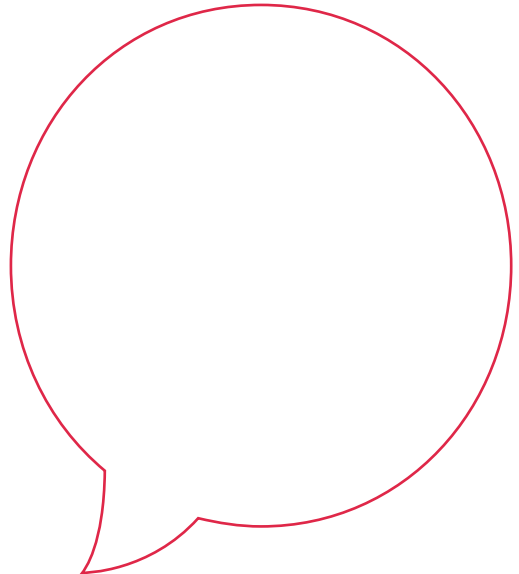


**FAILURES OF THE
ASSEMBLY IN
FUNCTIONALIZING
THE INFORMATION
AND PRIVACY
AGENCY**



November 2020

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INTRODUCTION

The right of access to public documents is guaranteed by the Constitution of the Republic of Kosovo in its Article 41, as a fundamental right enjoyed by all citizens . The Law on Access to Public Documents of 2010 establishes the right of every person to receive information about an official document by sending a request in any form, without being obliged to explain the reason for such request. This law also obliges public institutions to respond to received requests within seven days. On the other hand, it entitles the information seeker to file a complaint to the Information and Privacy Agency within fifteen days in case the public institution has remained silent, has not responded, or has rejected the request for access to public documents.

In June 2019, the Assembly of the Republic of Kosovo approved the new Law on Access to Public Documents. One of the substantial and most important changes foreseen in this law is the institution of the Commissioner, which is an independent body and the main institution for the implementation of the provisions of this law, as well as of the Law on the Protection of Personal Data. Consequently, the very beginning of the implementation of the provisions of these two laws is related to the appointment of the Commissioner.

The Commissioner is the head of the Information and Privacy Agency and as such represents the Agency and organizes and coordinates its work. The Information and Privacy Commissioner is the authority responsible for protecting the fundamental rights and freedoms of natural persons in relation to the processing of personal data, as well as for guaranteeing access to public documents. Therefore, the impossibility of his appointment has hampered the work of the Agency as a whole. The Assembly of the Republic of Kosovo has failed to elect the head of this agency three times in a row; the first time none of the candidates qualified; the second time his election failed due to the dissolution of the Assembly, while the third time none of the candidates managed to get the necessary votes.

Due to the non-election of the commissioner, the Information and Privacy Agency has been unable to issue any bylaws on the internal organization of the Agency;

these acts are a prerequisite for the functioning of the Agency and should have been issued 6 months after the entry into force of the Law on the Protection of Personal Data.

The Information and Privacy Agency has failed, even 1 year after the entry into force of the Law on the Protection of Personal Data, to publish recommendations, instructions, opinions, clarifications and positions on issues related to data protection, decisions of courts of general jurisdiction regarding access to public documents, as well as other important notices, as required by Article 67 of this law.

In addition to the failure to fulfill legal obligations, which have resulted in this institution being dysfunctional, the Assembly of the Republic of Kosovo also failed to adhere to the commitments undertaken under the Memorandum of Cooperation between the Assembly of the Republic of Kosovo and the Government of the United Kingdom of Great Britain and Northern Ireland (represented by the British Embassy), signed on 2 July 2020. According to Article 3 of this Memorandum, the Assembly of Kosovo is committed to implement this project in a timely, transparent and impartial manner, as well as to implement the recommendations from the implementing partner. Due to non-fulfillment of these obligations and disappointed from the failure of this process, the partners withdrew from the recruitment process for this position.

