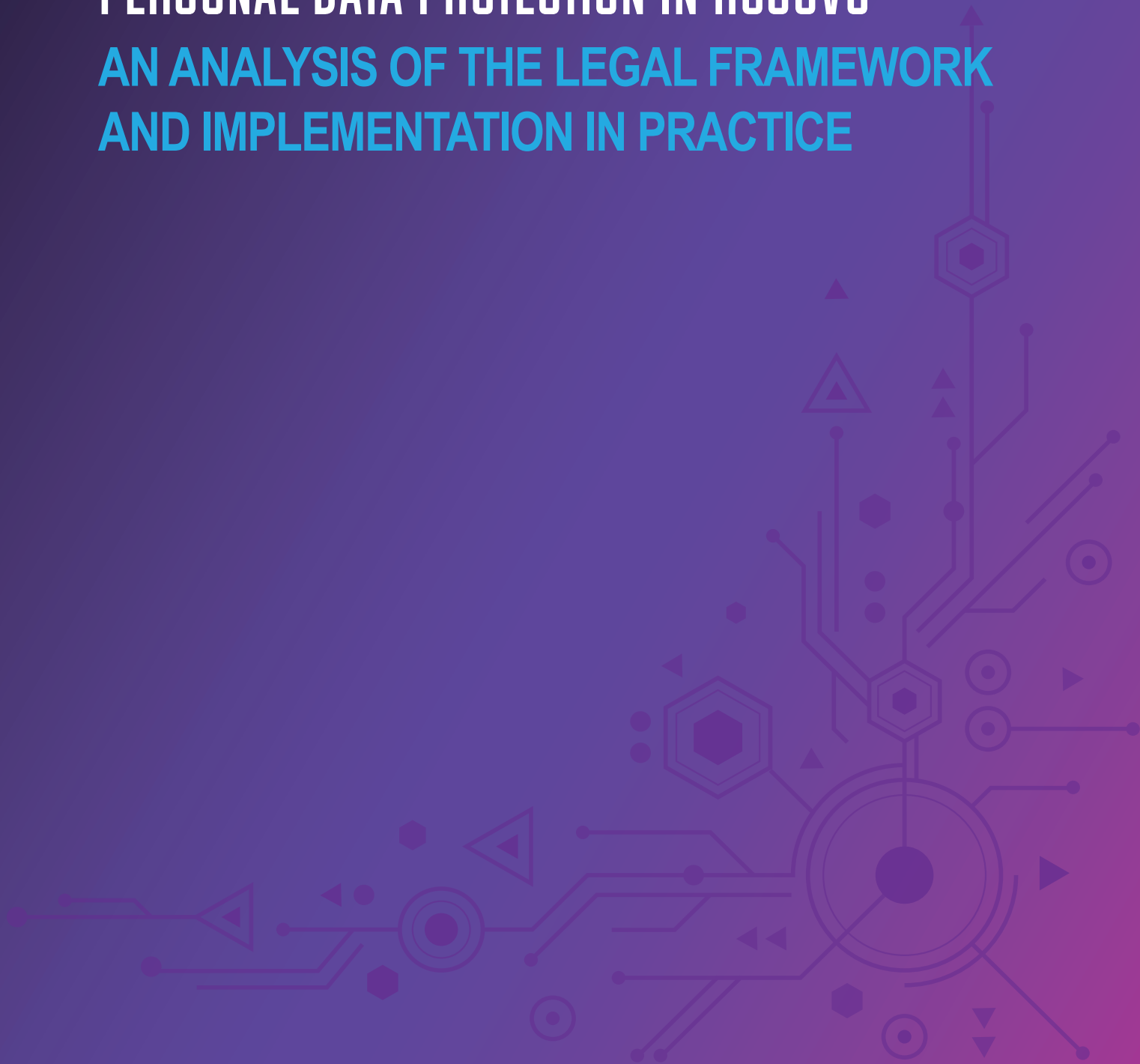




**ACCESS TO PUBLIC DOCUMENTS AND
PERSONAL DATA PROTECTION IN KOSOVO**
**AN ANALYSIS OF THE LEGAL FRAMEWORK
AND IMPLEMENTATION IN PRACTICE**





ACCESS TO PUBLIC DOCUMENTS AND PERSONAL DATA PROTECTION IN KOSOVO AN ANALYSIS OF THE LEGAL FRAMEWORK AND IMPLEMENTATION IN PRACTICE

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1. INTRODUCTION

This report expands into two areas, namely the Access to Public Documents and the Protection of Personal Data, for which the Information and Privacy Agency (AIP) has been designated by the relevant laws as the responsible institution for monitoring the implementation of those laws and handling complaints related to them.

Access to Public Documents

Access to Public Documents is a right guaranteed by the Constitution of the Republic of Kosovo¹. Since 2019, Kosovo has had in force the Law on Access to Public Documents², which is considered to have generally improved the legal regulation and advanced access to public documents compared to the previous legislation in force until 2019. The law is considered to be in line with international standards in the field of access to public documents. The Law on Access to Public Documents guarantees the right of all natural and legal persons to access documents of public institutions, while the Information and Privacy Agency is designated as the responsible institution for monitoring the implementation of this law and handling complaints. The 2019 law created a clearer legal basis by obliging institutions to have an open and transparent approach to public documents, including the publication and provision of access to public documents. Based on this law, the role of the Information and Privacy Agency (AIP) as an independent institution is focused on handling complaints and monitoring the implementation of the law by public institutions, including providing assistance and advice on procedures for accessing public documents. Laws and other acts should be in harmony with the requirements of the Law on Access to Public Documents to further increase transparency and establish clear procedures in specific areas regarding access to public documents.

The history of regulating access to public documents dates back to 2007 when Kosovo adopted the Law on Access to Official Documents³. This Law was repealed in 2010 with the Law on Access to Public Documents⁴, which was in force until 2019 when the current law was adopted. Access to public documents has faced continuous challenges, among other things due to hesitation by public institutions in implementing legal requirements for providing access to public documents. Consequently, in practice, there are many cases of non-publication of public documents, and at the same time, cases of refusal of access, limited access to public documents, or silence of public institutions regarding requests for access to public documents.

In recent years, AIP has managed to become functional⁵, and consequently, the number of complaints submitted and processed in this institution has continuously increased. The increase in the number of complaints should also be seen as an indicator that public institutions are still not fully proactive in publishing and providing access to documents according to legal requirements and interested parties.

1 The Constitution of the Republic of Kosovo, Article 41. <https://gzk.rks-gov.net/ActDetail.aspx?ActID=3702>.

2 Law No. 06/L-081 on Access to Public Documents. Accessible at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=20505>

3 Law No. 2003/12 on Access to Official Documents. Accessible at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2470>

4 Law No. 03/I-215 on Access to Public Documents. Accessible at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2724>

5 European Commission, Kosovo 2022 Report, pg. 31-32. Accessible at: <https://neighbourhood-enlargement.ec.europa.eu/system/files/2022-10/Kosovo%20Report%202022.pdf>

The challenges faced by the AIP, in particular the lack of sufficient human resources, will continue to have an impact on achieving the full effects of the law, including handling complaints and providing adequate support to public institutions.

Civil society and the media in Kosovo have played a positive role in improving the transparency of public institutions, in particular, through exercising the right to requests for access to public documents, the implementation of projects aimed at increasing the transparency of public institutions, advocacy and promotion of the right to access public documents and joint work with AIP.

Surveys with civil society organizations and businesses, as well as the information sessions co-organized during 2023 by the CIVIKOS Platform and AIP in all regions in Kosovo, confirm the need for additional information and raising awareness about the right of access to public documents.

Personal Data Protection

The protection of personal data in the Republic of Kosovo enjoys constitutional and legal protection. The Article 36 of the Constitution of the Republic of Kosovo, which regulates the right to privacy, guarantees rights such as respect for private and family life, the inviolability of the home, the confidentiality of correspondence, telephone and communications, and the protection of personal data. There it is expressly emphasized that *“Each person has the right to the protection of personal data. Their collection, storage, access, correction and use is regulated by law”*⁶. In addition, the protection of privacy and personal data enjoys protection at the constitutional level through the direct application of human rights in the Republic of Kosovo guaranteed by international human rights instruments, which are directly applicable in the Republic of Kosovo in accordance to the Article 22 of the Constitution. In particular, it should be mentioned the rights guaranteed by the European Convention for the Protection of Fundamental Human Rights and Freedoms and its Protocols, for which the Article 53 of the Constitution obliges public institutions to interpret them, in harmony with the judicial decisions of the Court European Commission on Human Rights.

The Personal Data Protection Law⁷ of 2019 was issued in harmony with Regulation (EU) 2016/679 of the European Parliament and of the Council of April 27, 2016, on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (GDPR)⁸. This law also designates the Information and Privacy Agency as the institution responsible for supervising the implementation of this law. As for the legal framework that covers the field of personal data protection, even the latest Report of the European Commission on Kosovo states that it is largely in line with the EU’s General Data Protection Regulation and the Directive on the Implementation of Law⁹. However, as noted above, the Information and Privacy Agency is faced with limited human capacities which create difficulties in the implementation of this legal framework that is very advanced. During the last years, however, the AIP has undertaken a series of initiatives which are in function of advancing the protection of personal data and has handled a significant number of complaints, imposing fines for violations related to the personal data protection¹⁰.

As analyzed in this report, the number of cases of personal data violations handled by AIP during the last years, in addition to showing the operationalization of AIP, is also an indicator of the challenges faced by Kosovo in the field of data protection. personal data. Considering the broad scope of the law on the personal data protection, which also covers the private sector, increasing the human capacities of the AIP is essential for proper implementation of the legal requirements. The private and public

6 Constitution of the Republic of Kosovo, Article 36, Par. 4. Accessible at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=3702>

7 Law No. 06/L-082 on Personal Data Protection. Accessible at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=18616>

8 <https://eur-lex.europa.eu/eli/reg/2016/679/oj>

9 European Commission, Kosovo 2022 Report, pg. 31-32. Accessible at: <https://neighbourhood-enlargement.ec.europa.eu/system/files/2022-10/Kosovo%20Report%202022.pdf>

10 Ibid.

sectors have not yet managed to raise their awareness to an appropriate extent and create capacities regarding the legal requirements to the personal data protection. Therefore, the role of AIP in promoting the protection of personal data, but also in providing support for controllers and processors to be in compliance with the requirements of the law on Personal Data Protection, remains essential.

Surveys with civil society organizations and businesses, as well as information sessions co-organized during 2023 between CIVIKOS and AIP in all regions in Kosovo, confirm the need for additional information and awareness raising regarding the legal obligations of the private sector regarding data protection personal. Counseling, preparation of standard documents and clarifying guidelines, rapid handling of individual complaints, inspection, and imposition of fines for personal data violations are areas that AIP should focus on in the future as well.

2. ACCESS TO PUBLIC DOCUMENTS

2.1 Constitutional Guarantees

The right to access to public documents is a constitutional category in the Republic of Kosovo, regulated within Chapter II [The fundamental rights and freedoms]. Article 41 of the Constitution of the Republic of Kosovo states: *“1. Every person has the right of access to public documents. 2. Documents held by public institutions and bodies of state power are public, with the exception of information that is restricted by law, due to privacy, business secrets or classified security information”*¹¹. Therefore, the guarantee and fulfillment of this right by public institutions constitutes one of the main foundations of democratic and transparent state institutions.

The right of access to public documents provides every citizen with the right to be informed about the activities of public institutions and allows the citizen to obtain the necessary information to be informed and to efficiently exercise their fundamental rights. This right represents a key tool for citizens to monitor the work of public institutions at the central and local level, while contributing to the good governance of institutions, increasing the efficiency, and accountability of public officials through a higher level of transparency in terms of fulfillment of constitutional and legal obligations and responsibilities.

