



EU Funded Project and Managed by the
European Union Office in Kosovo



Participation and Impact of Civil Society Organizations in Policy-Making and Decision-Making Processes in Kosovo





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Content

Executive Summary	5
1. Introduction	7
2. Importance of Citizens' Participation in Decision-making and Policy-making	9
3. Legal Basis Guaranteeing the Right to Participation in Decision-making Processes in Kosovo	13
4. Transparency and Participation in Decision-making in Practice	17
5. Capacities of Civil Society Organizations	19
6. Steps and Levels of Participation in Decision-making and Policy-making Process	26
6.1. Information	29
6.2. Consultation	33
6.2.1. Local Level Consultation	33
6.2.2. Consultation at Government Level.....	36
6.2.3. Consultations at the Assembly level	39
6.3. Partnership	42
6.4. Participation of civil society in public bodies.....	46
7. Best practices in other countries of the European Union	48
7.1. Publication of notices regarding the initiatives for drafting legislation or policies	49
7.2. Possibility to register for participation in the process of drafting a policy or legislation.....	49
7.3. Feedback on the comments received or refused by civil society during the consultation process	50
7.4. Electronic consultation platforms.....	50
7.5. Access to public documents.....	51
7.6. Civic activism	51
7.7. Funding of non-governmental organizations	52
8. Conclusions and recommendations	53

Executive Summary

Campaigns and the pressure of domestic CSOs and international institutions have influenced public institutions to adopt sound legal basis and to set in place procedures regarding the involvement of citizens in the decision-making and policy-making process. Nevertheless, as in many other areas, the reality does not match with what is sanctioned by way of laws. Public institutions do not yet follow legal procedures and obligations with regards to citizen inclusion in the decision-making and policy-making process.

There are, in general, four known levels of citizens' involvement in the decision-making process, starting from the lowest to the highest one: information, consultation, dialogue and partnership. The hitherto practice in Kosovo demonstrates that Kosovo institutions have not passed even the basic level of participation – the information level. Notwithstanding the advancement of the institutions approach regarding the publication of information and responses to applications requesting access to public documents, institutions continue to breach the Law on Access to Public Documents when it comes to documents of special importance, such as: officials' expenses, contracts on highways or other documents of special importance. There are also cases when institutions fail to comply with court decisions on publication of public documents, even less so when it comes to Ombudsperson's suggestions.

Although some progress is made in the process of consultations, at central level in particular, institutions still apply a different approach with regards to consultations by not following the legal procedures. Moreover, involvement of the public in the policy-making process is done at later decision-making stages. There is no system on institutional response ("*feedback*") in place for comments and recommendations provided by citizens and CSOs in the consultation process.

But in order to advance the consultation and partnership practices, besides a better will of the governing institutions, greater participation of the public is also required, as is so required the profiling and capacity building of the CSOs. Various researches conducted with citizens, prove that over 80% of citizens have never participated in public meetings organized by municipalities, over 96% of citizens do not participate in CSOs activities, and 85% of citizens have not engaged in any voluntary activity within a year. Out of 214 published documents on public consultation via the Government consultation platform, institutions have received comments and suggestions only in 10% of them.

For the purpose of enhancing the CSOs participation in the policy-making and decision-making process, it is necessary to have better information from institutions, better response to applications requesting access to public documents, greater involvement of the public starting from the stage of setting the agenda and in the policy drafting process, CSOs capacity building, as well as educational campaigns in order to increase the citizens' activation and explain the importance of participation in the policy-making and decision-making process.

1. Introduction

“We, the people...” are the first words of the Constitution of Kosovo and of the constitutions of other democratic countries. However, more than a citizen’s project, the Constitution of Kosovo is a document written in a closed process and far from the eyes of public. Most important laws were drafted by the same token, in a hastened process, even circumventing parliamentary debate and intervention. Following the declaration of independence and the end of international administration, the governing responsibility falls with the local institutions.

Civil society has in these ten years made continuous efforts to develop a culture of institutions transparency towards the public and to involve the public in the policy-making and decision-making process. More than just a procedure, participation of public in decision-making is a political right, meaning that anyone who is affected by a government decision has to be consulted and express his/her opinion.

Nevertheless, institutions continue neglecting their legal obligations to make information public and to involve the public in the decision-making. There is a mutual distrust between civil society organizations and governing institutions. The former chastise institutions for ignoring their suggestions or for having consultations only for the sake of fulfilling a procedure; the latter blame the civil society for non-participation or superficial contribution.

This study has analyzed the legal basis and the current practice of CSOs involvement in the decision-making and policy making process. Based on international standards, the study analyses Government approach in all levels of participation and in all policy-making phases. In addition, the study has analyzed participation practices in both governing levels: at municipalities’ level and at the Government and Assembly level.

On the other hand, the study also covers a critical view on the civil society capacity to participate in the decision-making and policy-making process, by analyzing civic activation and civic engagement in non-governmental organizations, the active number of organizations, their expertise and participation trend.

By representing successful examples of public involvement in decision-making in other European Countries, the study touches those areas which require greater efforts of institutions and civil society in advancing their partnership in the policy and decision-making. Finally, recommendations were made on how to further advance such process.

For the purposes of this study, the legal base and other strategic documents of all governing institutions were analyzed in terms of data publication and in terms of involvement of the public in decision-making. Moreover, the study is based on secondary information sources, such as reports of other local and international organizations, information obtained from webpages and data obtained through applications for access to public documents.

The Office of Good Governance and Kosovo Assembly were contacted, as well as various local organizations in direct meetings and via electronic communication¹. Data collected through interviews and consultations with civil society organizations constitute valuable contribution to the content of this study.

In addition, the study is also enriched with findings from study visits of non-governmental organizations representatives within the KEEN project in Slovenia, Austria, Netherlands and Croatia. The purpose of these study visits was to learn from mentioned countries the good practices in the area of citizen participation in decision-making, with special emphasis on inclusion of civil society in the policy-making process. From December 2016 until October 2017, organizations which are part of KEEN and representatives of public institutions have visited a number of civil society organizations and public institutions in these four European Union countries.



**The participation of public in
decision-making process is a legal requirement
in most of the democratic countries.**

¹ For the purpose of this study, the following organizations were contacted: Kosovo Civil Society Foundation (KCSF), Kosovo Democratic Institute (KDI), Group for Legal and Political Studies (GLPS), "EC Ma Ndryshe", Institute for Development Policy (INDEP), Democracy Plus (D+), National Democratic Institute (NDI-Kosovo), Balkan Investigative Reporting Network (BIRN), GAP Institute.