The Information and Privacy Agency has been non-functional since 2016 when its council was dissolved. Meanwhile, the adopted new law foresaw the restructuring of the IPA and the establishment of the position of Commissioner. However, even 1 year after the entry into force of the Law on the Protection of Personal Data, the Information and Privacy Agency has not yet been consolidated pursuant to the obligations of the law and continues to face challenges in terms of effective functioning as a direct result of the failure to abide by legal provisions.

The Committee on Security and Defense Affairs of the Assembly of Kosovo has been in the process of selecting candidates for Commissioner. The whole process of selection and appointment of candidates has been closely monitored by the Ad-Hoc Coalition consisting of the FOL Movement, Kosovo Civil Society Foundation, GAP

¹ Constitution of the Republic of Kosovo, 2008, Article 41

² Law no. 03 / L-215 on Access to Public Documents (repealed), 2010, Official Gazette of the Republic of Kosovo.

³ Law No. 06/L-081 on Access to Public Documents, 2019, Official Gazette of the Republic of Kosovo.

Institute, D4D Institute, Group for Political and Legal Studies, Çohu organization, Democratic Institute of Kosovo and Flutura Kusari, which has analyzed the CVs of the candidates and has directly monitored the development of interviews.

1. LEGAL BASIS FOR THE COMMISSIONER OF THE INFORMATION AND PRIVACY AGENCY

Prior to the entry into force of the new Law on Access to Public Documents (No. 06/L-08) in 2019, the issue of access to public information in Kosovo was regulated by the Law on Access to Public Documents (No. 03/L-215) of 2010, which had established an effective standard and legal support regarding access to public information. Meanwhile, among other issues that have been regulated and that entail the advancement of transparency in public institutions, the new law establishes the institution of the Commissioner as a novelty. This institution, which was not envisaged in the previous law and which is expected to be elected for the first time in Kosovo, is the authority responsible for ensuring the implementation of the provisions of this law and of the Law on the Protection of Personal Data.

Consequently, in the sense of the Law on the Protection of Personal Data (No. 06/L-082, OG of RKS 6/2019) and the Law on Access to Public Documents (No. 06/L-08, OG of RKS 13/2019), the Commissioner is an independent body appointed by the Assembly of Kosovo, which operates within the Information and Privacy Agency, and is responsible for ensuring access to public documents and the protection of personal data and privacy of the individual.

The Law on the Protection of Personal Data defines, inter alia, the selection criteria and procedure, as well as the extension and termination of the mandate of the Commissioner. According to Article 60 of this law, the Commissioner is elected by the Assembly of Kosovo by a majority vote of all deputies, for a term of five (5) years, with the possibility of re-election for an additional term.

Article 59 of this Law sets forth the criteria for selecting the Commissioner. Thus, candidates for the Commissioner must be citizens of the Republic of Kosovo; have a university degree in one of the following fields: law, public administration or

international relations; have at least eight (8) years of professional experience, of which at least five (5) years of experience in managing positions; not have been convicted by a final decision for a criminal offense or should have no indictment for the last five (5) years; have high moral and professional integrity; have experience and distinguished knowledge in the area of human rights protection; not have been dismissed from work or civil service due to a disciplinary measure; and not have exercised any function in any political party during past five (5) years and should not be a member of the Assembly of the Legislature of the Assembly of the Republic of Kosovo who elects him or her, or a member of the Government Cabinet in the last mandate.

Article 60 determines, *inter alia*, that the shortlist of candidates for Commissioner is composed of three (3) candidates. The selection panel hands over the shortlist to the committee, which proposes the same to the Assembly of the Republic of Kosovo. The proposal given by the committee contains the justification why the panel has given priority to some of the candidates compared to other candidates.

Article 64 of this Law defines the tasks and competencies of the Information and Privacy Agency, which is headed and represented by the Commissioner, including among others: advising public and private bodies on issues related to data protection; informing the public on issues and developments in the area of data protection; promotion and support of fundamental rights on personal data protection; deciding on complaints submitted by data subjects; and advising the Assembly, the Government, other internal institutions and bodies on legislative and administrative measures in relation to protection of fundamental rights and freedoms of natural persons in terms of data processing.

