Taulant Hoxha, director of the Kosovo Civil Society Foundation, states that if the new law on NGOs goes to the Assembly without being changed, then Kosovo becomes the first country in the world that allows the income of NGOs to be transferred to private businesses.<sup>6</sup>

If not amended, this provision will prevent donors from providing legal guarantees that their donations will be used for non-profit purposes. The EU Office in Kosovo condemned the possibility of this provision passing as "concerning." "This would represent a fundamental breach of non-profit principles, and would open the door for corruption and misuse of donor funding," the EU Office stated in a press release.<sup>7</sup> Furthermore, it is quite problematic to change the NGO's extinction basis from non-solvent to inactive. Non-solvency is the inability to pay, while non-activity is a non-financial concept that is neither defined in Kosovo legislation nor in international practice. Interpretation of non-activity as a basis for extinction creates direct opportunities for arbitrary decisions in relation to the extinction of NGOs and jeopardizes the constitutional right to freedom of association.<sup>8</sup>

<sup>6</sup> <http://bit.ly/2YnYwSL>

<sup>7</sup> <http://bit.ly/30icgA7>

<sup>8</sup> <http://bit.ly/2LFR047>

9. <http://bit.ly/2E0yldd>

The new provision is also in contravention of the Constitutional Court Judgment KO 97/12 on the Law on Banks regarding the initiative to allow the transformation of microfinance NGOs.<sup>9</sup> Which allows the state to close NGOs based on arbitrary interpretations of NGO activity.

During this time Civil society organizations continued meetings with parliamentary group leaders and individual deputies to ask them to base their decision on plenary sessions on Constitutional Court and international principles, and prevent the approval of unconstitutional law and endangering the future of the non-governmental sector in Kosovo.

**NOTE:** *The law got amended based on the requests of 300 CSO engaged in opposing this initiative on 15th of April 2019.*

## BLERT MORINA AGAINST THE REPUBLIC OF KOSOVO

The first ever known request by a transgender person in Kosovo to formally change their name and sex marker in their identification documents got denied on April 2018. The request to change his name, and his gender to male, was rejected by the civil registry office in Morina's hometown of Gjakova in western Kosovo, where a gay and trans community is forced underground despite progressive laws in its Constitution.

Under Kosovo's Law on Gender Equality and Law on Protection from Discrimination, gender identity is legally protected. In addition to that, gender identity is also protected by the European Convention on Human Rights, which according to Article 22 of the Kosovo Constitution supersedes national law. Morina and his legal representative Rina Kika, filed a request for change of name and gender mark at the beginning of April 2018 to the Office of Civil Status and within the legal deadline, they received a refusal decision from this office, with the reasoning that the request is not reasonable.

According to the Office of Civil Status, there is not enough evidence to disregard the gender identity of the person shown in the identification documents to request their change. The reason why a person is seeking a change of name is a nature of declaration and the rejection of a request for a change of name because the claim is not "sufficiently reasonable" is ungrounded. The Law on Personal Names and the Administrative Instruction on Personal Name Change Procedures do not foresee "lack of reason" as a legal basis for rejecting a request for a change of name. Also the refusal of the gender marking request is unfounded. The state administration has a duty to actively help the party by showing what documents are missing, so by law, you could not simply refuse a claim because the party did not submit a document if that document was not requested.

Even though Blert's case is the first known case of a transgender person seeking this right from the state of Kosovo, the legal basis is clear: gender identity is legally recognized and is a protected under the Law on Gender Equality, the Law on Protection from Discrimination and Court Practice of the European Court of Human Rights.

On January 30th, 2018 after filing a lawsuit to the Basic Court against the Decision through which the annulment of the decision was required. Blert Morina has also submitted a request for constitutional review of this decision to the Constitutional Court.

The Ombudsman, Hilmi Jashari in an interview for K2.0 stated that administrative instructions can not have the same power in decision-making as the Constitution.<sup>10</sup> Jashari himself will be involved in the case of Blert Morina which will help the Constitutional Court provide information and expertise. For the first time since its establishment, the Constitutional Court faces the challenge of deciding on an issue directly affecting the LGBT community in Kosovo. It remains to be seen whether the judges of the Constitutional Court are willing to make a decision to protect, respect and guarantee fundamental human rights.

CEL (Centre for Equality and Liberty), CSGD (Center for Social Group Development), KDI (Kosovo Democratic Institute), and LGBT advocacy groups in Kosovo are also focused on fighting about the position of the LGBT community in the Kosovar society, about the discrimination and violence through which this community passes because of the sexual orientation and/or gender identity.

The final verdict of the case and the collaboration of the institutions with the civil society sector is still to be seen during 2019. Moreover, Mr. Blert Morina is the head of CEL Organization dealing with LGBT rights in Kosovo.