2. Importance of Citizens' Participation in Decision-making and Policy-making

It is almost a widely recognized norm that citizens' participation in decision-making yields diverse political benefits. Politics stands in the link between those that govern and the governed. Democracy is a political system which, at least in theory, has the thinnest thread of division between the government and citizens. However, democracies differ in practice also based on the level of citizens' involvement in decision-making and in policy-making. While all democracies consider voting as a basic form of citizens' commitment, this is however not the only form of participation. Between the elections intervals, representing institutions in democratic countries apply a range of practices on engagement of citizens in the decision-making process throughout their entire governance. These practices, inter alia, include: public debates and meetings, continuing information, written communication, commenting and providing recommendations, opinion assessment and other forms.

Citizen participation in decision-making is a process where citizens' concerns, needs and values are included in decision-making and governance and it is a mutual communication and interaction aiming for better public policies and greater citizens support.² Participation of public in the decision-making process is nowadays a legal obligation in the vast majority of democratic countries. In addition to being a legal obligation within the legislation of the sovereign countries, there are also international conventions calling for inclusion of citizens in the decision-making process. Such an example is the Aarhus Convention, calling for involvement of the public in every decision that affects the environment, which is already signed by 46 states, European Union included.

² James L. Creighton. The Public Participation Handbook – Making Better Decisions through Citizen Involvement. Jossey-Bass, 2005.

According to the International Association for Public Participation³, the following principles must be respected in engaging the public in the decision-making process:



Citizens must have their say in the decisions that affect their life;



Participation must guarantee that public contribution will have an impact on decision-making;



The process of participation of the public must include the stances of all the participants;



Consultation process must inevitably include all those affected by a certain policy;



Public institutions must take in public even at the stage when the consultation process and inclusion of the public in the decision-making is being designed;



The process of public participation must have clear rules of information on how the public can be engaged in as comprehensive as possible manner;



The process of public participation in decision-making must certainly contain procedures on how to inform participants with their contribution and how that contribution has influenced the policies.

³ International Association for Public Participation. Source: <http://www.iap2.org/>

Advantages of citizens participation in the decision-making process are manifold and mutual for both institutions and citizens, such as: mutual education, mutual impact in altering or strengthening beliefs, better policies, better implementation of decisions and policies, enhancement of legitimacy, and so on.⁴

Table 1: Advantages of citizens’ participation in the decision-making process

Benefits of citizens’ participation in the decision-making process

	Citizens’ benefits	Institutions benefits
Decision-making Process	Education (learning from exchange of information with authorities); Providing clarifications to institutions; Obtaining knowledge on decision-making processes;	Education (learning from exchange of information with citizens); Building trust in institutions; Creating alliances; Acquiring legitimacy;
	Unblocking processes, achieving goals; Control over policy-making processes; Better policies and better implementation;	Unblocking processes, achieving goals; Avoiding court disputes; Better policies and better implementation;
Outcomes		

Source: Irvin & Stansbury, 2004

4 Renee A. Irvin and John Stansbury. Citizen Participation in Decision Making: Is It Worth the Effort? Public Administration Review, Jan/ Feb 2004.

Nevertheless, some scholars point out disadvantages also, or the cost resulting from the process of engagement of citizens and CSOs in decision-making. Amongst those is also the budgetary and human resources cost which must be directed towards creating room for debates, producing materials, prolonging the process. In cases where large groups with heterogeneous attitudes participate in consultations, the final outcome is unclear and more complex. There are cases when instead of strengthening trust between institutions and citizens the consultation process achieves quite the opposite, making wrong impressions on parties. Because citizens are not financially compensated for their participation in the policy-making processes, it often happens that only those directly affected by a certain policy participate in the decision-making process.⁵

Table 2: Disadvantages of citizens’ participation in the decision-making process

The cost of citizens’ participation in the decision-making process

	Citizens’ benefits	Institutions benefits
Decision-making process	Time consuming; Futile engagement if contribution is ignored;	Time consuming; Encounters expenses; In certain cases may have a contrary effect, thus increasing dissatisfaction with institutions; Process is prolonged;
	Poorer policies in cases when the process is affected by groups with opposite convictions or unprincipled requests;	Decline of control over the policy results; Likelihood to build poorer policies; Smaller budget is left for implementation of policies;
Outcomes		

Source: Irvin & Stansbury, 2004

5 Renee A. Irvin and John Stansbury. Citizen Participation in Decision Making: Is It Worth the Effort? Public Administration Review, Jan/Feb 2004.

3. Legal Basis which Guarantees the Right of Participation in Decision-making Processes in Kosovo

The Constitution of Kosovo guarantees participation of all citizens in the political life of the country providing for the active and passive right to vote. Additionally, according to the Constitution, state institutions support the possibilities for everyone's participation in public activities and the right to influence in a democratic way the decision of public authorities.⁶ Also, in Chapter on Local Government, the Constitution defines municipalities as basic units of local self-governing and encourages and safeguards active participation of all citizens in the decision-making process of municipal authorities.⁷

In order to establish constitutional principles guaranteeing the right of citizens on information and participation in decision-making, a range of laws and by-laws were adopted.

In 2010, Kosovo Assembly adopted the Law on Access to Public Documents⁸, which repealed the 2007 Law on Access to Official Documents and it has advanced the legal ground guaranteeing citizens access to public documents. Law on Access to Public Documents guarantees every applicant has access to all documents which are, in whatever form, in possession of public institutions. The reply must be provided within seven calendar days. In cases when institutions do not respond to applications requesting access to public documents, or if their responses are not in compliance with the law, the applicant is entitled to file a complaint with the Ombudsperson or to bring a claim before the competent court.

6 Constitution of the Republic of Kosovo, Article 45, item 3. Source: <http://bit.ly/1pdQSYZ>

7 Ibid, Article 124, item 1.

8 Official Gazette of the Republic of Kosovo. Law no.03/L-215 on Access to Public Documents. Source: <http://bit.ly/2EOAHJY>

Regulation on Rules and Procedure of the Government of the Republic of Kosovo⁹ regulates the standards of the executive institutions for consultation with civil society. According to the Regulation, while drafting of proposals for which a concept document is required, in addition to consulting the ministries and other public administration bodies, the proposing authority shall publish the content of its proposal for comments from the public and shall specifically request comments from non-governmental organizations which are significantly affected by the concerned proposal. During such consultation, the proposing authority shall provide sufficient information in a manner that is comprehensive to the public in order to enable the public to understand the nature and consequences of such proposal. The proposing authority shall also announce publicly the beginning of the consultation process and shall provide sufficient time for the public and non-governmental organizations to review the recommendations and provide their authentic answers¹⁰.