⁴ Law No. 03/L-172 on the Protection of Personal Data, 2019, Official Gazette of the Republic of Kosovo.

In addition, the Law on Access to Public Documents foresees in Article 28 the following responsibilities of the Information and Privacy Agency: to monitor and report in relation to compliance and adherence of this Law by public institutions; to recommend changes and general and specific reforms addressed to a specific institution, in relation to the right of access to public documents; to cooperate with responsible institutions for organizing and holding trainings for public officials on access to public documents and on effective implementation of this Law; to publish the obligations of public institutions deriving from this Law and the rights of each person provided for by this Law; and to undertake and impose any of the measures stipulated in this Law for the effective implementation of this Law.

Also, according to the Law on Access to Public Documents, respectively according to Article 32, the Information and Privacy Agency is competent to impose fines against public institutions and responsible officials who, in any way, prevent, impede or restrict the realization of the rights of access to public documents, or which allow damage, destruction, concealment or, in any other form, make the public document unclear.

Furthermore, according to Article 62 of the Law on Protection of Personal Data, the Information and Privacy Agency shall be financed from the Budget of the Republic of Kosovo and shall have its own budgetary line which guarantees its independence. The Agency shall prepare the annual proposal-budget in compliance with the Law on Public Financial Management and Accountability.

2. THE PROCESS OF SELECTING THE COMMISSIONER OF THE INFORMATION AND PRIVACY AGENCY

The Commissioner of the Information and Privacy Agency has failed to be selected three times in a row by the Assembly of the Republic of Kosovo. This is because, despite the efforts on all three times, the Assembly has not yet managed to make its selection. The first time none of the candidates managed to qualify, the second time the selection failed due to the dissolution of the Assembly, while the third time none of the candidates managed to get the necessary votes. The whole process will be elaborated in detail in the following text.

It should first be noted that the experts engaged by the British Embassy have made an outstanding and highly professional contribution to the whole process of evaluating candidates for commissioner. This contribution has been expressed in particular in the preparations made for the selection panel by the British experts before each interview, while each of the candidates was simultaneously evaluated by the Selection Panel on the one hand, and by the British experts on the other. Initially, each of these candidates was given the opportunity to begin the presentation about the challenges of the Agency and how they, as Commissioners, will deal with them in the future, followed by other questions asked by members of the Selection Panel, related to strategic thinking, leadership, communication, problem-solving, results orientation, management and networking.

2.1 THE FIRST VACANCY ANNOUNCEMENT AND THE PROCESS

The Assembly of Kosovo has announced, for the first time, the vacancy for the Commissioner of the Information and Privacy Agency on 08 April 2019, and it has lasted until 23 April 2019.

This vacancy has been published on the official website of the Assembly of Kosovo, as well as in the daily newspapers "Zëri", "Epoka e Re" and "Bota Sot" (in both official languages). The vacancy was also broadcast on "RTK", twice a day (in Serbian) on 08 April, 12 April, 15 April, 21 April and 22 April 2019, as well as on the radio "Kosova e Lirë", twice a day (in Albanian), on 08 April, 15 April and 21 April 2019.

⁵ For more, check: <https://levizjafol.org/te-anulohet-perzgjedhja-e-komisionerit-per-informim-dhe-privatesi/>

The total number of candidates for the position of commissioner was 11, and after evaluating the submitted documents and their biographies, 4 candidates have been selected from the shortlist to be interviewed by the Committee on Internal Affairs, Security and Supervision of the Kosovo Security Forces, composed of Haxhi Shala (Social Democratic Initiative), Fadil Beka (PDK), Xhelal Sveçla (LVV) and Aida Dermaku (PSD).

The interviews were held on 4 May 2019, however, according to the Selection Panel, none of the four candidates managed to qualify to be selected for the position of Commissioner of the Information and Privacy Agency by the Assembly of Kosovo. As a result, the vacancy was re-announced in order to provide the opportunity to participate of other more qualified candidates, as well as to provide a second opportunity to apply to the candidates of this announcement.