2.2 Legal Framework

In addition to the constitutional regulation, the right to access to public documents is regulated in detail by the Law on Access to Public Documents and bylaws that regulate the procedures for exercising the right to access to public documents. The Law on Access to Public Documents of 2019¹² guarantees every citizen and every interested party with the right to access public documents. With this law, a reformation of this field has been made possible, in the sense of increasing the transparency and accountability of public institutions.

The Law on Access to Public Documents has defined the duties and responsibilities of public institutions, namely the officials responsible for access to public documents within these institutions. Also, the Law gives a clear legal mandate to the Information and Privacy Agency (AIP) as a competent institution for supervision of law enforcement, for handling the complaints from the parties as a second instance body, in cases that due to silence, refusal or provision of limited access, the parties have found it impossible to exercise their legal right to access documents in public institutions. The AIP has also been given a mandate to issue several bylaws in order to implement the law and further develop the relevant procedures provided for in this law. If we refer to the provisions of Article 34, Paragraph 1 of the Law, it is emphasized: *“1. The Government, with the proposal of the Agency, approves bylaws for the implementation of this law, no later than six (6) months after the entry into force of this law.”* While, in some other provisions, such as Article 31, Paragraph 6, it states: *“6. The Agency issues a bylaw on how to keep records and report on the implementation of this Law.”* Therefore, these provisions are contradictory, and create ambiguity as to which bylaws should be issued by the AIP and which should be issued by the Government at the proposal of the AIP. This issue should be clarified in the future.

The Information and Privacy Agency has approved the following bylaws and guidelines in the field of access to public documents:

¹¹ Constitution of the Republic of Kosovo, Article 41. Accessible at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=3702>

¹² Law No. 06/L-081 on Access to Public Documents, Article 20.

- *Regulation No. 02/2022 on the Internal Procedure for the Review of Complaints for Access to Public*¹³

The Regulation defines the internal rules of the AIP for reviewing the complaints of the parties addressed to the AIP, as well as the decision-making related to the complaints in cases where the public institution fails to respond to the party's request, limits or refuses access to public documents natural or legal persons. Referring to the Legislative Program of Sub-Legal Acts¹⁴, AIP has foreseen the change of this regulation, in order to further advance the procedures and processes of examining complaints.

- *Regulation No. 01/2023 on the Manner of Keeping Evidence and Reporting for the Implementation of the Law on Access to Public Documents*¹⁵

The Regulation defines the content of the official evidence related to requests for access to public documents from public institutions and harmonizes the reporting process of the implementation of the Law on Access to Public Documents from public institutions to the Information and Privacy Agency.

- *Practical Guideline for Facilitating the Exercise of the Right of Access to Public Documents (2021)*¹⁶

The Guideline has described in detail the process of implementing the Law on Access to Public Documents in practice, including the preparation of the request for access addressed to public institutions, as well as what steps can be taken in cases where the request for access is limited or rejected. The Guideline also provides a standard form to use in this process.

- *Guideline for the Content of Public Institutions' Websites (2022)*¹⁷

Through the Guideline, AIP has determined the content of the websites of public institutions and the documents that public institutions are obliged to publish on the official website of the relevant institution. However, the Guideline has some ambiguity in its legal character, therefore, it could offer more clarifications for public institutions from the perspective of the requirements of the Law on Access to Public Documents, as AIP is competent only pertaining this competent.

In general, it can be said that the legal framework for access to public documents is in line with international standards in this field. This is also due to the fact that many of the human rights instruments are directly applicable in the case of Kosovo, as part of the Constitution. Although the Law on Access to Public Documents of 2019 does not mention harmonization with the EU Acquis, its requirements reflect the principles of Regulation (EC) No. 1049/2001 of the European Parliament and the Council of 30 May 2001 on public access to European Parliament, Council and Commission documents.

The Law on Access to Public Documents is the basic law for this field, however, the provision of access to public documents, including transparency procedures in the areas of public institutions' activity, the publication of documents and the provision of transparency must be regulated in the same line also in other specific laws, enabling a harmonization between them.

¹³ <https://aip.rks-gov.net/download/rregullore-nr-02-2022-per-proceduren-e-brendshme-te-shqyrtimit-te-ankesave-per-qasje-ne-dokumente-publike/>

¹⁴ <https://aip.rks-gov.net/download/vendim-02-2023-per-miratimin-e-planit-legjislativ-te-akteve-nenligjore-per-vitin-2023/>

¹⁵ <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=80781>

¹⁶ <https://aip.rks-gov.net/download/udhezues-praktik-per-lehtesimin-e-ushtimit-te-drejtues-per-qasje-ne-dokumente-publike/>

¹⁷ <https://aip.rks-gov.net/download/udhezues-per-permbajtjen-e-faqeve-te-internetit-te-institucioneve-publike/>

2.3 Implementation of the Access to Public Documents in Practice

2.3.1 Legal responsibilities of the public institutions

The obligation to publish documents

In the spirit of developing institutional transparency and accountability, public institutions are obliged by law to implement the right of access to public documents for all citizens. In accordance with the Law on Access to Public Documents, every public institution is obliged to publish public documents automatically after they have been prepared for publication. This must happen no later than fifteen (15) days after the moment when the documents become accessible. There are cases when this rule is not applied, in particular when public documents contain data that constitute a basis for refusing access to public documents, as provided for in Article 17 of the Law on Access to Public Documents. However, in such cases, it is the obligation of every public institution to do the damage and public interest test before deciding not to publish those documents. Public institutions make their documents public in one of the following forms:

- Electronic;
- Printed;
- Through broadcast;
- In any other form which enables access to a larger number of the public.

The Law on Access to Public Documents expressly defines which documents must be proactively published by public institutions. Public institutions are obliged to publish proactively on the official website of the respective institutions, regardless of the person's request for access¹⁸. Some of the public documents that institutions are obliged to publish in principle are:

- The mission and functions of the public institution, including those of subordinate units;
- The organizational scheme of the public institution, including that of subordinate units;
- The basic legislation for the organization, operation and functions of the relevant institution;
- Daily data on the institution's public activity, legal and bylaw acts;
- Strategies and other approved action line documents, in the field of action and functions of the public institution;
- The detailed list of services that the institution offers to the public, such as: licenses, permits, authorizations, certificates, certifications or other public services, which will also include:
 - Procedures and conditions of their benefit;
 - The necessary documentation and the cost for the realization of the service;
 - The application form for each service and the guide for completing it;
 - Mandatory deadline to receive a response to the requested service;
 - The term and the body where the appeal is made, in case of refusal of the answer or non-provision of the service within the mandatory legal term.

Regarding the content of public institutions' websites, this field is regulated by Administrative Instruction (MAP) No. 01/2015¹⁹ for the websites of public institutions. This Administrative Instruction, in addition to the legal basis provided in the Law on Governmental Bodies for the Information Society²⁰, also refers to Article 16 of Law No. 03/L-215 on Access to Public Documents (which was repealed by Law No. 06/L-081 on Access to Public Documents). It should be taken in consideration, though, that AIP is only competent to ensure that institutions publish the documents required by the law on Access to Public Documents, but it is not competent to interfere with government powers in terms of managing websites and dictating their content. Consequently, it is not competent to issue bylaws in this field either. However, it is necessary to cooperate with government institutions in the process of issuing legal and sub-legal acts to contribute to increasing the transparency of public institutions, reflecting also

18 Article 5, par. 2 of the Law No. 06/L-081 on Access to Public Documents.

19 <https://gzk.rks-gov.net/ActDetail.aspx?ActID=11007>

20 <https://gzk.rks-gov.net/ActDetail.aspx?ActID=8669>

the requirements of the Law on Access to Public Documents. As mentioned above, AIP has issued the Guideline for the content of public institutions' websites, however, the wording defined in this guideline creates some ambiguity about its legal nature, since it cannot be a binding bylaw. This guideline can only guide institutions in terms of the minimum requirements to publish documents required by the Law on Access to Public Documents, but cannot dictate the content of public institutions' websites.

The obligation of every institution to have an official e-mail address and an access to public documents officer

Every public institution is obliged to have an official e-mail address, with which it will communicate with the public, as well as appoint a person responsible for checking and regularly recording the received data. Each public institution is obliged to appoint an official responsible for access to public documents.

The obligation of public institutions to issue a decision according to the request for access to public documents

The Law on Access to Public Documents obliges public institutions to issue a decision to allow access to the requested document or to issue a reasoned decision for full or partial rejection within the legal deadline. The party dissatisfied with the decision or silence of the public institution has the right to file a complaint with the Information and Privacy Agency, within the legal deadline and according to the procedure provided for filing the complaint.

2.3.2 The role and responsibilities of the Information and Privacy Agency

AIP is an independent institution that reports to the Assembly of the Republic of Kosovo. AIP is responsible for supervising the implementation of the Law on Access to Public Documents and the Law on Personal Data Protection. AIP is the competent institution for reviewing complaints received by the parties, which for various reasons did not have access to public documents, respectively, the request for access to public documents has been rejected in whole or in part. AIP also decides in cases when the public institution has remained silent or has not responded at all to the party's request for access to public documents. The procedure for reviewing complaints and decision-making is determined by law and Regulation No. 02/2022 for the internal procedure for reviewing complaints for access to public documents²¹. Within the AIP, the Department for Access to Public Documents is also established, which from an organizational point of view is divided into two divisions:

- *The complaint review division*, which deals exclusively with the review of complaints received by the parties and in this regard maintains regular communication with public institutions and the complaining parties, organizes and holds hearings with the parties during the complaint review process, and also prepares the relevant decision, depending on the case (accepting, rejecting, final decision up to the decision to impose a fine on the public institution).
- *The monitoring and reporting division*, which mainly deals with monitoring and reporting regarding the compliance and respect of the Law on Access to Public Documents by public institutions, cooperates with public institutions and coordinates activities related to the training of officials for access to documents public, and keeps and updates a register with the data of the officers of access to public documents of public institutions.

Some of the duties and responsibilities of the Agency, pursuant to the Law on Access to Public Documents, are:

- Monitor and report on the compliance of the public institutions with the Law on Access to Public Documents;
- Recommend changes and reforms of a general, but also specific, nature directed to a specific institution regarding the right to access public documents;
- Cooperate with the responsible institutions for organizing and providing trainings for public

²¹ <https://aip.rks-gov.net/download/rregullore-nr-02-2022-per-proceduren-e-brendshme-te-shqyrtimit-te-ankesave-per-qasje-ne-dokumente-publike/>

officials for access to public documents and for the effective implementation of the Law on Access to Public Documents;

- To publish the obligations of public institutions derived from the Law on Access to Public Documents, and the rights of each person provided for by this Law;
- To undertake any of the measures provided by the Law on Access to Public Documents for the effective implementation of the Law.

AIP has a limited number of staff in the Department for Access to Public Documents, which has a negative effect on the efficient performance of its duties. However, during the 2023, AIP has planned to recruit an additional number of personnel, which would have an impact on the increase of AIP's capacities in the field of access to public documents²². From the data of the cases received during the last years, an increased number of complaints submitted to the AIP is noted. Therefore, in the absence of sufficient human resources, it is difficult to handle these complaints in time.

2.3.3 Procedures for requests and complaints for access to public documents

The Law on Access to Public Documents has established a clear procedure regarding the submission of a request for access to public documents and the response from the public institution. The right to access to public documents in the Republic of Kosovo is granted to every citizen who is able to make a request for access to the relevant public institution. The applicant for access to public documents has the right to request documents and information from the public institution, except documents or information which are restricted to the public by the relevant laws in force. The request for access to documents at public institutions can be made:

- In written form;
- In electronic form, or,
- Verbally (in cases where the request is made verbally, the official responsible for access to public documents of the public institution is obliged to prepare the request in writing in order to proceed further).

To facilitate the request procedure in the electronic form, the CIVIKOS Platform in cooperation with civil society organizations and the AIP, have developed a platform - KerkoQasje.com (RequestAccess). KerkoQasje provides simplified information about the rights and legal deadlines arising from the Law on Access to Public Documents, lists the contacts of all public institutions at the local, central level, as well as the independent ones, and provides an email/request template which it is written by the legal officers of the AIP and must be completed with only the name of the relevant document one is requesting access to.