The Government considers, in particular, their opinion and initiatives; it takes a stance with regards to them, notifies them with its stances and measures and, if necessary, invites their representative to participate in Government working bodies and organizes other forms of cooperation.¹¹ The Government will have the consultation process running for at least 15 days.¹²

Based on the Regulation on Rules and Procedure of the Government, the consultation process will be conducted in compliance with an instruction issued by the Secretariat based on the proposal of the Legal Office. In September 2011, the Office of the Prime Minister¹³ issued the **Guidelines on Public Consultation Process**, which came as a result of a long cooperation with civil society organizations.¹⁴ The Guidelines standardize the public consultation process and it was issued aiming to assist the civil servants and civil society organizations to successfully plan and implement a public consultation process. The Guidelines defines consultation phases, steps, forms, the process and the consultation process assessment. The Guidelines also contain the templates to be used by the central executive institutions in consultations cases.

9 Official Gazette of the Republic of Kosovo. Regulation no.09/2011 of Rules and Procedures of the Government of the Republic of Kosovo. Source: <http://bit.ly/2B9yeYj>

10 Official Gazette of the Republic of Kosovo. Regulation no.09/2011 of Rules and Procedures of the Government of the Republic of Kosovo, Article 32. Source: <http://bit.ly/2B9yeYj>

11 Official Gazette of the Republic of Kosovo. Regulation No.09/2011 Rules and Procedures of the Government of the Republic of Kosovo, Article 69. Source: <http://bit.ly/2B9yeYj>

12 Exceptions from this rule are the emergency cases, when the sponsor of the documents may request acceleration of procedures.

13 Decision No.062/2011 of the Secretary General of the Office of the Prime Minister, dated 26 September 2011. Source: <http://bit.ly/1JhXtU>

14 The Guideline is drafted by the Legal Office of the Office of Prime Minister in cooperation with Kosovo Civil Society Foundation (KCSF).

In 2016, the Government also approved the Regulation on Minimum Standards of Public Consultation Process¹⁵ which, to a great extent, transforms the consultation principles set forth in the Guidelines into additional legal obligation for executive institutions. The Regulation defines the documents for which a consultation process must be held, among them also for:

- Annual draft plan for strategic documents;
- Government legislative draft program;
- Draft plan for by-laws;
- Draft list of concept documents;
- Draft concept documents;
- Draft normative acts;
- Draft strategies; as well as
- Any other document which must be supported with a clarifying memorandum or for which a public consultation is required.

The Regulation also defines the forms and techniques of public consultation, such as: written consultation, webpage publication, public meetings, conferences, meetings with groups of interest, workshops, interviews, face-to-face meetings, public opinion researches, panels of citizens, street stands, etc.

Law on Legislative Initiatives¹⁶, which became effective in 2011, provides the right of citizens to undertake legislative initiatives. Pursuant to such law, any citizen may undertake legislative initiative. Any legislative initiative shall have a representative. In order for the legislative initiative to be compulsory for the Assembly, at least 10.000 signatures of citizens are required which must then be verified by the Central Election Committee. Through a legislative initiative, the citizens are qualified to request the Assembly to draft a law, or they may themselves prepare a draft law and submit it to the Assembly for discussion and approval.

Regarding the legislative level, the Regulation on Rules and Procedures of the Assembly¹⁷ stipulates that parliamentary commissions will hold public hearings in order to obtain notifications which are being reviewed, from experts of public organizations, representatives of groups of interest and other persons. In June 2016, the Assembly issued the Action Plan for an Open and Transparent Assembly 2016-2020.¹⁸ The plan, inter alia, envisages also the establishing of an electronic legislation monitoring system, facilitating access to voting records of MPs, publication of documents in open formats, etc. Whereas, with regards to the increase of citizens participation and civil society organizations participation in the works of the Assembly, the plan foresees activities such as: facilitation of access of persons with limited abilities to Assembly, enhancement of procedures for participation of citizens and CSOs in the work of parliamentary commissions, opening of the library and archive for citizens and CSOs.

15 Official Gazette of the Republic of Kosovo. Regulation No.05/2016 on Minimum Standards for Public Consultation Process. Source: <http://bit.ly/2EQ5bvo>

16 Official Gazette of the Republic of Kosovo. Law no .04/L-025 on Legislative Initiatives. Source: <http://bit.ly/2DmYCUy>

17 Kosovo Assembly. Rules and Procedures of the Assembly of the Republic of Kosovo, 29 April 2010. Source: <http://bit.ly/2rlzJmy>

18 Kosovo Assembly. Action Plan for Open and Transparent Assembly 2016-2020. Source: <http://bit.ly/2DfGwzH>

At local level, participation of citizens and CSOs in decision-making and policy-making is guaranteed by Law on Local Government¹⁹. The law obliges every municipality to have public meetings at least twice a year in which any citizen or organization can participate. In such meetings, participants may pose questions and bring proposals to the elected municipal representatives. Citizens may take initiative to propose regulations, within the competencies of the municipality, for approval by the assembly. Such initiative must be signed by 15% of registered voters. Moreover, the Municipal Assembly establishes Sectorial Counselling Committees aiming for participation of citizens in the decision-making process. The membership of such committees is comprised of citizens and representatives of non-governmental organizations. Counselling Committees may submit proposals, make researches and provide opinions on the initiatives of the Municipal Assembly, in compliance with the statute of the municipality.

Law on Local Government obliges municipalities to issue a municipal regulation on transparency. Most of municipalities have issued the regulation on transparency²⁰. Additionally, Ministry of Local Government Administration (MLGA), pursuant to Law on Local Government, has issued an array of Administrative Instructions with the purpose to advance transparency, accountability and to facilitate participation of citizens and civil society organizations in the decision-making process.

Table 3: Summary of official documents on participation of public in the decision-making process

The Constitution of the Republic of Kosovo

Law on Access to Public Documents

Assembly	Government	Municipalities
Rules and Procedures of the Assembly	Rules and Procedures of the Government, Article 32	Law on Local Government
Law on Legislative Initiatives	Regulation on Minimum Standards for Public Consultation Process	Regulation of MLGA on Transparency in Municipalities
Action Plan for Open and Transparent Assembly 2016-2020	Guidelines on Public Consultation Process	26 Municipal Regulations on Transparency

19 Official Gazette of the Republic of Kosovo. Law no.03/L-040 on Local Self Government. Source: <http://bit.ly/1CulaKA>

20 Regulations on Transparency of 26 municipalities are published in the Official Gazette of the Republic of Kosovo. Source: <http://bit.ly/1CulaKA>

4. Transparency and Participation in Decision-making in Practice

However, like in all societal areas, the real situation concerning the process of transparency and participation of citizens in decision-making also differs significantly from the laws in force. Laws related to transparency and participation of citizens in decision-making are good on paper but their implementation is partial.