The Selection Panel consisted of members of the Committee on Internal Affairs, Security and Supervision of the Kosovo Security Force (Haxhi Shala, Aida Derguti, Fadil Beka and Xhelal Sveçla) and British experts engaged by the British Embassy. Meanwhile, observers from civil society were the ad-hoc coalition organizations, consisting of: FOL Movement (Lëvizja FOL), Kosovar Civil Society Foundation, GAP Institute, D4D Institute, Group for Legal and Political Studies, Çohu, Kosovo Democratic Institute and Flutura Kusari. During this process, the observers from civil society strongly opposed the appointment of these candidates, because according to them, the candidates lacked the vision, strategy and proper preparation for this position, and in particular, they have opposed the candidacy of the current officials of the Agency for Personal Data Protection, Bujar Sadiku and Jeton Arifi, due to suspicions that they are close to the Democratic Party of Kosovo.

2.2 THE SECOND VACANCY ANNOUNCEMENT AND THE PROCESS

The Assembly of Kosovo has announced the second vacancy for the candidates for commissioner on 29 May 2019, and it has lasted until 12 June 2019.

On the day of the announcement, the vacancy was published on the official website of the Assembly of Kosovo, in the daily newspapers "Zëri", "Epoka e Re" and "Bota Sot" (on 20 May in both official languages). The vacancy was also broadcast on the radio "RTK", twice a day (in Serbian) on 29 May, 1 June, 3 June, 7 June and 11 June 2019, as well as on the radio "Kosova e Lirë", twice a day (in Albanian), on 29 May, 05

June, 09 June and 11 June 2019.

The total number of candidates for the position of commissioner was 20, while after evaluating the submitted documents and their biographies, 10 candidates have been selected from the shortlist to be interviewed by the Committee on Security and Defence Affairs. While only seven candidates participated in the interview phase, out of a total of 10 who were selected in the shortlist.

Interviews for these seven candidates were held on 09 and 10 July 2019. According to the Selection Panel, only one of all candidates has managed to demonstrate the necessary qualities and knowledge to be selected as Commissioner of the Information and Privacy Agency by the Assembly of Kosovo.

The Selection Panel, in this process, consisted of members of the Committee on Security and Defence Affairs of Kosovo (Haxhi Shala, Aida Derguti, Fadil Beka and Xhelal Sveçla) and experts engaged by the British Embassy, while observers from civil society were: FOL Movement, Kosovo Civil Society Foundation, GAP Institute, D4D Institute, Group for Political and Legal Studies, Çohu, Kosovo Democratic Institute and Flutura Kusari.

This time, the interviewing panel managed to send three names of candidates to the Assembly for voting, who were: Krenare Sogojeva Dërmaku, Agron Behrami and Enver Bujari. Meanwhile, based on the evaluation by British experts, according to them, Krenare Sogojeva Dërmaku is the candidate that should be voted by the members of the Assembly of Kosovo. For this reason, civil society organizations, through letters sent to each MP and the public letters, had called on the members of the Assembly of Kosovo to take into account the evaluations of the Commission and the British Embassy project and to base their vote on this professional evaluation, rather than in their political and party preferences.

Although announced for the second time, the Assembly of Kosovo still failed to select the Commissioner of the Information and Privacy Agency and this time as a result of the political crises in the country, respectively due to the dissolution of the Assembly, and the whole process returned to zero.

Otherwise, even during this process, the representatives of the civil society had shown a reaction in the form of a public letter addressed to the Committee on Security and Defence Affairs, where they had requested that the candidates from

the previous process (Bujar Sadiku and Jeton Arifi) not be selected as the head of this institution, for the same reasons as the reaction made to the first vacancy. Also, through this public letter, the observers from civil society have explicitly requested that their concerns regarding these candidates be taken seriously.