Processing the request by the official responsible for access to documents of the public institution

Upon acceptance of the request for access to public documents, the public institution, namely the official responsible for access to public documents, after the completion of the relevant procedures of acceptance, registration and initial review, proceeds the request for access to the relevant unit within the public institution that has in possession or controls the requested document. Each public institution is obliged to designate an official responsible for access to public documents.

Obligation to decide on the request

In terms of decision-making, the responsible official of the public institution (which according to the Law on Access to Public Documents is the highest administrative official of the public institution), within a period of seven (7) days from the day of registration of the request, with a decision allows or denies

²² AIP, Annual Work Report for Year 2022, Prishtina, 2023, pg. 17. Accessible at: <https://aip.rks-gov.net/download/raporti-vjetor-i-punes-per-vitin-2021-2/>

access to the requested public documents²³. In case of full or partial rejection, a reasoned decision must be issued and the applicant informed about the right he has to request reconsideration of the request, as well as when and where such request can be submitted. The legal provisions leave room for the public institution to extend the period of taking the decision regarding the provision of access for an additional fifteen (15) days, if the document must be searched within a large number of documents (such as archives or in cases of tender files or similar situations). the requested document is not in the possession of the requested public institution but in another public institution, or with one request the person requests a large number of public documents from the same party. Regardless of the deadlines mentioned above, in cases where the requested public document concerns the protection of a person's life or freedom, the public institution is obliged to provide an answer within forty-eight (48) hours.

Fees for access to public documents

The Law on Access to Public Documents stipulates that the viewing of public documents in the facilities of public institutions is free of charge, but not prohibiting the setting of fees for related services provided by libraries, archives and museums. Therefore, the applicant for a copy of the public document may be charged a fee, which should not exceed the true costs of reproducing and supplying the document.

Ministry of Finance, Labor and Transfers, with Regulation No. 02/2012/MF²⁴, has determined the fees for the costs of producing and sending documents or copies of documents. This regulation is applicable to all public institutions. The regulation also provides exemptions from fees (Article 5), in these cases:

- Viewing official documents in public institution facilities (except archives and museums);
- Scanning of documents to be sent to the applicant by e-mail; and
- Photocopying and printing of documents up to 10 pages.

Obligation to instruct the applicant

In cases where the public institution does not produce, possess, or control the requested document, but has knowledge of the other public institution that produced, accepted, disposes of, or controls the public document, it is obliged to inform and guide the applicant to the relevant public institution not later than five (5) working days from the day of receiving the request, while in cases where there is no information about the relevant institution, it instructs the applicant to contact the Agency for Information and Privacy.

Submission of denial of access complaints to the Information and Privacy Agency

Article 20 of the Law on Access to Public Documents provides that "the complaint must be submitted within 15 days, after the expiration of the 7-day period, in case the public institution has remained silent, partially approved, or rejected the request...". Therefore, every natural and legal person has the right to submit a complaint to the AIP, against any action or inaction, if they consider that the public institution has failed to respond, limited or refused access to public documents, as requested by the relevant entity, according to the Law for Access to Public Documents. According to Article 10 of the Law, the party's complaint can be submitted:

- In writing;
- In electronic form²⁵; and
- Verbally.

For each registered complaint, which was submitted within the deadline, that meets the criteria

²³ Law for Access to Public Documents, Article 12.

²⁴ <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=10015>

²⁵ <https://aip.rks-gov.net/ankesat/>

provided by law and bylaws issued by AIP²⁶, AIP is obliged to communicate the received complaint to the public institution, which has made a decision regarding the request for access or that has failed to respond to the request, asking the public institution to provide a written response to the claims raised by the complainant within the seven (7) day deadline. In this case, according to the procedures, two situations are foreseen:

- The public institution reacts or returns an answer within the deadline, and the Agency immediately communicates with the party, asking to declare whether or not they are satisfied with the answer received.
- The public institution is silent or does not react at all within the deadline, the Agency issues a Binding Decision, with which it obliges the institution to provide access to public documents, according to the party's request.

AIP, within the deadline set for the provision of access by the public institution, may, as necessary, develop other communications with the institution, or depending on the specifics of the case, even organize meetings in the form of consultation in order to ensure access to public documents, respectively for the party to exercise their legal right. If even after the deadline and other communications, the public institution remains silent and does not cooperate with the AIP, therefore does not offer the required access, the Law allows the AIP to take measures, namely to impose a fine on the institution which for various reasons has remained silent, denied or limited access to public documents.

In general, the legal basis and procedures defined for providing access to public documents are clear, simple to understand and possible to be implemented by any public institution. From the institutional aspect, the human capacities in many public institutions can be a challenge for providing access according to the requirements of the law for access to public documents.

2.3.4 Sanctions for not providing access to public documents

Law No. 06/L-081 on Access to Public Documents provided punitive provisions, respectively the imposition of fines against public institutions which act contrary to legal requirements. AIP is responsible for supervising the implementation of the Law, including the imposition of fines. The provisions of Article 33 of the Law on Access to Public Documents foresee two types of fines:

- From three thousand (3,000) to ten thousand (10,000) € fine is imposed on the public institution which, contrary to the provisions of Law No. 06/L-081 on Access to Public Documents makes it impossible, hinders or limits the exercise of rights to access to public documents;
- From one thousand (1,000) to three thousand (3,000) €, the public institution is fined when they do not respond at all to the request for access to public documents.

AIP, before the imposition of the fine, has the duty to inform the public institution of the purpose and reason for the imposition of the fine and offers a time limit, no longer than seven (7) days, to improve the identified violation, so that not to impose a fine.

During 2022 and 2023, AIP has started imposing fines on public institutions, due to failure to implement the provisions of the Law on Access to Public Documents. The imposition of fines is thought to have a positive effect on increasing the transparency of public institutions, and providing access according to legal requirements. Below is the list of fines imposed.

²⁶ Regarding the complaint, based on the regulation issued by the AIP, it must contain the following elements: a) Description of the action or omission, for which the complaint is submitted; b) The concrete action required by the public institution; c) Causes, reasons for the complaint, as well as the details of the public institution to which the complaint is submitted; d) Full name and address of the complainant (phone number or email address); e) A copy of the request for the public document/s, as submitted to the public institution; f) A copy of the response received from the public institution, if the public institution has responded.

No.	The fines imposed to public institutions during 2022	The fine amount
1	Kosovo Bar Association	€ 3,000.00
2	Kosovo Intelligence Agency	€ 3,000.00
3	Municipality of Kacanik	€ 4,000.00
4	Ministry of Foreign Affairs and Diaspora	€ 13,000.00

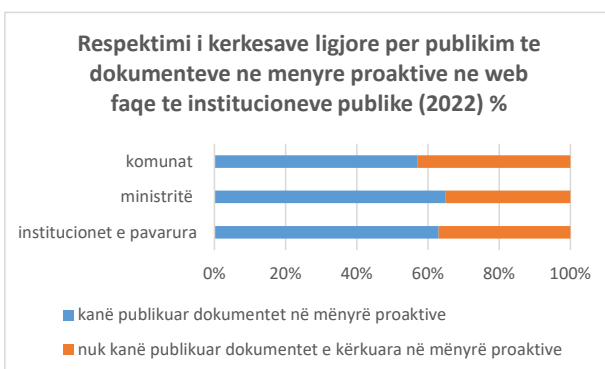
Table 1. The Fines Against Public Institutions (Source: AIP, 2022).

However, the AIP has begun to have some difficulties in terms of the enforcement of fines by some public institutions. The Agency has the legal possibility to carry out the execution through private execution, however, this has a financial cost for the Agency's budget, which has not actually been planned for this purpose so far. Execution through Tax Administration of Kosovo (TAK), as defined in Article 147 of Law No. 05/L-031 for the General Administrative Procedure, has never been practiced until now, and in itself would be problematic for TAK, considering the human capacities. At the same time, enforcement is not possible even through the Treasury, given the current legal restrictions. Therefore, the issue of enforcement of fines imposed on public institutions should be addressed in a broader legal context within the Law on General Administrative Procedure and not only for those imposed by the AIP.

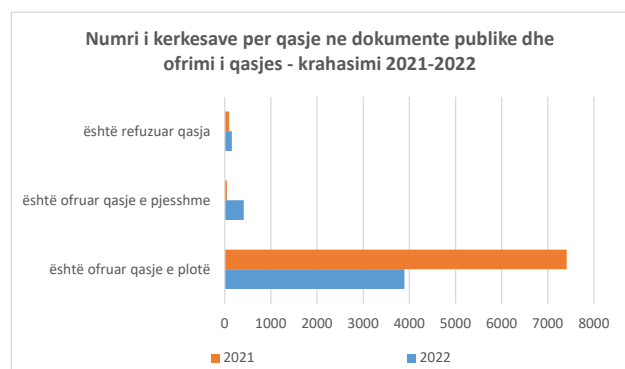
2.4 Data Analysis for Access to Public Documents

The statistics available to AIP for requests for access to public documents are not complete due to the failure of reporting by a large number of public institutions. Consequently, we cannot talk about accurate statistics in this topic, considering that in 2022, only 87 out of 171 public institutions, or about half of the public institutions, reported their statistics, in contrast to 2021 when statistics were reported by 103 public institutions²⁷.

If we analyze the statistics of 2022 with those of 2021, it can be noted that the number of institutions that have reported the statistics of access to documents in AIP has decreased, but the number of requests reported as a whole has also decreased significantly. From the analysis of these statistics, it can be noted that despite the decrease in the number of reported requests, the number of requests to which access has been limited or denied has increased. Although it is difficult to know the causes, these statistics can be interpreted as a decrease in transparency and a tendency to close public institutions to citizens.



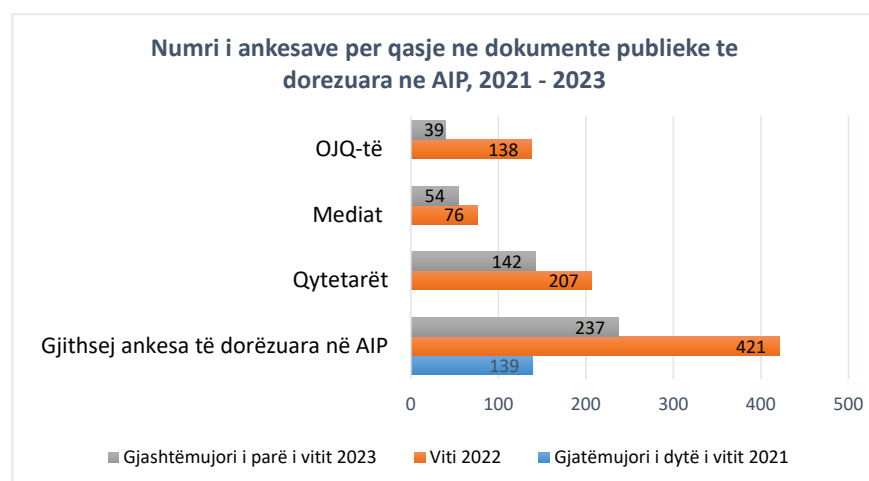
Graph 1. Proactive Publication of Public Documents (Source: AIP, Annual Report for Year 2022).



Graph 2. Requests for Access to Public Documents (Source: AIP, Annual Report for Year 2022).

²⁷ AIP, Annual Work Report for Year 2022, Prishtina, 2023, pg. 28. Accessible at: <https://aip.rks-gov.net/download/raporti-vjetor-i-punes-per-vitin-2021-2/>

AIP has started to review complaints for access to public documents since the second part of 2021, as this was not previously the competence of AIP. Consequently, when we make such a comparison of the number of complaints addressed to the AIP between 2021 and 2022, we must take this fact into account. In the following table, the complaints received in the second half of 2021, 2022 and the first half of 2023 are presented, in order to analyze the trends of complaints regarding access to public documents.



Graphi 3. Number of Complaints (Source: AIP).