This was, to a great extent, also ascertained in the recent European Commission (EC) Kosovo 2016 Report²¹. European Commission expresses its criticism both concerning the readiness of Government to implement the legislation, strategies and principles for good governance, in this case transparency and engagement of civil society organizations (CSOs) in decision-making, and also concerning the insufficient capacities of the CSOs to participate in such process. According to the EC report, progress was made in regards to approval of minimum standards for the public consultation process. Irresponsibility of some ministries, limited resources, insufficient budget and lack of political willpower represent obstacles in the implementation of the Strategy on Cooperation with Civil Society. Short consultation deadlines set by the Government represent obstacles to the engagement of CSOs in the decision-making process. Based on the European Commission, deficiency of consultations or limited consultations on some laws and strategies of political and economic interest is quite worrisome. The right to have access to official information is breached by institutions. There is no sufficient transparency with reference to public funding of CSOs.

Nevertheless, the low level of citizen and CSO participation in the decision-making and policy-making process is not only about the institutions attitude but also about the culture of participation and about civil society capacities. According to a GAP Institute research on participation of citizens in policy-making process at local level and in political and non-governmental organizing, it results that the level of citizen participation is very low.²² Asked as to how often they have participated in public meetings organized by the municipality, 81% of the respondents replied that they have never participated. Only 33% of the respondents are aware of the existence of local councils as informal bodies that serve for the discussion of community projects (neighborhood or village), whereas 69.2% of those who were aware of the existence of such councils did not participate in the selection of the council representatives.

Moreover, based on the said research, there is a very low level of engagement of citizens in voluntary work, in associations or political events. Only 3.4% of respondents stated that they are members of a non-governmental organization, while 82% of citizens are not affiliated to any political party. Only 15% of citizens stated that they are engaged in some voluntary work.

21 European Commission. Kosovo 2016 Report. Brussels, 9.11.2016. Source: <http://bit.ly/2INRFCl>

22 GAP Institute. Organized Communities – The Role and Importance of Active Citizenship. April 2017. Source: <http://bit.ly/2pt5tRb>

Participation and Impact of Civil Society Organizations in Policy-Making and Decision-Making Processes in Kosovo

Such low rate of civic engagement impacts, to a great extent, also the process of participation in decision-making and policy-making. The quality of a government depends a lot on the social norms and civic engagement. Networking and cooperation of citizens in a society is known as the social capital. Researchers have found numerous connections between societies (even regions within a country) which have a high rate of social engagement or civic networking, lower crime rates, more efficient governance.²³

²³ Robert D. Putnam. Bowling Alone: America's Declining Social Capital. Journal of Democracy, January 1995.

5. Civil Society Organizations Capacities

Organization of civil society plays an important role in the process of participating in decision-making and policy-making. It provides citizens with an alternative way of channeling different viewpoints and safeguarding various interests in decision-making processes.²⁴ According to a European Commission definition, non-governmental organizations are voluntary self-governing bodies or organizations established to pursue a collective objective which does not bring-about direct benefit for its founders and members.

According to the Law on Freedom of Association in Non-Governmental Organizations²⁵, a domestic NGO is an association or foundation established in Kosovo to accomplish the purpose based on law, either for public benefit or mutual interest. An Association is a membership organization. A Foundation is an organization without membership, established to manage properties and assets and may be established by one or more persons.

There are 8,853 non-governmental organizations registered in Kosovo by August 2017.²⁶ The MPA Department for Registration of NGOs has revoked the status of 516 NGOs. Pursuant to Law on Freedom of Association in Non-Governmental Organizations²⁷, an NGO may be an association or a foundation. According to the official records on NGOs, 96.1% are associations and 3.9% are foundations. As of 1999, approximately 465 NGOs are registered annually.

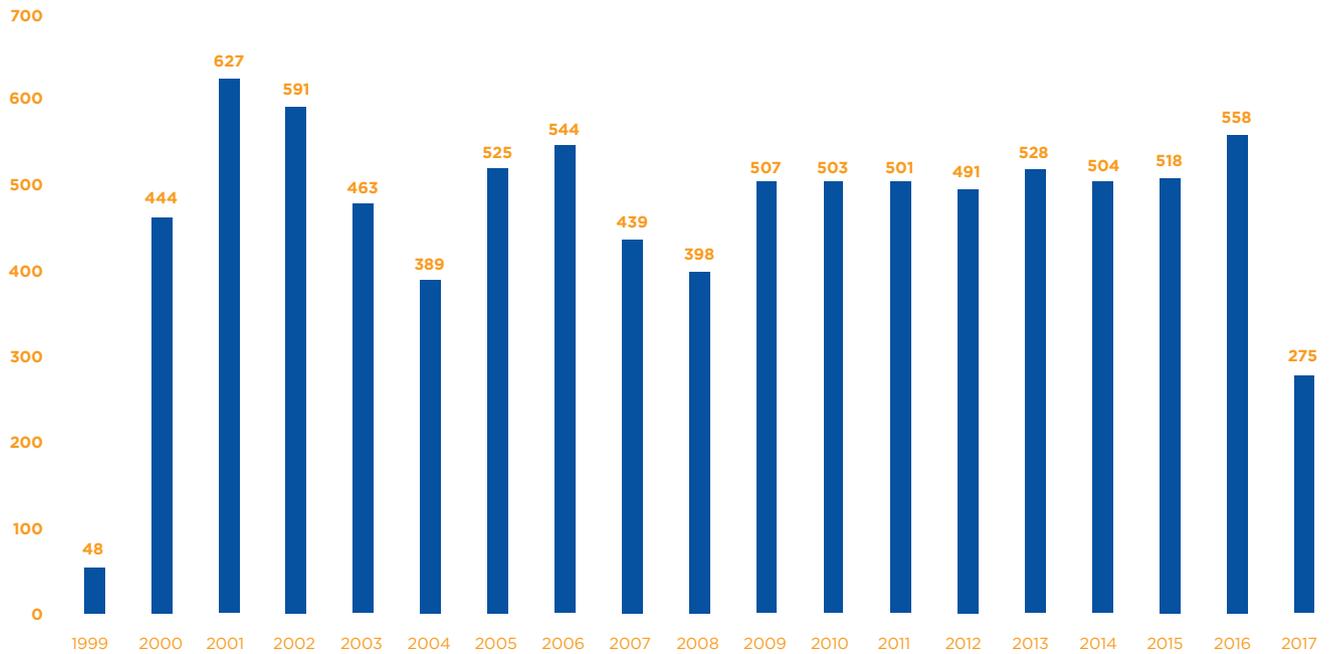
24 Conference of INGOs of the Council of Europe. Code of good practice for civil participation in the decision-making process. Adopted by the Conference of INGOs at its meeting on 1st October 2009. Source: <http://bit.ly/2BqFPCh>