2.3 THE THIRD VACANCY ANNOUNCEMENT AND THE PROCESS

The vacancy for the Commissioner of the Information and Privacy Agency has been announced for the third time (after one year) by the Assembly of Kosovo on 26 May 2020 and it has lasted until 9 June 2020.

The vacancy has been published on 26 May 2020 in the daily newspapers "Koha Ditore" and "Epoka e Re", in the online version, as according to the Assembly, these were the only ones that responded to their request for publication of the vacancy. The vacancy was also published on the official website of the Assembly of Kosovo and was sent for broadcast on "Radio Kosova" - the program in Serbian, to be read twice a day on 26 May, 02 June and 08 June 2020.

The Selection Panel of this process was originally scheduled to meet on 24 June 2020 to open applications, however, due to the COVID-19 pandemic, the opening of applications has been postponed until 22 July 2020.

The total number of candidates for the position of the commissioner who have applied during this competition was 12, while after evaluating the submitted documents and their biographies, 6 candidates have been selected from the shortlist to be interviewed by the Committee on Security and Defence Affairs, assisted by the British Embassy project. Members of this commission were the MPs: Fatmire Kollçaku - Chairperson (VV), Ganimete Musliu - Member (PDK), Beke Berisha - Member (AAK), Ilir Tasholli - Member (LDK), Rasim Demiri - Member (VAKAT Coalition).

The process of interviewing the candidates lasted two days, while from the 5 interviewed candidates, the evaluation committee had selected the candidates: Bujar Sadiku, Krenare Sadiku - Sogojeva and Muharrem Mustafa, as potential candidates to be appointed as the chairperson of the Information and Privacy Agency.

After the full selection process, the British Embassy project has evaluated the candidate Krenare Sogojeva-Dermaku with the most points. Meanwhile, the organizations of the ad-hoc Coalition (FOL, KCSF, GLPS, Çohu, KDI, Flutura Kusari, GAP and D4D) have called on the members of the Assembly of Kosovo that, in accordance with the given commitment, to take into account the evaluations of the British Embassy project and to base their vote on this professional evaluation, rather than in their political and party preferences.

However, none of these candidates managed to get the necessary votes, so the selection of the Commissioner of the Information and Privacy Agency failed for the third time in a row.

On the failure of this process, in addition to the reactions of civil society organizations, there was also a reaction from the British Embassy, which this time had provided recommendations for the selection of candidates. Consequently, the British Embassy has expressed disappointment at the failure of this process and has announced that British experts have withdrawn from the recruitment process for this position.

In the reaction of the British Embassy, among other things, he wrote: “We have followed with disappointment the failure of the Assembly of the Republic of Kosovo to appoint the Commissioner of the Information and Privacy Agency on 14 August. The transparent and meritorious process, supported by our recruitment project, had produced two suitable candidates. The non-appointment of any of them calls into question the stated commitment of the political parties to implement the Memorandum of Understanding with the British Embassy, but most importantly, it sends a negative signal to independent professionals in Kosovo and their hopes of contributing to Kosovo Institutions. Any public appointment should take into account only the interests of the country and its citizens, and not the narrow party interest. The failure of the Assembly to appoint the Commissioner of the Information and Privacy Agency will leave Kosovar citizens without proper institutional protection of privacy and data. This will also lead to a recurrence of the recruitment process for the fourth time and will cause delays in EU funding for the Agency. The next process will not be supported by our recruitment project. We will

⁵ For more information, check: <http://levizjafol.org/leter-publike-kandidatet-nga-procesi-i-kaluar-te-mos-zgjedhen-komisioner/>.

⁶ For more information, check:

<https://levizjafol.org/ftojme-kuvendin-e-kosoves-te-procedoje-me-perzgjedhjen-e-komisionerit-per-informim-dhe-privatesi-2/>.

⁷ The first letter of the Director General of IPA, Bujar Sadiku, addressed to the Committee on Security and Defense Affairs, Assembly of the Republic of Kosovo, Unit 01, No. 25, dated 22.05.2019.