From the graph above, it can be seen that there has been an increasing trend of complaints submitted to AIP from the last six months of 2021 to the first six months of 2023. These statistics can be interpreted in two directions. First, there has been an increased awareness of citizens, media and NGOs about the role and mandate of AIP, as well as an increasing trust in AIP. On the other hand, when analyzed in relation with the trends presented in graph 2 above, they indicate a tendency of public institutions being closed of (not transparent), given the increase in the number of requests with limited access and rejected. According to AIP data, out of the 421 cases of complaints submitted in 2022, full access to public documents was provided to applicants only with a letter of notification to 180 cases/complaints, while 47 cases /complaints were closed at the initial stage of review²⁸. Whereas, in 74 cases the AIP has issued approval decisions, and in 4 cases it has imposed a fine²⁹. These statistics show that the majority of cases of restriction or refusal of access by public institutions have been contrary to the requirements of the Law on Access to Public Documents.

The information campaigns and the proactive approach that the AIP has followed in terms of informing the public about the right to access public documents can be a factor playing a significant role in the increase in the number of complaints submitted to the AIP.

2.5 The Role of Civil Society in Increasing the Transparency of Public Institutions

Civil Society Organizations (CSO) and the media have continuously played a very important role in the development of transparency and accountability of public institutions in the Republic of Kosovo. CSOs have continuously monitored the work of public institutions, and in certain cases they have submitted requests for access to public documents, in relation to those documents or information that have not been proactively published by public institutions or complaints in case of silence or rejection.

One of the cases worth mentioning which has had a general impact on the role of civil society organizations towards public institutions in the process of accountability and transparency is the case of the Balkan Network for Investigative Journalism (BIRN)³⁰ against the Prime Minister's Office in 2015. Namely, the request for access to the expenses of the Prime Minister of Kosovo and his deputies in

28 AIP, Annual Work Report for Year 2022, pg. 27.

29 Ibid.

30 <https://kallxo.com/shkurt/permbledhje-lajmeve/birn-fiton-rastin-gjyqesor-ndaj-zyres-se-kryeministrit/>

visits abroad. In this case, the Court in the omnipotent Judgment has decided in favor of BIRN against the Office of the Prime Minister, obliging the latter to provide access to the requested information. This case, but also many other cases initiated by NGOs, has influenced public institutions to increase transparency and provide access to information and documents of a similar nature.

AIP is cooperating closely with civil society organizations to implement projects aimed at increasing the transparency of public institutions in general.

2.6 Challenges in Accessing Public Documents

Some of the main challenges related to access to public documents are:

- Silence of institutions in requests for access to public documents;
- Providing limited access to public documents;
- Refusal of access to public documents and the failure of public institutions to proactively publish public documents;
- Tendency of non-cooperation of some public institutions with the AIP, including the failure to implement the decisions and pay the imposed fines.
- AIP's lack of financial capacity to enforce such fines, and the legal impossibility for this to be done through the Treasury;
- Lack of human capacities in the Information and Privacy Agency, followed by shortages in important positions within the institution.

This fact is evidenced in the Progress Report of the European Commission for the year 2022, but also in the Annual Work Report of the AIP for the Year 2022, as well as the Performance Plan for the year 2023³¹. These institutional challenges are a reflection of the limited budgetary capacities to recruit personnel, to train them in line with the developments in EU countries, both in terms of access to public documents and protection of personal data. A significant number of AIP professional positions approved by budget and according to the organizational chart remain unfilled, which has consequences for the quality and efficiency of AIP;

- Lack of adequate capacities of public institutions and lack of awareness to respect the requirements of the law for access to public documents.

This includes the failure of appointment of officials for access to public documents and their lack of adequate preparation to provide access to public documents. The informative, training and awareness-raising role of the AIP is necessary in this respect;

- The need to harmonize the other legal framework with the Law on Access to Public Documents.

Every public institution is obliged to harmonize their issued internal acts with the Law on Access to Public Documents, with the aim of developing transparency and accountability.

31 <https://aip.rks-gov.net/download/plani-i-performances-per-vitin-2023/?epdmdl=2686&refresh=64c9fb-63976ca1690958691>.

3. PERSONAL DATA PROTECTION

3.1 Constitutional Guarantees

The personal data protection in the Republic of Kosovo is a constitutional category. Article 36 of the Constitution of the Republic of Kosovo, which regulates the right to privacy, guarantees rights such as respect for private and family life, the inviolability of the home, the confidentiality of correspondence, telephone and communications, and the protection of personal data. These provisions expressly define that *“every person has the right to the protection of personal data. Their collection, storage, access, correction and use is regulated by law”*³². In addition, the protection of privacy and personal data is also protected at the constitutional level through the direct application of human rights guaranteed by international human rights instruments in the Republic of Kosovo, which are directly applicable in Kosovo according to Article 22 of the Constitution. In particular, it should be mentioned the rights guaranteed by the European Convention for the Protection of Fundamental Human Rights and Freedoms and its Protocols, for which Article 53 of the Constitution obliges public institutions to interpret them, in harmony with the judicial decisions of the European Court for Human rights. Therefore, the privacy matters in general, and the personal data protection in particular, are well regulated as part of the Constitution and international instruments directly applicable in Kosovo.

3.2 Legal Framework

In addition to the basic regulation with the Constitution of the Republic of Kosovo and as part of the international instruments for human rights included in Article 32 of the Constitution, the personal data protection is regulated in detail with the Law on the Personal Data Protection (LPDP)³³ and a significant number of bylaws aimed at operationalizing the practical implementation of the provisions of this law. The Personal Data Protection Law of 2019 has been harmonized with the EU Acquis in the field of personal data protection, and to a large extent with the requirements of Regulation (EU) 2016/679 of the European Parliament and of the Council dated April 27, 2016 on the protection of natural persons in relation to the processing of personal data and on the free movement of such data and the repeal of directive 95/46/EC (General Data Protection Regulation), which is also known as GDPR Regulation³⁴. This fact is also mentioned in the Progress Reports of the European Commission for Kosovo, in which it is emphasized that the legal framework covering the field of personal data protection is broadly in line with the EU General Regulation on Data Protection and Law Enforcement Directive. However, when harmonization with EU legislation is discussed, it should be noted that harmonization of the legal framework is not sufficient, thus the implementation mechanisms and implementation in practice are needed to be in line with the requirements of the EU Acquis as well. Therefore, if the personal data protection system in Kosovo is analyzed as a whole, it faces significant challenges in the proper implementation of this legal basis in practice.

The harmonization of the Law on the Protection of Personal Data with the Regulation of the GDPR has a positive impact on the controllers of personal data in the Republic of Kosovo. This is mainly because the same, in addition to the implementation of the law in question, have the opportunity to

32 Constitution of the Republic of Kosovo, Article 36, Par. 4. Accessible at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=3702>

33 Law No. 06/L-082 on Personal Data Protection. Accessible at: <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=18616>.

34 GDPR, <https://eur-lex.europa.eu/eli/reg/2016/679/oj>.

harmonize their internal acts and the processes related to the processing of personal data in the same way as the controllers outside the Republic of Kosovo, with whom these controllers have daily business cooperation or are practically even their branch in the Republic of Kosovo.

The Law on Personal Data Protection of 2019 is almost entirely harmonized with the EU GDPR, and among other things, it also regulates these issues which are also essential from a GDPR perspective:

- AIP is established by this law as the responsible authority for the supervision and implementation of the Law on Personal Data Protection.
- The provisions of the law apply to public and private entities (controllers) that process the personal data of individuals within the Republic of Kosovo, and it also applies to diplomatic missions of Kosovo abroad.
- Controlling entities must have a valid legal basis for processing personal data. These legal bases include consent, fulfillment of contract, legal obligation, protection of vital interests, public duty, and legitimate interests.
- If a controlling entity relies on the data subject's consent as a legal basis for processing personal data, that consent must be freely given, be specific, informed, and clearly given. Individuals as data subjects have the right to withdraw the consent given at any time.
- The law gives individuals various rights, including the right to access their personal data, to correct inaccurate data, to delete data ("the right to be forgotten"), to limit the processing and transfer of data, and to object to the processing.
- Based on Articles 37-39 of the Law, some organizations as controlling entities are required to appoint a data protection officer who is responsible for overseeing data protection activities within the organization.
- According to Article 33, controllers must report data breaches to the AIP within 72 hours of becoming aware of the breach, unless the breach is unlikely to result in a risk to the rights and freedoms of individuals.
- Articles 44-51 establish rules for the transfer of personal data outside Kosovo and in line with EU decisions. Transfers to countries that do not provide an adequate level of data protection may require additional protective measures.
- Controllers must demonstrate compliance with the provisions of the Law on Personal Data Protection by implementing appropriate technical and organizational measures. They must keep records of their data processing activities.
- The law requires controllers to incorporate data protection principles into the design of their systems and processes from the outset (privacy by design) and ensure that, by default, only necessary personal data is processed.
- According to Articles 35-36 of the Law, controllers must carry out an impact assessment for processing data that is likely to result in a high risk to the rights and freedoms of individuals. The assessment is intended to help assess and mitigate the risks associated with data processing.
- AIP has the power to impose significant fines for violations of the Law, which can be up to 4% of the total annual turnover of the previous financial year of the entity. At the same time, fines can also be imposed on the responsible persons.

Within the legal provisions of the Personal Data Protection Law, a number of bylaws for the detailed regulation of many processes are planned to be issued. The bylaws in question based on the Law are expected to be issued by the AIP, with the exception of a bylaw which is expected to be issued by the Government. AIP has issued the following bylaws:

- *Regulation No. 01/2022 (AIP) on the Method of Storage and Use of Archival Material and Protocol of the Agency for Information and Privacy* ³⁵;
- *Regulation No. 02/2022 on the Internal Procedure for the Review of Complaints for Access to Public Documents* ³⁶;

³⁵ <https://aip.rks-gov.net/download/rregullore-nr-01-2022-aip-per-menyren-e-ruajtjes-dhe-shfrytezimit-te-materialit-arkivor-dhe-protokollit-se-agjencise-per-informim-dhe-privatesi/>

³⁶ <https://aip.rks-gov.net/download/rregullore-nr-02-2022-per-proceduren-e-brendshme-te-shqyrtimit-te-ankesave-per->

- *Regulation No. 03/2022 on the Method of Conducting Inspection and Control*³⁷;
- *Regulation No. 04-2022 for the Internal Procedure for the Review of Complaints for the Protection of Personal*³⁸;
- *Regulation No. 05/2022 on Security Measures During the Processing of Personal Data*³⁹;
- *Regulation No. 06/2022 on the Internal Procedure for Reviewing Requests for the Authorization of the International Transfer of Personal*⁴⁰.

It can be noted that the bylaws issued by the AIP have not been published in the Official Gazette of the Republic of Kosovo. Considering that the AIP has the legal competence to issue these acts and that they are related to the implementation of the Law on the Protection of Personal Data, they should be published in the Official Gazette of the Republic of Kosovo. In addition to the formal legal aspect, the publication in the Official Gazette would have better effects of informing about the legal framework in force.

In addition to the bylaws mentioned above, AIP has not yet completed the entire framework of secondary legislation provided by the Personal Data Protection Law, although the Legislative Plan of Bylaws for 2023⁴¹ foresees the drafting of these missing acts. Some of the areas that are expected to be covered by the bylaws that have not yet been issued are complex and have not yet been regulated in detail even in the countries of the region. Therefore, they are complex areas and require specific expertise. The following regulations are foreseen within the legislative plan of AIP for 2023:

- *Regulation for Defining the Criteria and Procedures for Issuing the Certificate for Personal Data Processing;*
- *Regulation on the Determination of Fees for Notifications and Authorizations;*
- *Regulations on the Method of Processing Data Obtained from the Use of Drones.*

AIP has also issued guidelines to provide ease in the process of implementing primary and secondary legislation, as follows:

- *Guidelines for Political Parties during the Development of the Election Campaign*⁴²;
- *Guideline to Using the Camera Surveillance System for Data Controllers*⁴³;
- *Guidelines for the Processing of Personal Data for Direct Marketing Purposes*⁴⁴.