25 Official Gazette of the Republic of Kosovo. Law no.04/L-57 on Freedom of Association in Non-Governmental Organizations. Source: <http://bit.ly/2BsRjLz>

26 Ministry of Public Administration – NGOs Department. List of Domestic NGOs. August 2017.

27 Official Gazette of the Republic of Kosovo. Law no.04/L-57 on Freedom of Association in NGO. Source: <http://bit.ly/2BsRjLz>

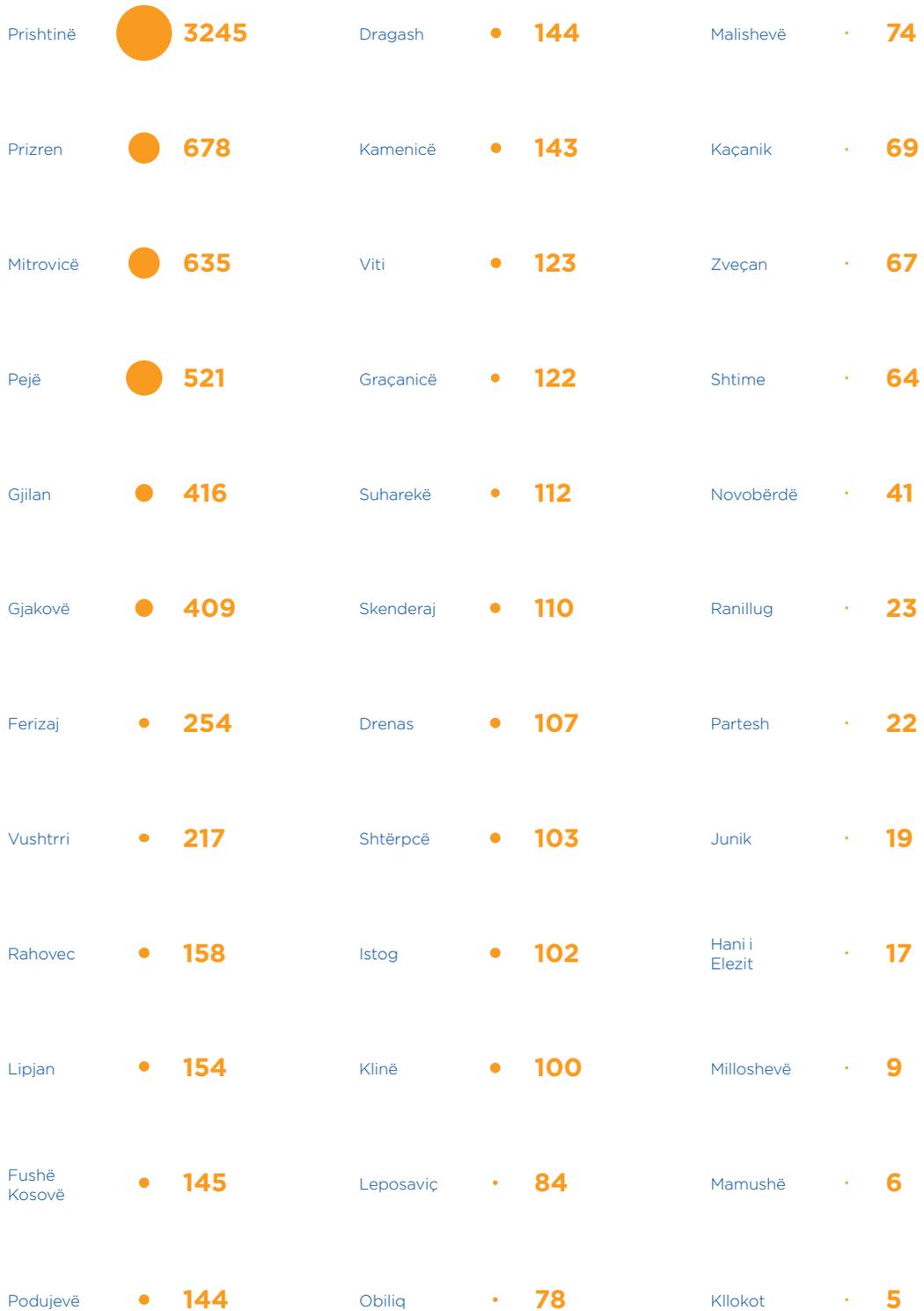
Figure 1:
NGOs Registration by years
(1999-2017)



Source: Department for NGOs, the 2017 data are until August.

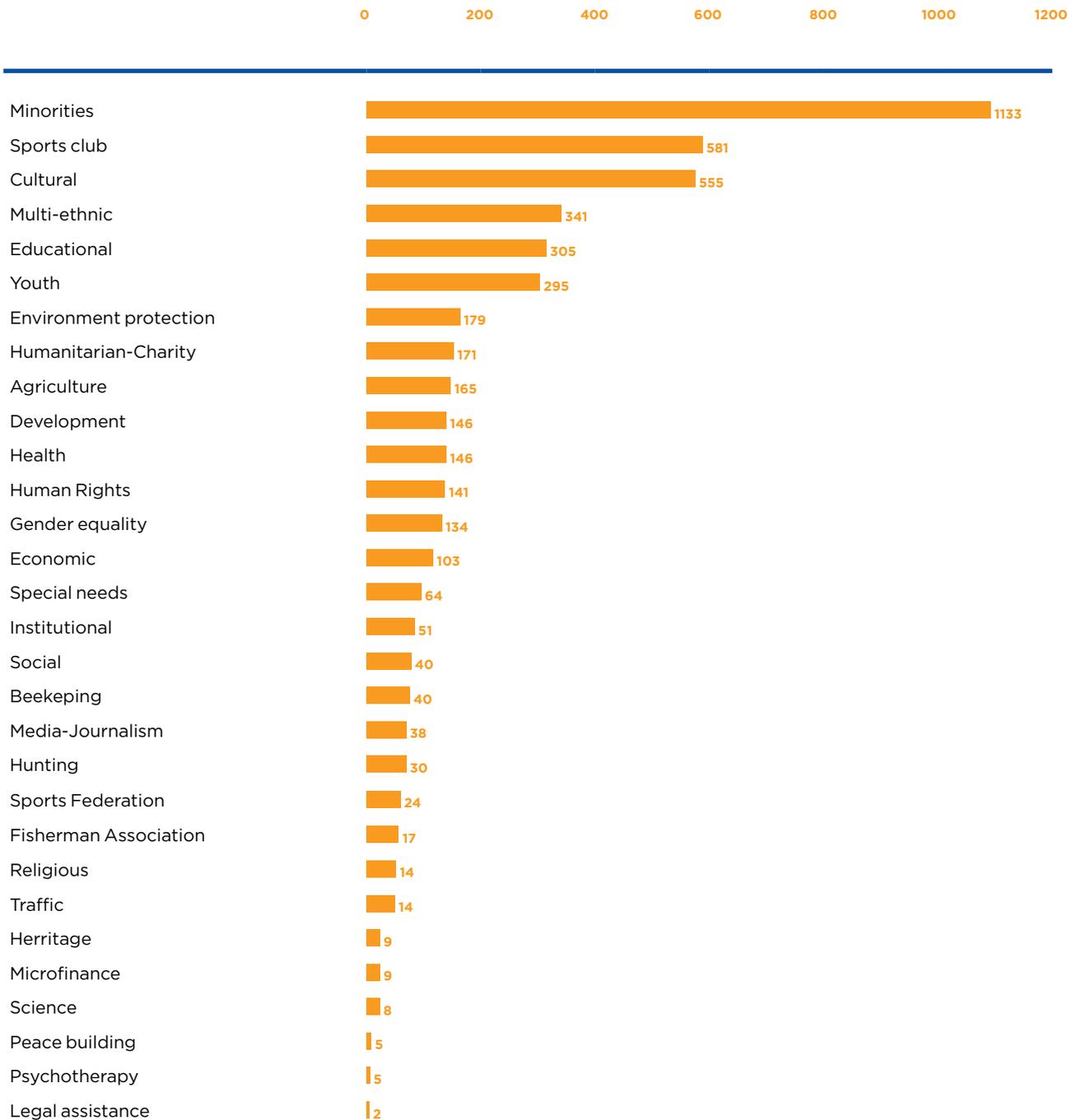
The biggest number of NGOs is focused in Pristina and in big cities.