⁸ The second letter of the Director General of IPA, Bujar Sadiku, addressed to the Committee on Security and Defense Affairs, Assembly of the Republic of Kosovo, 064/2020, dated 17.08.2020.

⁹ The second letter of the Director General of IPA, Bujar Sadiku, addressed to the Committee on Security and Defense Affairs, Assembly

not waste British taxpayers' money on repetitive processes that were transparent and well-conducted, and that produced candidates who meet the conditions for appointment”.

Furthermore, the Director General of the Information and Privacy Agency, Bujar Sadiku, on 22 May 2019, addressed to the Assembly by requesting the Committee on Security and Defense Affairs to authorize him, as the Director of the Agency, to undertake all legal and procedural actions in order “to prevent the blocking of the functioning of this public authority by issuing an internal regulation and other administrative acts, as defined by law that enables the reconstruction and functioning of the Agency”.⁸

Meanwhile, on 17 August 2020, the Director General of the Information and Privacy Agency, Bujar Sadiku, addressed to the Assembly of the Republic of Kosovo, specifically the Committee on Security and Defense Affairs for the second time requesting the “issuance of a special authorization which would enable the Director General of IPA to simultaneously perform several actions”.⁹

Specifically, the Director of IPA requests permit to perform actions related to the full functioning of the Agency, the right to sign sub-legal acts and the right to make decisions in the field of inspections and decisions concerning the protection of personal data and right to access public documents.

While the constituent organizations of the ad-hoc coalition (FOL Movement, Kosovar Civil Society Foundation, GAP Institute, D4D Institute, Group for Political and Legal Studies, Çohu, Kosovo Democratic Institute and activist Flutura Kusari) have responded by expressing concerns regarding the request that IPA Director addressed to the Assembly for obtaining special authorization.

In the letter sent to the Speaker of the Assembly of Kosovo, Mrs Vjosa Osmani, the civil society organizations that are part of the ad-hoc coalition have requested the Presidency of the Assembly “to disregard this illegal request and to provide no special authorizations to individuals of IPA”.¹⁰ Among other things, this response states that the IPA's letter does not refer to any existing legal basis and the authorizations requested by Mr Sadiku are the exclusive competence of the Information and Privacy

Commissioner and not of the Director General of IPA, therefore such an action would be illegal, and such an illegal authorization would not help IPA to benefit from international funds but would jeopardize them in the future.¹¹

After reviewing the request, the Committee on Security and Defense Affairs concluded that it was not competent to deal with this issue and decided to forward the request to the Presidency of the Assembly, which then rejected the request of the Director of IPA, Bujar Sadiku.

At the meeting held on 13 October 2020, the Committee on Security and Defense Affairs had proposed that only Article 60, respectively the part pertaining the election of the commissioner, of the Law No. 06/L-082 on Protection of Personal Data, be amended. Specifically, the Committee on Security and Defense Affairs has proposed that the Commissioner be elected by a majority of votes of parliament members who are present and vote (with simple majority). Meanwhile, if in the first ballot none of the candidates receive the necessary number of votes, a second ballot shall be held, listing only the candidates with the most votes.

Civil society organizations have deemed inadmissible for the applicable Law be amended and supplemented on the basis that there are difficulties in electing a commissioner, they even responded through a public letter. This response, inter alia, states: “Upon the proposed legal amendments, this position can be gained by the candidate who manages to have 31 votes, respectively with the support of a political party. If the initiative is implemented, there would be a real risk that the Commissioner will serve only one political party. Based on the discussions of the members and committees, we note that the reasoning for the proposed legal amendments is not grounded on solid arguments that would justify the amendment of the Law. As it seems, the main goal is for the Information Agency be grasped by politics. Legal amendments are expected to be submitted to the Presidency of the Assembly and the Government, before proceeded for approval. We request these institutions to not support this initiative. Political parties must find a political consensus that will enable the selection of an independent candidate.”¹²

¹⁰ The letter of the ad-hoc coalition organizations addressed to the Speaker of the Assembly of Kosovo, Vjosa Osmani, on the topic “The Information and Privacy Agency requests illegal authorizations from the Assembly”.