AIP has sufficient legal space to issue guidelines related to the detailed implementation of the legal provisions of the Law on Personal Data Protection. Therefore, given the broad scope of the Law on Personal Data Protection, AIP has legal space to issue guidelines in almost every area covered by the law, which would focus on these issues:

- Providing accurate information to citizens and businesses regarding data protection, including rights and obligations regarding data processing that would help improve the accountability of the private sector as data processors and controllers.
- Providing appropriate guidance on data processing for the private sector, including guidance on the preparation of internal data protection policies by the private sector, that would assist in the

[qasje-ne-dokumente-publike/](#)

37 <https://aip.rks-gov.net/download/rregullore-nr-03-2022-per-menyren-e-kryerjes-se-inspektimit-dhe-kontrollit/>

38 <https://aip.rks-gov.net/download/rregullore-nr-04-2022-per-proceduren-e-brendshme-per-shqyrtimin-e-ankesave-per-mbrojtjen-e-te-dhenave-personale/>

39 <https://aip.rks-gov.net/download/rregullore-nr-05-2022-mbi-masat-e-sigurise-gjate-perpunimit-te-te-dhenave-personale/>

40 <https://aip.rks-gov.net/download/rregullore-nr-06-2022-mbi-proceduren-e-brendshme-te-shqyrtimit-te-kerkesave-per-autorizimin-e-transferimit-nderkombetar-te-te-dhenave-personale/>

41 <https://aip.rks-gov.net/download/vendim-02-2023-per-miratimin-e-planit-legjislativ-te-akteve-nenligjore-per-vitin-2023/>

42 <https://aip.rks-gov.net/download/udhezues-per-parti-politike-gjate-zhvillimit-te-fushates-zgjedhore/>

43 <https://aip.rks-gov.net/download/udhezues-per-perdorimin-e-sistemit-te-vezhgimit-me-kamere-per-kontrolluesit-e-te-dhenave/>

44 <https://aip.rks-gov.net/download/udhezues-per-perpunimin-e-te-dhenave-personale-per-qellim-te-marketingut-te-drejtperdrejte-2/>

proper implementation of the Personal Data Protection Act .

- Providing data processing agreements models and similar template documents that will improve the implementation of the legal framework for data protection by the private sector. This would improve the capacity of the private sector to properly implement data protection requirements.

However, the provision of additional manuals and advice to the private sector, with the number of human capacities currently available to AIP is very limited. Therefore, improving the institutional capacities of the Information and Privacy Agency in providing advice on the implementation of the Law on Personal Data Protection for the private sector should be among the main priorities of the AIP.

3.3 Implementation of Personal Data Protection in Practice

3.3.1 Legal responsibilities of data controllers and processors

One of the first steps that must be taken by public and private institutions (controllers) in the process of implementing relevant procedures for the personal data protection is the appointment of the official responsible for the personal data protection. The Law stipulates that the personal data protection officer is appointed based on professional skills, and in particular on the basis of expertise in the protection of personal data. The officer for the personal data protection can be appointed from among the personnel of the controller or processor. This includes contracting with a service contract. The official responsible for the personal data protection is also the point of contact with AIP, and has the obligation to advise the controllers or processors and their employees regarding their duties, obligations and responsibilities in the implementation of the requirements arising under the Law on the Protection of Personal Data.

Entities that control and process personal data must⁴⁵:

- Take into account the purpose, object, nature, and the context of any data processing activity;
- Take into account the possibility of any serious risk to the freedoms and rights of any natural person;
- Implement appropriate organizational and technical measures and security measures that show that data processing activities are carried out in accordance with the LPDP;
- Review and update these measures as necessary.

In addition to controllers, the Law on Personal Data Protection also includes the personal data processors. Based on Article 28 of the Law on the Personal Data Protection, the processor processes personal data only according to the instructions of the controller, unless required to do so by a special law. The duties of the processor towards the controller must be determined through the contract for the processing of personal data concluded between the controller and the processor. Therefore, although they do not have the same obligations as controllers, data processors have some direct obligations provided for in the law. In the event of breaches of their personal data, data subjects may file claims for compensation in court against both data controllers and data processors.

Legal criteria for personal data processing

The Law on the Personal Data Protection provides that in every case of personal data processing by the controllers, the legal basis of processing provided for in Article 5 of the Law shall be applied. The legal basis for data processing is mandatory to ensure the legitimacy of data processing provided by law.

Therefore, according to Article 5 of the Personal Data Protection Law⁴⁶, any controller who wants to collect, store, publish, distribute, delete or destroy personal data must have a legal basis for such processing. The legal bases on which processing may take place are included below:

⁴⁵ Law on Personal Data Protection, Article 23.

⁴⁶ Article 5 or the Law Nr. 06/L-082 on Personal Data Protection.

- **Consent** - which implies that the data subject has given explicit consent for the controller to process his personal data for a specific purpose;
- **Contract** - the processing is necessary for a contract that the controller has with the data subject, or because the subjects have requested that special steps be taken by the controller before entering into a contract;
- **Legal obligation** - processing is necessary for the controllers to comply with the law (not including contractual obligations);
- **Vital interest** - the processing is necessary to protect someone's life;
- **Public interest** - the processing is necessary for the controller to perform a task in the public interest or for its official functions, and the task or function is clearly defined in law;
- **Legitimate interest** - processing is necessary for the legitimate interests of the controller or the legitimate interests of a third party, unless there is a good reason to protect the individual's personal data that outweighs those legitimate interests.

If we analyze these legal bases of processing, we see that the legal requirements of the Personal Data Protection Law are in line with the requirements of the EU GDPR.

Technical and organizational measures for the protection of personal data

The controller has the obligation to provide all the necessary infrastructure for the security of personal data when processing the subjects' personal data, namely to undertake the necessary actions and measures for the protection of this data. All the measures that the controllers are obliged to undertake must be taken in order to prevent the risk from data processing that may cause physical, material and non-material damage, such as: discrimination, identity theft or fraud, financial loss, damage to reputation, as well as loss of confidentiality of personal data protected by professional secrecy, etc.

Therefore, in order to avoid violations, the controller must make sure that in the case of processing, apply appropriate technical and organizational measures, to ensure an appropriate and convenient security level of data processing. According to the law, *a data breach means any action that results in the destruction, loss, accidental or unlawful alteration, unauthorized disclosure or access to data that has been transferred or otherwise processed.* The controller is obliged to implement appropriate technical and organizational measures to guarantee an appropriate level of security in proportion to the risk of personal data processing, in order to prevent a possible breach of personal data. The controller must approve internal acts to guide the implementation of appropriate measures and demonstrate compliance with legal requirements. As for technical security measures, they concern the protective measures that are placed in physical locations, information technology systems/devices that are used within the controller or as part of the final products that are used and related to the processing of personal data. This also includes the contractual arrangement of technical measures that the controller arranges with third parties that have access to personal data or with whom it participates in data processing. Some of the technical measures that controllers must implement are foreseen by Article 31 of the Law on Personal Data Protection as follows:

- Pseudonymization and encryption of personal data;
- Ability to ensure the confidentiality, integrity, availability and continued stability of processing systems and services;
- Using strong passwords on computers, creating backup copies of data;
- The ability to restore availability and access to personal data in a timely manner, in the event of a physical or technical incident;
- The process of testing, regular evaluation of the effectiveness of technical and organizational measures to guarantee processing security;
- Use of antivirus programs, etc.

3.3.2 The rights of data subjects

In the process of personal data processing by the controllers, the natural person is the main and central party of this process, which the Law on Personal Data Protection considers as “Data Subject”. Therefore, the data subject according to the Law on the Personal Data Protection enjoys rights as a data subject, and these are the responsibility of the controller to be implemented. In line with this, every controller who processes personal data is obliged to provide necessary information to the data subject, regarding his data that will be processed. Article 12 of the Law on Personal Data Protection has listed the detailed information that must be provided to the data subject. The data subject has the right to request from the controller the correction of inaccurate data concerning him, by completing incomplete personal data⁴⁷.

A very important right belonging to the data subject is the right to erasure or “The right to be forgotten”⁴⁸. The right to be forgotten usually applies in cases where there are one of the following reasons:

- Personal data are no longer necessary in relation to the purposes for which they were collected or processed;
- The data subject withdraws the consent on which the processing is based according to Article 5 paragraph 1, sub-paragraph 1.1. or Article 8, Paragraph 2., Sub-paragraph 2.1. of the Law and if there is no other legal reason for the processing;
- The data subject objects to the processing in accordance with Article 20, Paragraph 1. of the Law and there are no overriding legitimate reasons for the processing, or the data subject objects to the processing in accordance with Article 20, Paragraph 2 of the Law;
- Personal data has been processed illegally;
- Personal data must be deleted to fulfill a legal obligation to which the controller is subject;
- Personal data are collected in connection with the offer of information society services referred to in Article 7, Paragraph 1 of the Law.

The data subject has the right to obtain from the controller the restriction of processing, if one of the following criteria applies:

- The accuracy of the personal data is contested by the data subject for a period that enables the controller to verify the accuracy of the personal data;
- The processing is unlawful and the data subject opposes the erasure of the personal data and instead requests the restriction of their use;
- The controller does not continue to need the personal data for the purposes of processing, but they are required by the data subject for the establishment, exercise or defense of legal claims;
- The data subject has objected to the processing in accordance with Article 20, Paragraph 1 of the Law pending verification if the controller’s legitimate reasons prevail over those of the data subject.

According to Article 20 of the Law, the data subject has the right to be notified in cases where his personal data is transferred from one controller to another controller, as well as the right to object to the processing of his personal data.

The data subject in the process of processing personal data is at the center point, and his rights guaranteed by law are exclusive rights foreseen, in order to ensure the processing of personal data in full compliance with the provisions of the Law on the Personal Data Protection, and in any case to guarantee the legal security of the subject of personal data.

3.3.3 Role and responsibilities of the Information and Privacy Agency

The Law on Personal Data Protection of 2019 was issued in harmony with the EU GDPR Regulation, therefore the role of the AIP, regulated by this Law is in line with the EU requirements for an independent authority and with full powers in the field of personal data protection. Therefore, based on the

⁴⁷ Ibid, Article 15.

⁴⁸ Ibid, Article 16.

provisions of the Law on Personal Data Protection, AIP is responsible and has full powers to supervise the implementation of the law as follows:

- Acceptance and review of complaints for the protection of personal data;
- The development, planning and undertaking of inspection actions for the supervision of the implementation of the law for the protection of personal data;
- Supervision of the adequacy of the procedures and measures taken for the security of personal data in accordance with the law;
- Preparation and development of awareness and information campaigns for citizens regarding their rights as subjects of personal data and develops information campaigns for public and private controllers on legal obligations related to the processing of personal data;
- Research and analysis of development trends in the field of personal data protection, including the provision of relevant recommendations;
- Providing advice to the Assembly, the Government, institutions and other bodies on legislative and administrative measures regarding the protection of the rights and freedoms of natural persons with regard to the processing of personal data.

However, the Information and Privacy Agency is faced with limited human capacities which create difficulties in the implementation of this legal framework which is very advanced. This is also confirmed in the last Report of the European Commission on Kosovo⁴⁹. Over the last few years, however, AIP has undertaken a series of initiatives aimed at advancing the protection of personal data and has handled a significant number of complaints, imposing fines for violations related to the personal data protection⁵⁰.

3.3.4 Sanctions for personal data breach

In Article 92 of the Law on Personal Data Protection, the sanctions for each situation of violation of personal data are foreseen. AIP has been given full authority to impose fines on data controllers who act contrary to the requirements of the Law on the Personal Data Protection. As mentioned above, legal provisions have defined what is a breach of personal data, and the imposition of financial penalties by AIP differs from violations of the provisions of the Law on Personal Data Protection, including fines for violations of general provisions of the law, up to the illegal processing of personal data, direct marketing, camera surveillance, biometric characteristics, etc. Fines from two hundred euros (€200) to two thousand euros (€2,000) can be imposed on natural persons, while those on legal persons can be imposed from four thousand euros (€4,000) to four ten thousand euros (€40,000).