Figure 2:
**Registration of NGOs by
 address**



Source: Department for NGOs

Figure 3:
NGOs registered based
on the main scope of their
activity



Source: Department for NGOs

Participation and Impact of Civil Society Organizations in Policy-Making and Decision-Making Processes in Kosovo

Around 41% of NGOs are not categorized according to their main scope of activity. However, the areas covered by the remaining categorized NGOs, are the rights of minority communities, youth organizations, education, etc. Based on current laws in force, religious communities, sports clubs, sports federations, cultural institutions are also registered as NGOs. The following figure includes all NGOs according to official categorization by the Department for NGOs.

Nevertheless, it is considered that the number of active organizations is around 1,500. Fewer than 1,000 organizations have had some financial activity or have employed persons during 2015. Most of the sector comprises of small organizations, according to both their funds and staff number.²⁸

According to the data from Kosovo Tax Administration (KTA), from 2009, when the implementation of fiscal number began, 2,230 NGOs were issued a fiscal number by the end of 2015, which is a prerequisite to administer any type of taxes in Kosovo. Also, 748 NGOs submitted with the KTA the required annual tax declarations for 2015, 7864 NGOs paid taxes or declared some financial transaction, whereas 927 NGOs reported that they have employed persons during the reporting year.²⁹ Based on data from the Pension Savings Trust, in 2016 there were 13,888 contribution payers from the NGOs sector, or 3.9% of the overall number of persons paying pension contribution.³⁰

With regards to the internal professional capacity of civil society organizations, based on the survey of Kosovar Civil Society Index 2016, it appears that NGOs give more importance to the engagement of professional staff with regards to drafting and implementing projects, valuing thus more their relationship with donors, than to the engagement of professional staff to influence the policies or to provide concrete advocating. According to the NGOs, the number of well-trained individuals for the needs of NGOs is small and the recruitment of professionals presents a huge challenge. Usually, during the course of staff engagement, NGOs are in search of professionals that are successful in a particular subject area, but they also have to be successful managers. According to KCSE, the number of individuals possessing these two qualities is quite limited, whereas those who do possess both of these qualities are very difficult to be attracted.³¹

However, based on the USAID CSOs Sustainability Index in Central and South-Eastern European countries and in Eurasian countries³², the sustainability of Kosovar CSOs is of the same level with the level of CSOs in the region, in terms of legal basis, financial sustainability, organization capacity and image, provision of services, infrastructure and advocating. The USAID has rated the sustainability of Kosovar CSOs with 3.8 points, namely at the same level with CSOs in Albania, at a more satisfactory level than the CSOs environment in Serbia, Montenegro and Macedonia, but at a lower level than the CSOs in Croatia, Rumania, Bulgaria and Bosnia. Whereas, concerning the CSOs advocating capacity, Kosovo and Macedonia are ranked worse than the CSOs of other countries in the region. Issues dealing with CSOs cooperation with the local and central level government, initiatives to have an impact on the legislation or policies, lobbying activities, etc., have been assessed within the CSOs advocating capacities.

28 KCSE. Kosovar Civil Society Index 2016. Pristina, October 2016. Source: <http://bit.ly/2E7EZgl>

29 KCSE. Kosovar Civil Society Index 2016. Pristina, October 2016. Source: <http://bit.ly/2E7EZgl>

30 Pension Savings Trust. Annual Report 2016. Source: <http://bit.ly/2AkgfzV>

31 KCSE. Kosovar Civil Society Index 2016. Pristina, October 2016. Source: <http://bit.ly/2E7EZgl>

32 USAID. 2016 CSO Sustainability Index for Central and Eastern Europe and Eurasia. July 2017, 20th edition. Source: <http://bit.ly/2nbQRpF>

According to the USAID CSOs Sustainability Index 2016, some of the reasons why the CSOs in Kosovo have failed to be successful in advocating initiatives are linked with the political problems in the country, the brusqueness of the public debate due to extensively discussed topics, such as the demarcation with Montenegro and association of municipalities with Serbian majority.

Kosovo is one of the countries that have most benefited from international financial assistance per capita. Although there are no exact data, it is believed that from 1999 until 2007, Kosovo has benefitted 4.5 billion dollars' worth of donations³³, whereas from 2008 until 2017 it has benefitted 2.5 billion dollars.³⁴ Besides the direct assistance to institutions, in infrastructure, capacity building, technical assistance, part of these funds went also to civil society organizations.

Besides the external donors, some NGOs also benefited from the public funds. Until 2017, no detailed data existed on the public funds beneficiary NGOs. In 2017, the Office of Good Governance published for the first time a detailed report on the state budget subventions allocated to the CSOs in 2015-2016.³⁵ According to such report, within two years, 27.8 million Euro were allocated to NGOs. The said amount also included subsidies for sports federations (2.6 million euro), sports clubs registered as NGOs (2.4 million euro), city theatres (125 thousand euro), business associations (112 thousand euro), private universities (500 thousand euro), etc.

In 2015, 745 NGOs and 711 NGOs in 2016, were granted funds at the ministry level. Whereas at municipality level, 955 NGOs benefited from public funds in 2015 and 936 NGOs were subsidized in 2016.