¹¹ For more information, see:

<https://levizjafol.org/agjencia-per-informim-dhe-privatesi-kerkon-nga-kuvendi-autorizime-te-kunderligjshme/>.

¹² For more information, see:

<http://levizjafol.org/reagim-ndryshimet-ligjore-tentojne-kapjen-e-metutjeshme-te-agjencise-per-informim-dhe-privatesi/> .

Amending and supplementing the Law on Protection of Personal Data because of obstacles created during its enforcement, in addition to being unnecessary, this also poses a threat to legal certainty and calls into question the proper functioning of institutions. We, therefore, as civil society organizations, will strongly oppose the establishment of such practices.

3. LEGITIMACY OF AGENCY'S DECISIONS WITHOUT THE APPOINTMENT OF THE COMMISSIONER

According to the provisions of the Law on Protection of Personal Data, the Head of this Institution, respectively the Commissioner of the Information and Privacy Agency, is responsible for making decisions in the Information and Privacy Agency. Article 54 of this Law states that the unsatisfied party has the right to initiate an administrative dispute before the competent court against Commissioner's final decision.

The failure to select the Information and Privacy Commissioner has completely stagnated the work of the IPA as a key institution for ensuring access to official documents, thus making this institution's decisions taken by other officials of this institution during this period (in the absence of the commissioner), be considered invalid.

This can also be evidenced by the alternative provisions of the relevant laws. Article 27 of the Law on General Administrative Procedure (hereinafter: LGAP) states that if the final decision is taken by another official of the public body other than the responsible official designated by law, the other official can prepare a draft act or an administrative contract and submit it to the official responsible designated by law for approval and signature. Referring to the above provision, other officials of this institution cannot make decisions without the signature of the competent official, i.e. without the signature of the Commissioner of the Information and Privacy Agency.

Whereas, Article 26 of this Law states that the head of public organ shall determine a responsible unit, if the same is not determined by a special law, sub-legal act or internal administration rules of the organization, whereas this decision should be made public with the appropriate means, including the website of the public body. In this case, the Assembly of the Republic of Kosovo should designate the responsible unit by decision.

Despite the fact that the Information and Privacy Commissioner has not been elected yet, during the period July 2019 - July 2020, the Information and Privacy Agency has provided 10 pieces of advice to the responsible officials of the institutions and has taken a total of 28 decisions, 4 of which are approving, 5 are rejecting and 16 are closed cases for the benefit of the party without a decision; these decisions are signed by other officials of this Institution. Meanwhile, 3 cases have been under review by this Institution.¹³

4. NUMBER OF COMPLAINTS SUBMITTED TO THE INFORMATION AND PRIVACY AGENCY AND OMBUDSPERSON

During July 2019 - May 2020, a total of 24 complaints were submitted to the Information and Privacy Agency, 6 of which were submitted in 2019 and 18 in 2020, while, during this period, 11 complaints remained under review. Moreover, during this period, 12 requests for advice/correct interpretation of the law were submitted to the Information and Privacy Agency. The complaints submitted are mainly related to the publication of personal data, direct marketing, unauthorized access to personal data, processing of biometric features, etc.¹⁴

FOL



DATA OBTAINED FROM THE INFORMATION AND PRIVACY AGENCY THROUGH THE REQUEST TO ACCESS PUBLIC DOCUMENTS.

NUMBER OF COMPLAINTS FOR THE YEAR 2019

6

NUMBER OF COMPLAINTS FOR THE YEAR 2020

18

24
TOTAL

13

NUMBER OF COMPLAINTS WITH CLOSED STATUS

11

NUMBER OF COMPLAINTS BEING REVIEWED

¹³ Data obtained from the Information and Privacy Agency through the request to access public documents.

¹⁴ Data obtained from the Information and Privacy Agency through the request to access public documents.