3.4 Data Analysis for Personal Data Protection

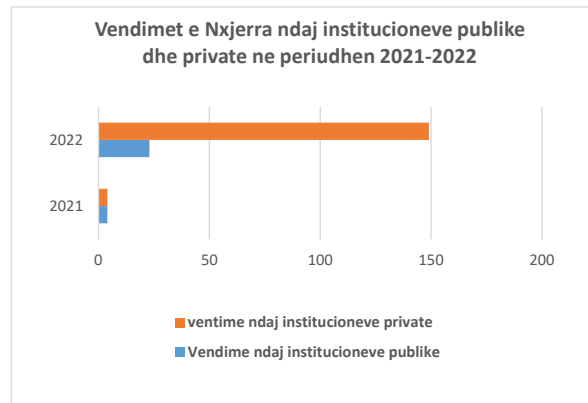
From the data presented in the following graphs, there is a significant increase in the number of cases that have been received in the form of complaints at the AIP. From these statistics, it can be seen that we have an increase in the number of complaints, in particular regarding the misuse of personal data, direct marketing, and camera surveillance. Even the number of decisions issued by AIP during 2022 has increased. From the data reported by AIP for the first half of 2023, a similar trend of complaints compared to 2022 can be observed. The increase in the number of complaints can be justified by the operationalization of AIP and awareness campaigns by AIP. The statistical data of the complaints submitted, but also of the fines imposed during this period, are indicative of the challenges faced by Kosovo in the field of compliance with the requirements of the Law on the Protection of Personal Data.

49 European Commission, Kosovo 2022 Report, pg. 31-32. Accessible at: <https://neighbourhood-enlargement.ec.europa.eu/system/files/2022-10/Kosovo%20Report%202022.pdf>.

50 Ibid.



Graph 4. Complaints Received from the AIP.



Graph 5. Issued Decisions from the AIP.

The Information and Privacy Agency has undertaken actions for the purpose of inspection and control of personal data controllers. Consequently, AIP has greatly increased the number of ex officio and on-demand inspections during 2022. The large number of cases where public institutions have installed surveillance cameras in violation of legal requirements remains worrying. During the year 2022, from the inspections of the AIP in all the municipalities of the Republic of Kosovo, it has been established that in some of the municipalities the surveillance system with a camera has been identified in violation of the provisions of the Law on the Personal Data Protection. Actions have been taken, in cooperation with the competent institutions for security, for those cameras to be seized, respectively removed from use⁵¹. In some of the cases, illegally installed cameras were confiscated, such as in the Municipality of Shtërpce. AIP has prepared an inspection plan for 2023.⁵²

From the analysis of the decisions of the AIP published on its website, which mainly either impose a fine or order a ban on the processing of personal data, it can be seen that the most frequent cases of violation of the provisions of Law No. 06/L-082 on the Personal Data Protection by the Controllers are related to:

- **Data processing in violation of legal requirements (in violation of legal criteria and principles of personal data processing provided by law)**

The most frequent cases when the controllers process personal data contrary to the legal requirements of the LPDP are the cases when they act by not applying at least one of the legal criteria for the processing of personal data, provided for in Article 5 of the Law on the Personal Data Protection and dealt with in the Section *Legal criteria of personal data processing* of this report, or even when the principles of personal data processing, provided for in Article 4 of the Law, are not respected.

- **Camera surveillance in violation of the requirements set out in the Law on Personal Data Protection**

In the case of personal data processing using the camera surveillance system, controllers are obliged to act according to the relevant provisions of the LPDP, applying the general and special provisions of the camera surveillance system. Controllers are advised that before installing the camera surveillance system, in addition to the implementation of the legal provisions, they should consider a “checklist” with the following issues:

- **Purpose** – Is there a clear purpose for installing the camera surveillance system?
- **Legality** – What is the legal basis for using the camera surveillance system?
- **Necessity** – Can it be demonstrated that the installation of the camera surveillance system is necessary to achieve your goal?
- **Proportionality** – If the camera surveillance system will be used for purposes other than security, are you able to demonstrate and justify that these other uses are proportionate?

51 <https://betimiperdrejtesi.com/sogojeva-dermaku-me-2022-aip-gjeti-se-vetem-dy-komuna-i-kishin-vendosur-sipas-ligjit-kamerat-ne-sheshet-publike/>.

52 <https://aip.rks-gov.net/doenload/plani-i-inspektimit-per-mbrojtjen-e-te-dhenave-personale/>.

- *Security* – What measures will be taken to ensure that the recordings of the camera surveillance system are secured and safe from external interference and from the possibility of violating the privacy of the subjects, both technically and organizationally?
- *Keeping* – How long will you keep the records, bearing in mind that they should not be kept for more than one month, unless otherwise required for legitimate purposes?
- *Transparency* –How will you inform people that you are recording their images and will you provide them with other information required by transparency obligations, access on demand to their personal data?

In many cases, AIP has found that controllers have not acted in line with these requirements.

- **Direct marketing**

Controllers use personal data for the purpose of providing goods and services to the subjects of personal data through postal services, telephone calls, electronic mail or other forms of communication⁵³. Even in direct marketing, the controller is obliged to apply at least one of the legal processing criteria provided in Article 5 of the LPDP, whereas the legal criterion that is most often used in direct marketing is “consent” from the subject of personal data.

The Information and Privacy Agency, in the process of supervising the Law on Personal Data Protection, during 2022 has imposed a total of eight (8) fines against public and private sector institutions, as shown in the following table:

Institution	Fine	Legal violation
Tax Administration of Kosovo	20.000 €	Unlawful processing of personal data.
Municipality of Podujeva	20.000 €	Unlawful processing of personal data.
Sigal Uniqa Group Austria	50.000 €	Violation of the provisions for the security of personal data, and general violation of the provisions of the Law on the Personal Data Protection.
Agency for Agricultural Development	30.000 €	Unlawful processing of personal data.
B.B Prishtinë (natural person, anonymized data)	20.000 €	Unlawful processing of personal data.
“Bluechip International” L.L.C.	5.000 €	Unlawful processing of personal data.
”Kayalar Telekom” L.L.C	4.000 €	Unlawful processing of personal data.

Table 2. Penalties for Personal Data Breach (Source: AIP).

Whereas, until June 30, 2023, the Information and Privacy Agency lists one (1) fine imposed on the Social Democratic Party of Kosovo⁵⁴ – fine in the amount of €20,000 due to illegal processing of personal data.

3.5 Challenges in Personal Data Protection

Some of the challenges that the Information and Privacy Agency has continuously faced in terms of personal data protection are as follows:

- Lack of human capacities in the Information and Privacy Agency, followed by shortages in important positions within the institution.

This fact is evidenced in the Progress Report of the European Commission for the year 2022, but also in the annual report of the work of the AIP for the year 2022, as well as in the Performance Plan for

53 <https://aip.rks-gov.net/download/udhezues-per-perpunimin-e-te-dhenave-personale-per-qellim-te-marketingut-te-drejtperdrejte-2/?wpdmdl=2266&refresh=64c9fef145d7a1690959601>.

54 <https://aip.rks-gov.net/vendimet-nga-ankesat/vendimet-nga-ankesat-e-mbrojtjes-ne-te-dhena-personale/>.

the year 2023⁵⁵. These institutional challenges are a reflection of the limited budgetary capacities to recruit personnel, to train them in line with the developments in EU countries, both in terms of access and protection of personal data. A significant number of AIP professional positions approved by budget and according to the organizational chart remain unfilled, which has consequences for the quality and efficiency of AIP⁵⁶.

- The limited number of employees within the Department for Data Protection, with special emphasis on the marked lack of Inspectors, who are mandated to supervise the implementation of the Law on Personal Data Protection.

The need for capacity building in the form of training of AIP officials is continuous, given the complexity of the field.

- The lack of institutional capacities of the controllers (of public and private institutions), including the lack of awareness to respect the requirements of the law for the protection of personal data.

This includes not appointing officers for the personal data protection, lack of procedures and policies related to the protection of personal data, and the need for training. The informative, training and awareness-raising role of AIP is very necessary in this aspect.

- Lack of guidelines deriving from the Law on Personal Data Protection.

The need for the issuance of various guidelines by the AIP, in order to facilitate the implementation of the law by the controllers, is evident. Issuing these practical guidelines for the purpose of implementing the Law, in particular with regard to specific chapters, would be of great help to the controllers, who implement the provisions of the Law on Personal Data Protection.

On the other hand, the main challenges faced by the *subjects of personal data* are:

- Data processing in violation of legal requirements (in violation of legal criteria and principles of personal data processing provided by law);
- Camera surveillance contrary to the requirements set forth in the Personal Data Protection Law; and
- Direct marketing.

55 <https://aip.rks-gov.net/download/plani-i-performances-per-vitin-2023/?ëpdmdl=2686&refresh=64c9fb-63976ca1690958691>.

56 <https://aip.rks-gov.net/download/plani-i-performances-per-vitin-2023/?ëpdmdl=2686&refresh=64c9fb-63976ca1690958691>.

4. RESULTS FROM THE REGIONAL INTERACTIVE TALKS AND THE SURVEY

4.1 Regional Interactive Talks

The CIVIKOS Platform, in cooperation with the Information and Privacy Agency, has organized seven information/interactive sessions in all regions of Kosovo. In these regional interactive sessions organized in Gjilan, Peja, Gjakova, Ferizaj, Mitrovica, Prizren and Prishtina, the participants were coming mostly from NGOs, media and Local Councils participated. In most cases, representatives from municipal institutions also participated. These sessions were organized in the form of interactive conversation in order to promote the role of the AIP and the two areas of responsibility of the AIP. During these sessions, questions were asked by the participants and answered by AIP representatives.

In these information sessions, a presentation of the Information and Privacy Agency was made by its officials, including section on its mandate and legal responsibilities. A general presentation of the legal framework covering Access to Public Documents has been made, including the obligations of institutions and the rights of citizens to request access, as well as the role of AIP in supervising the Law on Access to Public Documents. The legal framework for Personal Data Protection was also presented, including the applicable legislation, the obligations of data controllers and the role of AIP as an independent institution in supervising the implementation of the Law for the protection of personal data. AIP and CIVIKOS have used these sessions to distribute promotional materials for access to public documents and personal data protection, which have been appreciated by the participants.

From the discussions during these sessions, it is observed that most of the participants from NGOs have basic knowledge about the right to request public documents, and are somehow informed with the legal procedures related to access to public documents. There is a general belief that access to public documents has progressed in recent years. However, there are many cases where public institutions refuse access, offer limited answers or remain silent. The representatives of the institutions in many cases have admitted the lack of human capacities being the reason to provide timely access, especially in cases of requests for access to public documents related to procurement procedures. In some cases, positive examples have been mentioned, where the intervention of NGOs has made public institutions increase transparency and publish documents that otherwise should have been published proactively. In each of these information sessions, AIP representatives have provided clear information about which documents are public, which documents are not made public, including those related to business secrets, intellectual property, and anonymization of personal data. At the same time, it was also discussed about the classified documents, if they were subjected to the classification procedure or not.

Although AIP has developed training for officials on access to public documents and public institutions, and they have the right to contact AIP if they do not have a clear request for access, it was noted a need for further promotion of access to public documents has been noted from the discussions and for increasing the capacities of public institutions to handle requests for access to public documents in an appropriate manner. Increasing the transparency of public institutions through the proactive publication of documents, remains a challenge.

In the field of personal data protection, even though there is an increase in awareness by NGOs and public institutions, the situation remains very challenging on the ground. Some of the most problematic situations handled include cases of cameras installed contrary to legal requirements, storage and

processing of data without a legal basis, direct marketing by the business sector, misuse of personal data and identity theft, publishing of personal data without authorization, publication of personal data by the media, and similar situations. From the discussions, it was concluded that a significant number of NGOs collect and process personal data while performing their activities, but do not have any internal policy on personal data.