33 Greg Mills. *Why States Recover- Changing Walking Societies into Winning Nations*, from Afghanistan to Zimbabwe. Hurst & Company, London 2014. Pg. 256-257.

34 Ministry of European Integration. Assistance Management Platform. Source: <http://amp-mei.net/portal/>

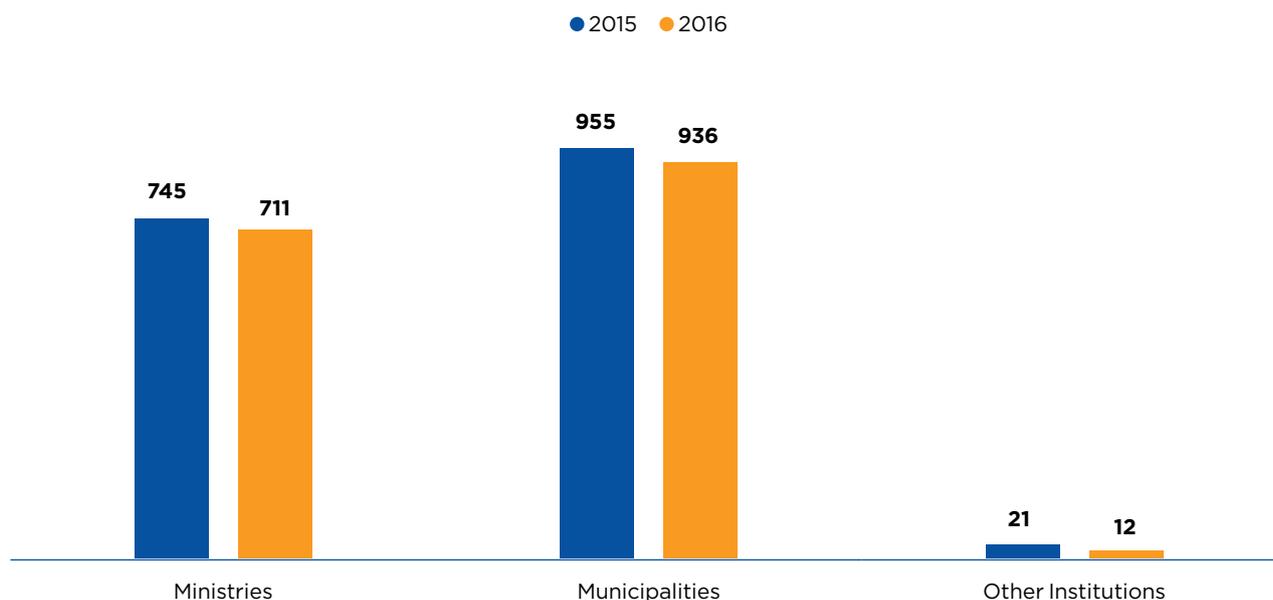
35 Office of Good Governance, supporting the EU funded project "Support in Implementation of Government Strategy for Cooperation with the Civil Society". Report on public-fund support for NGOs within the Republic of Kosovo Institutions for 2015-2016. Pristina, March 2017.

Participation and Impact of Civil Society Organizations in Policy-Making and Decision-Making Processes in Kosovo

On the other hand, the category of subsidies for the NGOs is one of the budget categories comprising of the biggest number of abuses. According to the abundant reports of the National Auditing Office, many cases have been identified throughout the years where institutions have allocated subventions without any criteria, there is no evidence what was accomplished by such funding of NGOs and there are no financial and narrative reports of the NGOs which benefited from the public funds.

Until June 2017, allocation of funds for NGOs was done without any basic regulation on budgetary organizations, without any clear criteria on benefiting and reporting. In June 2017, Ministry of Finance adopted Regulation on the Criteria, Standards and Procedures of Public Funding of NGOs.³⁶

Figure 4:
**Number of NGOs that
have benefited from
public subsidies based on
institutions and years**



Source: Government Report for public financial support of NGOs within the institutions of Republic of Kosovo for 2015-2016

36 Official Gazette of the Republic of Kosovo. Regulation no. 04/2017 on Criteria, Standards and Procedures on Public Funding of NGOs. Source: <http://bit.ly/2uINcS3>

6. Participation Steps and Levels in Decision-making and Policy- making Process

According to Organization for Economic Cooperation and Development (OECD), governments can foster cooperation with citizens through:

Information

This is a basic and unilateral step when, based on self-initiative, governments inform the public about the processes and decisions, or when citizens seek information through legal mechanisms, such as the right to have access to public documents, information published in official gazettes or in webpages.

Consultation

Information is a prerequisite for consultations. Through consultations, decision-making institutions request and obtain reactions to policies. Examples of these are consultations on legislation, strategic documents, public attitude assessment, etc. Consultation consists of a limited mutual communication between the government and citizens.

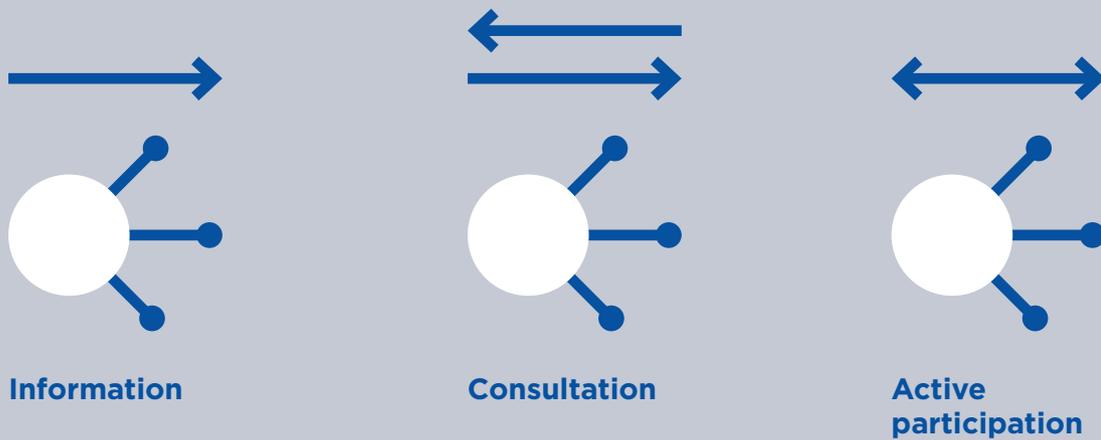
Active participation

Engagement of citizens in the decision-making process is an advanced form of mutual communication between the government and citizens. Active engagement means that citizens get directly engaged in proposing policies, although this does naturally not imply the assuming the right of elected persons to render their final decision.³⁷

³⁷ OECD. Citizens as Partners. OECD Handbook on Information, Consultation and Public Participation in Policy-making. 2001. Source: <http://bit.ly/2DzOIlp>

Figure 5:
Levels of Participation in Decision-making

Increase of the level of participation and influence of citizens in policy-making



Source: OECD, 2001.