10. <http://bit.ly/2EhAcDv>

## GAP INSTITUTE AGAINST THE CONCEPT DOCUMENT ON KOSOVO PARTICIPATION AGENCY

Ministry of Economic Development in May 2018, issued a public consultation for the concept document on the creation of Kosovo Participation Agency which would be committed to the issue of organization and functioning of publicly-owned enterprises. This approach aimed to ensure their efficient engagement in the competitive market, raise the quality of products and services they offer, and enhance their impact on employment and overall economic development. This concept is clearly depicted in all strategic documents related to this sector.

However, this initiative upon its publishing in the online consultation platform<sup>11</sup> was criticized and opposed by GAP Institute. Based on the document provided by the Ministry of Economic Development, it was argued that the management of public enterprises (POEs) by an independent agency would further lose political responsibility for public services.

Public utilities, such as water supply, waste management, power supply, should be the direct responsibility of municipalities and the Ministry of Economic Development, not by an independent body that does not have a political account.

11. <http://bit.ly/2Jhyl7j>



The management of POEs by an independent agency reporting only to the Assembly of Kosovo would further invalidate the Law on Local Self-Government, article 17 of which gives powers to municipalities for water supply and waste management.

Therefore, instead of approving the Law on the Kosovo Agency for Participation, which still takes on the competencies of the municipalities, the Law on Public Enterprises should be amended which gives more decision-making powers to municipalities in public enterprises.<sup>12</sup>

12. <http://bit.ly/2HkCF7V>

Moreover, the creation of an agency also conflicts with public administration reforms. There is a MAP initiative, supported by the European Commission, to reduce the number of independent agencies. This reform is also linked to IPA funds for Kosovo. Creating a new agency is contradicted by the government's pledges to keep control of the size of public administration. This also contradicts the Action Plan for Addressing Country Report Recommendations 2018, approved by the Government on 23 April 2018, in which the Government pledges to adopt and implement an action plan for rationalizing the number of agencies and semi-independent bodies, in accordance with the agreement between the Assembly and the Government.

As a result, in September 2018, Ministry of Economic Development withdrew from its initiative on establishing such a new independent agency called "Kosovo Participation Agency". Considering that the establishment of such agency is against objectives of the reform on public administration and would cost millions of taxpayers money without bringing any added value to the management of publicly owned companies;

## ACTIONSEE GRANTEE - YAHR ENGAGED IN MONITORING THE MUNICIPALITY OF LIPJAN

NGO Youth Association for Human Rights - during the implementation of the project granted by the ActionSEE, was involved in creating a informal group which would gather remotely on discussing on transparency the Municipality of Lipjan.

One of such discussions was held on May 28th, 2018 where representatives from local institutions, political parties, local media, and civil society, participated. The focus of this discussion was on the activities that the local institutions are undertaking to improve the Municipality's transparency. Some of the problems that were discussed included: lack of informing and reporting to the Assembly, lack of dedicated space for the discussions of the opposition in plenary sessions, amongst others.

Nevertheless, the participants recognized the increased transparency from the Municipality's side in regards to updates in the Municipality's website and live broadcasting of plenary sessions on YouTube.

In addition to this, YAHR also organized an interview with the Mayor of Lipjan on May 29th, 2018. The aim of such an interview was to get more information in regards to the concrete steps that the Mayor is undertaking to improve transparency and accountability of the Municipality of Lipjan.

Moreover, a similar roundtable discussion was organized as well in the Municipality of Shtime. Attendees included representatives from local institutions, political parties, local media, and civil society.

Some of the concerns raised during such discussion were: the lack of publication of the transcripts of Assembly sessions; the lack of live broadcasting of Assembly sessions; lack of publication Municipality regulations and Municipality budget; amongst others.

As a result, the initiation of finding channels through which the Assembly sessions are broadcasted live, the formation of informal group on transparency and the provision of more information in the Municipality's website were recommended. Also, YAHR spread the word about its involvement in the ActionSEE project by distributing posters in the city of Lipjan and informing the citizens about the purpose of the project.

On August 17, 2018, the Informal Group on Transparency held a meeting where it was recommended that more and more information to be included in the Municipality's website and social media accounts which already have a considerable amount of information that contribute to the transparency of the Municipality.

Whereas, on August 30, 2018, another meeting of the Informal Group on Transparency was held on the topic of "The Role of Local Media in the Transparency of Local Institutions". Attendees included representatives from local institutions, political parties, local media, and civil society.

## CONCLUSION AND RECOMMENDATIONS

As a general observation, there is a vary of media outlets which exist in Kosovo. Media outlets start from the ones who are seen as directly influence by the political establishment to the ones who do not hesitate to criticize the political establishment, report on cases of corruption to influence the nationalist policies.

However, most of the covering done by media is very limited to the work of a certain governmental institution. Their participation is limited in only public events and not as much in working meetings within the government of the ones between CSO and public institutions.

Taking into consideration the status quo and in order to better improve the communication and collaboration between all stakeholders is important to:

- Institutions to create the strategy for communication with media aiming to promote the inclusion of media monitoring in the work of public institutions
- Civil Society Organizations need to deeper collaboration with media in order to give a wider voice to issues
- Development of joint projects between media and CSOs in Kosovo
- Journalist to define areas of monitoring and working with public institutions





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