From the discussions, it was concluded that the Information and Privacy Agency, although it was operationalized with the current mandate two years ago, however, lacks sufficient human capacity to carry out inspections and handle the large number of cases related to the personal data protection. AIP currently operates at approximately half the capacity needed to fulfill its mandate in both areas of its competence. Despite the limited capacities, AIP has managed to deal with a large number of cases of collection and processing of personal data without a legal basis, in particular through the placement of cameras in public spaces, as well as other cases of violation during the last two years. of personal data, either according to the complaint or ex officio.

4.2 Survey

In addition to the interactive sessions, a questionnaire was prepared that covered the access to public documents and the protection of personal data. The questionnaire aimed to analyze how informed NGOs and businesses are with these two areas covered by the AIP, how much these subjects are in compliance with legal requirements in the field of personal data protection, and at the same time help AIP in the development of intervention programs in these areas to fulfill its mandate. Therefore, the survey is intended as a tool to understand the current situation regarding the needs and implementation of the Law on Access to Public Documents and the Personal Data Protection.

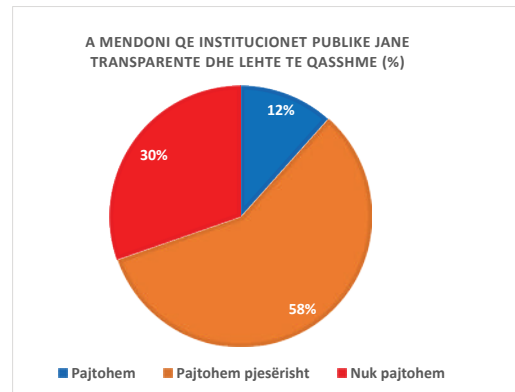
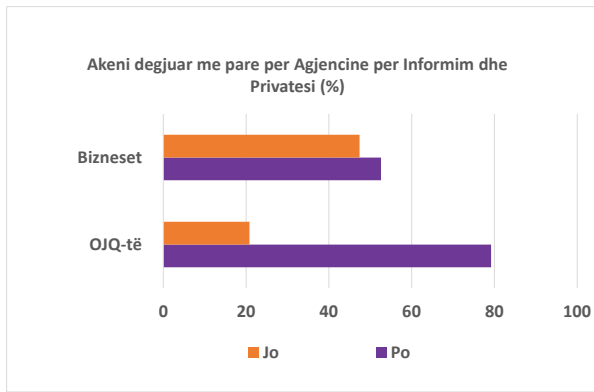
A total of 124 questionnaires filled by NGOs and businesses were received as part of the survey. Although the number of completed questionnaires is not large, considering the number of registered NGOs and businesses, the limited number of responses indicates a lack of information and awareness of NGOs and the business sector about the importance of access to public documents and the personal data protection, but also the obligations they have in particular in the field of personal data protection.

The survey was completed anonymously and below is an analysis of some of the main questions related to the scope of this report, including an interpretation of them.

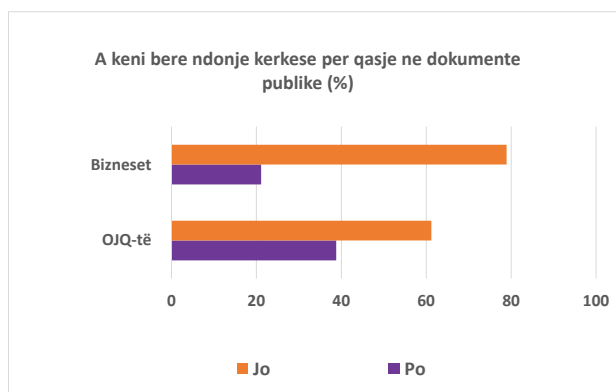
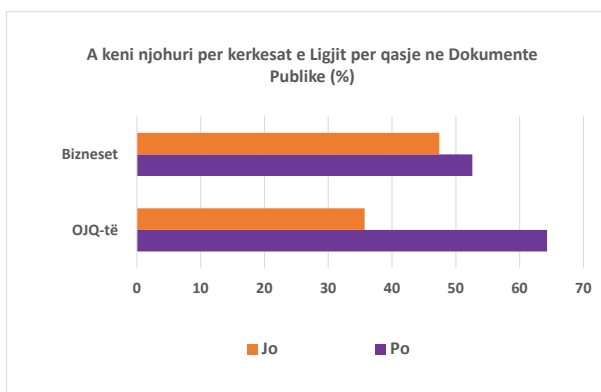
4.2.1 Access to Public Documents

Information about the Role and Responsibilities of the Information and Privacy Agency

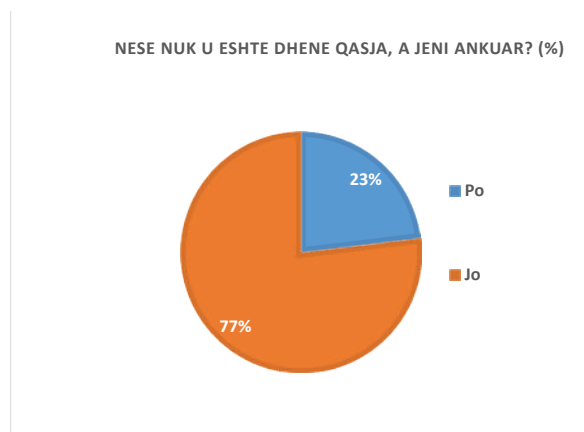
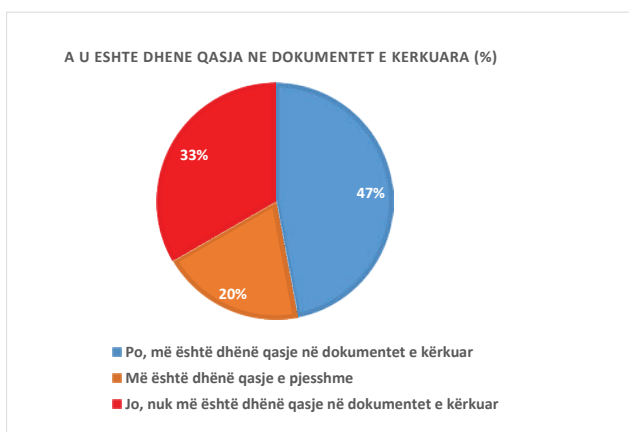
In the question “*Have you heard before about the Agency for Information and Privacy?*”, about 79.2% of respondents representing NGOs answered that they had heard about AIP before, while 20.8% of them answered negatively. Among the respondents representing the business sector, only 52.6% of them answered that they had heard about AIP before, compared to 47.4% who had not heard about AIP before. While, regarding the transparency of public institutions, only 12% of respondents think that public institutions are transparent and easily accessible, 58% partially agree with the finding that public institutions are transparent and easily accessible, while 30% disagree.



In the question “Are you aware of the requirements of the Law on Access to Public Documents”, 64.3% of NGOs answered that they are aware of the requirements of the Law on Access to Public Documents, while 35.7% of them declare that they are not familiar with these request. In the same question, about 52.6% of the businesses answered that they have knowledge about the legal requirements, while about 47.4% that they have no knowledge about these requirements. While in the question “Have you made any request for access to public documents?”, 38.8% of NGOs affirmed that they have made a request for access to public documents, against 61.2% of them who have never made such a request. Only about 21% of the businesses that responded to the questionnaire affirmed that they have ever submitted a request for access to public documents, while 79% of them have not submitted any such request.



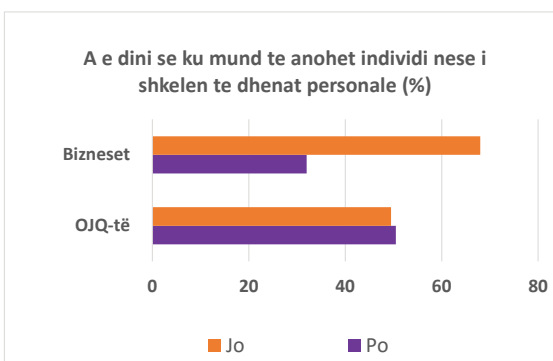
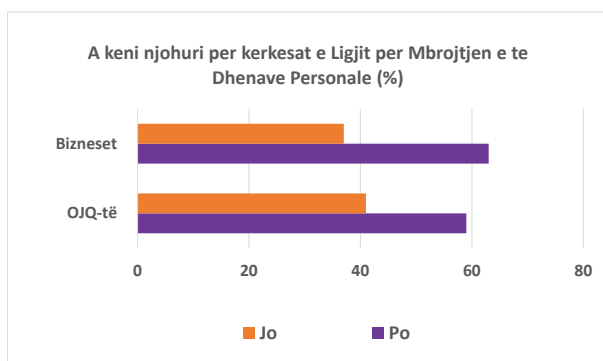
In the question “Were they given access to the requested documents?”, about 47% of the respondents answered that they were given access to the requested document, 20% were given limited access, and 33% that they were not given access. Only 23% of those who were not granted access answered that they complained about the decision not to grant access or limited access. In 39% of cases the complaint was successful and access was provided, while in 61% of cases the complaint was unsuccessful.



4.2.2 Personal Data Protection

Information on the requirements of the Personal Data Protection Law

In the question “Are you aware of the requirements of the Law on the Protection of Personal Data”, 59% of NGOs answered that they are aware of the requirements of the Law on the Personal Data Protection, while 41% of them declare that they have no knowledge with these requirements. In the same question, about 63% of businesses answered that they have knowledge of the legal requirements, while about 37% that they have no knowledge about these requirements. While in the question “Do you know where the individual can complain if his personal data is violated?”, 50.5% of NGOs have this information, against 49.5% of them who do not have this information. Only 32% of the businesses that responded to the questionnaire clearly know where the individual can complain in the event of a personal data breach, while 68% of those that responded do not have this information.



In the question “Which institution do you think most often commits a breach of personal data?” there is a perception that public institutions most often commit personal data breaches, followed by public enterprises, hospitals, commercial banks, supermarkets, nurseries and so on. In this question, respondents had the opportunity to choose more than one option.



Internal policies and procedures for Personal Data Protection

In the question “Does your organization/business have an internal policy for the protection of personal data?”, about 51% of NGOs answered that the NGO has an internal policy for personal data, against 49% who answered that the NGO does not have an internal policy for the protection of personal data. In the same question, about 26.3% of businesses answered that they have an internal policy for the protection of personal data, against 73.7% that answered that the business does not have an internal policy for the protection of personal data. Of the subjects that answered that they do not have internal policies for the protection of personal data, among the main reasons for the lack of such a policy is: the lack of capacity for the preparation of such a policy in 39% of cases among NGOs and in 33% of cases businesses; lack of knowledge about the legal requirements for such a policy in 26.8% of NGOs and 40% of businesses; and uncertainty as to whether the requirements of the law are applicable to these subjects with 25% of NGOs and about 40% of businesses. Only 25% of NGOs and 40% of businesses that

answered that they do not have an internal personal data policy answered that the lack of such a policy is because they do not collect and process personal data. About 23.5% of businesses and about 21.3% of NGOs that do not have internal policies do not plan to create an internal policy for the protection of personal data because they do not have the capacity. If they were offered professional support for drafting an internal policy, 52.9% of businesses and 54.7% of NGOs that do not have internal policies for the protection of personal data would do so. While 29% of businesses and 13% of NGOs will prepare it with their capacities. As for the question “Do you have any internal procedure for dealing with personal data violations?”, 63.3% of NGOs stated that they have such a procedure, while 36.7% do not have such an internal procedure. Of the businesses that responded, 68.4% have an internal procedure for dealing with personal data breaches, against 31.6% who responded that they do not have an internal procedure.