**NUMBER OF REQUESTS FOR ADVICE ON
THE CORRECT INTERPRETATION OF THE
LAW ON ACCESS TO PUBLIC
DOCUMENTS FOR 2020**

12

**REQUESTS FOR ACCESS TO PUBLIC
DOCUMENTS FOR AIP FOR 2020**

2

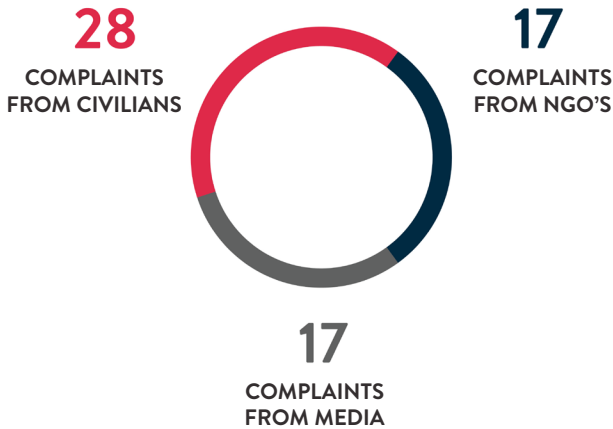
According to Article 21 of the Law on Access to Public Documents, each person has the right to address the Ombudsperson Institution with a request or a complaint, if they consider that any right acknowledged by this Law or other acts for access to public documents has been violated.¹⁵

From 19 July 2019 until 31 May 2020, 62 complaints were submitted to this Institution, 17 of which were submitted by NGOs, 17 by the media and others by citizens. Of these complaints, 59 are admissible for investigation, while 3 complaints are inadmissible (because there is no violation, or because the complainant's lack of interest).¹⁶

FOL



COMPLAINTS RECEIVED BY THE OMBUDSMAN REGARDING ACCESS TO PUBLIC DOCUMENTS



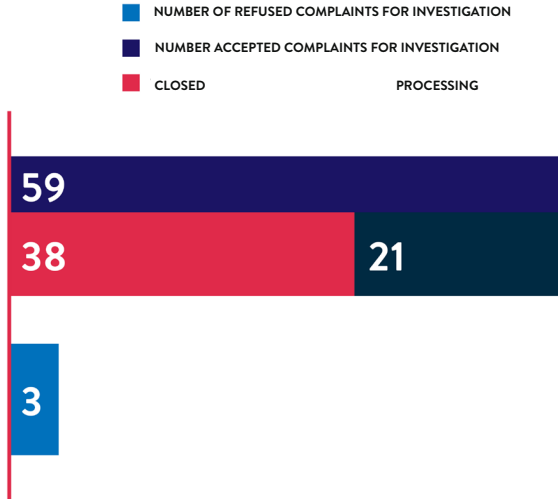
19TH OF JULY 2019 - 31ST OF MAY 2020

¹⁵ Law No. 06/L-081 on Access to Public Documents, Article 21, Official Gazette of the Republic of Kosovo, 2019.

¹⁶ Data obtained from the Ombudsperson Institution through the request to access public documents.

COMPLAINTS RECEIVED FOR INVESTIGATION

19TH JULY 2019 - 31ST MAY 2020



RECOMMENDATIONS

- Elect the Commissioner of the Information and Privacy Agency as soon as possible, in order to achieve the functioning of the Agency at the earliest.
- Do not amend the Law on Protection of Personal Data. The practice of amending laws whenever there are difficulties in their enforcement is a legal anomaly and as such should not be adopted. This, in addition to being unnecessary, also poses a threat to legal certainty and calls into question the proper functioning of institutions.
- Continue considering the good experiences and practices created during the cooperation with British experts.
- Clarify the necessary managerial experience required from to apply for commissioner.
- Do not consider the applications of candidates who are or have been involved in political parties.
- Issue as soon as possible sub-legal acts for the internal organization of the Information and Privacy Agency.
- The Information and Privacy Agency should publish recommendations, guidelines, opinions, clarifications and positions on issues related to the field of data protection, as well as other data required by the Law on Protection of Personal Data.