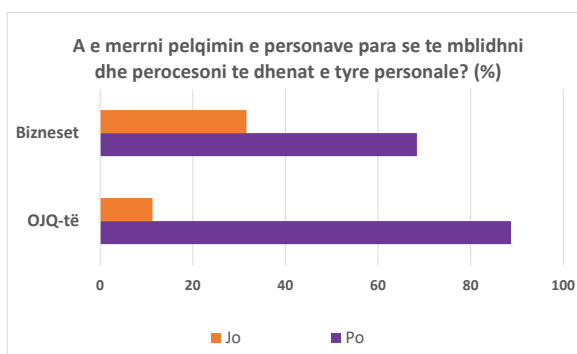
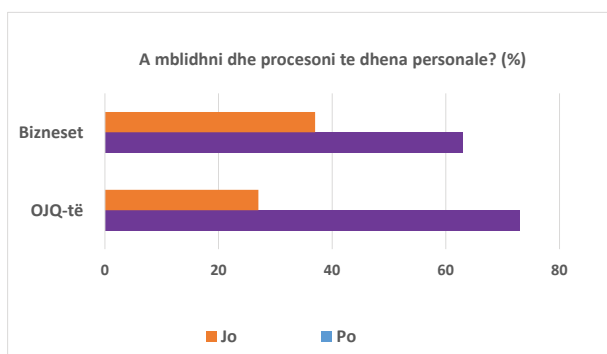
In the question “Did your organization make an internal assessment of the risks regarding the protection of personal data”, 41.4% of the NGOs that responded emphasized that the NGO made such an assessment, against 58.6% that answered that they did not any such assessment is made. In businesses, only 15.8% answered positively, against 84.2% of them who emphasized that there is no internal assessment of risks regarding the protection of personal data.

Officials for the personal data protection and training of personnel regarding the protection of personal data

In the question “Is any of your staff trained in personal data protection?”, only 25.8% of NGOs state that any of their staff is trained in personal data protection. The percentage of businesses that answered that they have staff trained for the protection of personal data is only 10.5%. While only 26% of NGOs and 31.6% of businesses have reported that they have an internal official responsible for the protection of personal data.

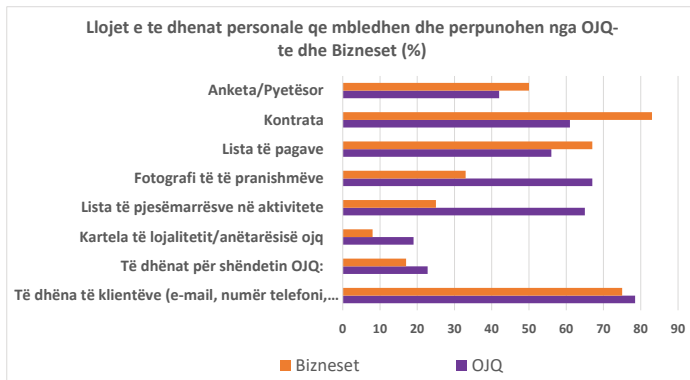
Collection and processing of personal data

In the question “Do you collect and process personal data?”, 73% of NGOs and 63% of businesses answered that they collect and process personal data. While 27% of NGOs and 37% of businesses say that they do not collect and process personal data. 88.7% of NGOs and 68.4% of businesses state that they obtain the prior consent of data subjects before collecting and processing personal data. Also, from the received answers, it appears that 41% of NGOs and 79% of businesses have installed security cameras outside their facilities. 46% of NGOs and 65% of businesses have declared that they have installed signs and decisions that notify other people about those cameras.



From the answers received, it can be seen that NGOs and businesses collect and process different personal data, on different legal bases, including contract and consent. Customer data (e-mail, phone number, etc.) is collected by about 78.5% of NGOs and 75% of businesses. Health data are reported to be collected by 22.8% of NGOs and 17% of businesses; The list of participants in the activities was reported by 65% of NGOs and 25% of businesses; Photographs of attendees 67% of NGOs and 33% of

businesses, payroll data, contracts and surveys were also reported as a way of collecting personal data.



5. CONCLUSIONS AND RECOMMENDATIONS

5.1 Access to Public Documents in the Republic of Kosovo

- Kosovo has a legal framework for access to public documents that is in line with international standards in this field. The Constitution of the Republic of Kosovo provides guarantees for access to public documents, while the Law on Access to Public Documents of 2019 regulates in detail the process of access to public documents, and defines the institutional mechanisms for addressing requests for access to public documents and addressing of complaints for denial or restriction of access.
- Civil society organizations and the media have continuously played a very important role in the development of transparency and accountability of public institutions in the Republic of Kosovo. AIP is cooperating closely with civil society organizations to implement projects towards this goal.
- The current law has contradictory provisions, which create ambiguity as to which bylaws were issued by the AIP and which were issued by the Government at the proposal of the AIP. This issue should be clarified in the future.
- AIP is only competent to ensure that institutions publish the documents required by law, but not to interfere with the government's competence to manage websites and dictate their content. Consequently, it is not even competent to issue bylaws in this field, but to cooperate in this process to reflect the requirements of the Law. Therefore, the Guideline for the content of public institutions' websites (2022) has some ambiguities in its legal character, since it cannot be a binding bylaw. This Guideline can only guide institutions regarding the minimum requirements to publish the documents required by the Law. Therefore, the AIP could offer many clarifications to public institutions from the perspective of the requirements of the Law on Access to Public Documents, since only regarding this aspect the AIP is competent.
- The Agency for Information and Privacy during the last two years has been operationalized in an institutional sense and has issued most of the bylaws and information guidelines, which provide more detailed and specific clarifications regarding the right of citizens to access public documents, such as and the options that must be followed, in order to realize this right. However, much remains to be done in increasing the capacities of AIP itself as a supervisory institution and of public institutions that are responsible for providing access to public documents. From the analysis of complaint statistics, it is observed that the role of AIP in increasing the transparency of public institutions is essential, and that public institutions in most cases have limited or refused access to public documents without basis.
- From the statistical data published by AIP for the period 2021-2023, a decrease in the reporting of statistics on access to public documents by public institutions to AIP for 2022 is observed. At the same time, a decrease in the number of requests for access to public documents in 2022 compared to 2021 and an increase in the number of cases in which access to public documents was restricted and denied. It is also noted an increase in the number of complaints submitted to AIP comparing the period July 2021-June 2023. Also, statistics show that most cases of restriction or refusal of access by public institutions have been contrary to the requirements of the Law on Access in Public Documents. Surveys with NGOs and businesses, but also the large number of complaints submitted to AIP, are indicators that public institutions are still not fully transparent, therefore they do not proactively publish documents and in many cases limit or refuse access to public documents. A culture of communication and cooperation with citizens regarding access to

public documents should be encouraged and promoted.

- The survey with Non-Governmental Organizations and businesses indicates that a significant number of them are not informed about the role and mandate of the AIP. Consequently, the provision of additional information by the AIP is necessary.
- Public institutions must carefully and without obstacles implement the Law on Access to Public Documents. This includes implementing the Law's requirements for the proactive release of public documents and providing full access to public documents. Cooperation with the Agency for Information and Privacy, including the implementation of its decisions and instructions, constitutes a legal obligation and will help strengthen the transparency of all public institutions. This includes the obligation to pay the fines imposed by the AIP.
- AIP has some difficulties in terms of enforcement of fines by some public institutions. There is a legal possibility to do the execution through private enforcement, however, this has a financial cost for the AIP budget, which has not yet have this included. Execution through TAK has never been practiced until now, and in itself would be problematic for TAK, given human capacities. Enforcement is not possible even through the Treasury, due to current legal restrictions. The issue of enforcement of fines imposed on public institutions should be addressed in a broader legal context within the Law on General Administrative Procedure, and not only for those imposed by the AIP.
- AIP should invest in increasing human capacities within the institution. This includes recruiting and training staff to handle issues of access to public documents in accordance with legal requirements.
- It is important that public institutions provide training and awareness of their officials to provide access to public documents in accordance with the requirements of the law on access to public documents. AIP can play a key role in this process by providing guidance and training to public officials.
- It is necessary for public institutions to harmonize their internal acts with the Law on Access to Public Documents to ensure consistency and fair implementation of the legislation in the field of access to public documents.
- It is recommended that every bylaw issued by AIP be published in the Official Gazette of the Republic of Kosovo. In addition to the formal legal aspect, the publication in the Official Gazette would have better effects of informing about the legal framework in force.

5.2 Personal Data Protection in the Republic of Kosovo

- Kosovo has a law for the personal data protection, which is currently in line with EU requirements in this area. However, implementation mechanisms and implementation in practice are also needed to be in line with the requirements of the EU Acquis. If analyzed as a whole, the personal data protection system in Kosovo faces significant challenges in the fair implementation of this legal basis in practice.
- Over the past two years, AIP has taken actions to protect personal data, in particular by preventing the collection and processing of data without authorization and without legal protection. A significant number of fines have been imposed, which are believed to have a positive effect on the awareness of controllers and processors of personal data. The number of cases of violations is also indicative of the challenges faced by Kosovo in the field of personal data protection.
- Taking into account the broad scope of the Law on Personal Data Protection, which also covers the private sector, increasing the human capacities of the AIP is essential for proper implementation of the legal requirements.
- The private and public sectors have not yet managed to raise their awareness to an appropriate extent and create capacities regarding the legal requirements related to the protection of personal data. Therefore, the role of AIP in promoting the personal data protection, but also in providing support for controllers and processors to be in compliance with the requirements of the Law on Personal Data Protection, remains essential.

- AIP has not yet completed the entire framework of secondary legislation provided for by the Law on Personal Data Protection, but it is foreseen to be done in the Legislative Plan of Bylaws for the Year 2023. These bylaws are complex and have not yet been properly regulated in detailed even in the countries of the region.
- From the survey, it is noted that most NGOs and businesses are controllers and processors of personal data. However, a high percentage of them are not aware of the legal requirements and obligations that the Law on Personal Data Protection foresees against them in the case of personal data processing. Many of the respondents representing this sector are not aware of where to submit a complaint in case of a personal data breach. There is a great lack of internal privacy policies, a lack of human capacities trained according to the requirements of the Law on Personal Data Protection, including the official responsible for the protection of personal data.
- Further promotion of the importance of privacy and personal data protection remains a must. At the same time, the promotion of the role and mandate of the AIP as a supervisory institution for the field of personal data protection is important to increase compliance with the requirements of the Law on Personal Data Protection.
- It is recommended that the Agency for Information and Privacy take care of increasing human capacities within the institution. This includes the recruitment and training of personnel in accordance with developments in the countries of the European Union regarding the protection of personal data. The recruitment of vacant professional positions in the AIP, which are already approved by budget, should be a priority and will affect the increase in the quality of work and the efficiency of the work of the AIP. In particular, it is important to increase the number of employees in the Data Protection Department, including more specialized inspectors. The need for continuous training of AIP officials is essential to ensure that they are aware of the up-to-date changes in legislation and the complexities of the field of personal data protection.
- AIP should play an active role in improving the capacities of public and private institutions to fulfill the requirements of the Law for the Personal Data Protection. This includes helping to raise their awareness, developing procedures and policies for the personal data protection, and providing the necessary training. AIP can play a key informing and training role in this process.
- The provision of additional manuals and advice as needed for the private sector is very limited considering the current limited number of AIP human capacities. Therefore, improving the capacities of the AIP in providing advice on the implementation of the Law on Personal Data Protection for the private sector should be among the main priorities. It is recommended that AIP issues practical guidelines that assist controllers in implementing the Law on the Personal Data Protection. These guidelines will help facilitate their understanding and application of the Law.
- Bylaws issued by AIP on this field have not been published in the Official Gazette of the Republic of Kosovo. In addition to the formal legal aspect, the publication in the Official Gazette would have better effects of informing about the legal framework in force. It is recommended that every bylaw issued by AIP to be published in the Official Gazette of the Republic of Kosovo. In addition to the formal legal aspect, the publication in the Official Gazette would have better effects of informing about the legal framework in force.