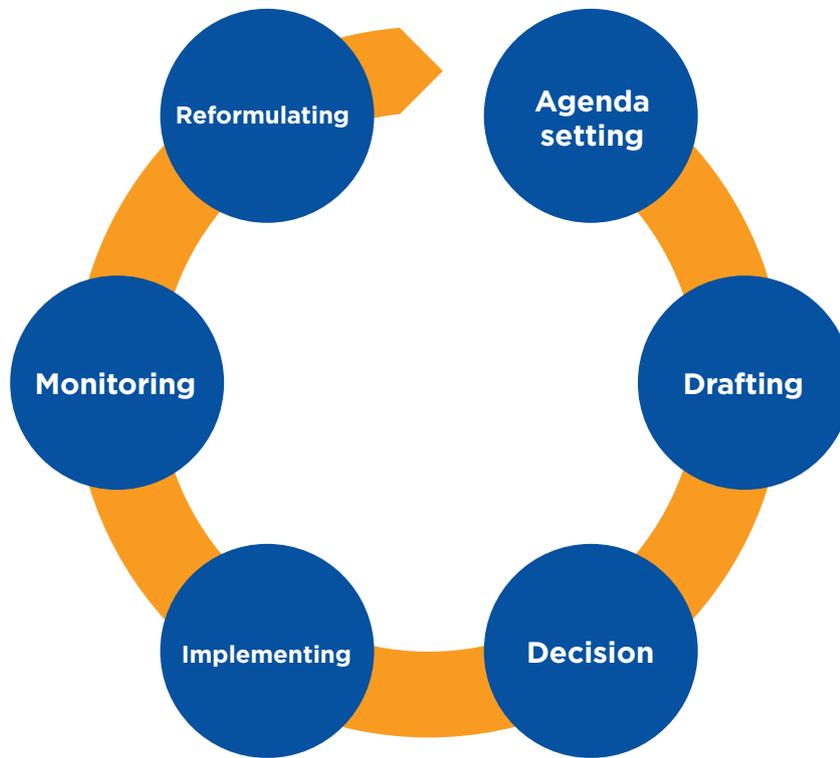
Likewise, the Code of Good Practice for Civil Participation in the Decision-making Process, adopted by European Council³⁸, lists four different levels of participation, starting from the one with lowest participation to the level with the highest participation: information, consultation, dialogue and partnership. The European Council Code has been used as basis for drafting of the Guidelines for Public Consultation Process in Kosovo.³⁹

Based on the European Council Code, there are six different steps in the decision-making process: agenda setting, drafting, decision, implementing, monitoring and reformulating. These steps constitute a cyclical process and they impact one another and public participation is necessary in each and every one of them.

38 Conference of INGOs of the Council of Europe. Code of Good Practice for Civil Participation in the Decision-making Process. Adopted by the Conference of INGOs at its meeting on 1st October 2009. Source: <http://bit.ly/2BqFPCh>

39 Decision No.062/2011 of Secretary General of the Office of Prime Minister, dated 26 September 2011. Source: <http://bit.ly/1IJhXtU>

Figure 6:
Steps in the decision-
making process



Source: INGO Code

Based on the political decision-making steps and on the levels of public participation, we will next analyze public participation (citizens, CSOs) in the process of decision-making and policy-making in Kosovo.

6.1. Information

Information is the basic level which lays out the grounds of cooperation between governing institutions and citizens. The right to be informed and have access to all public data is also regulated by the Constitution of Kosovo. Pursuant to Article 41 of the Constitution, every person is entitled to have access to public documents. Documents maintained by public institutions and state authorities are public, except information which is limited by law for the sake of privacy, business secrecy or classified security information. Such constitutional right is furthermore advanced by Law on Access to Public Documents.

Various monitoring reports assess in different ways the implementation of constitutional and legal principles with regards to the right on information. Public institutions at both local and central level have made progress in terms of undertaking active measures to publish basic information on the institutions work. According to the European Commission Kosovo 2016 Report, the number of unanswered applications to have access to public documents in the last two years was low.⁴⁰ Whereas, as far as budgetary transparency is concerned, the report assessed that transparency is low but with a tendency of improvement.

This is also proven by a GAP Institute report, which assessed the budgetary transparency of all central and local institutions in 2011.⁴¹ According to the report, out of 37 municipalities, which had a functional webpage at that time, only one municipality published on regular basis detailed budgetary reports as required by the Law on Public Financial Management and Accountability. While at central level only Ministry of Justice published detailed budgetary data. Based on the same report, out of 34 applications addressed to municipalities, only one municipality had agreed to make public its detailed documents on budgetary expenses.

However, almost six years later, in another report,⁴² it was assessed that budgetary transparency of municipalities has marked a significant increase. At the end of 2017, most of municipalities published periodical data on budgetary expenditure; also, the rate of replies to applications requesting access to public documents is greater than in the previous years.

The “EC Ma Ndryshe” organization, through the Municipal Transparency Reform Index, in 2015 assessed the transparency in seven big municipalities of Kosovo, focusing on several indicators, such as: information about the Mayor and other political representatives, accounting and budget, urban planning, public sector employment, etc.⁴³ Based on this assessment report, the monitored municipalities lack transparency in important sectors of local government, for example public information regarding the management of public assets by local government.

40 European Commission. Kosovo 2016 Report. Source: <http://bit.ly/2INRFCI>

41 GAP Institute. Kosovo Budget - Transparency and Forms of Budgetary Reporting. March 2013. Source: <http://bit.ly/1K3nson>

42 GAP Institute. GAP Municipalities Budget Transparency Index 2017. Source: <http://bit.ly/2Fkxdzj>

43 “EC Ma Ndryshe”. Municipal Transparency Reform Index 2015. Source: <http://bit.ly/2BuiHmc>

A report of Balkans Investigative Reporting Network (BIRN), based on 300 applications addressed to public institutions in the period of time between January 2012 and May 2013, showed that a reply was received in only 30% of such cases.⁴⁴ According to the report, state institutions resulted as closed institutions, particularly with regards to budget expenditure, court documents and financial reports of political parties. According to BIRN, the National Agency for the Protection of Personal Data is the key institution which endeavors constantly to assist institutions through “legal ways” to be closed towards the public, by openly attempting to remove from online pages the declaration of wealth of public officials, which would signify stepping backward from the already accomplished transparency standards in the post-war Kosovo. In another occasion, the said agency denied access to officials’ travel expenses bills, reasoning that some diet of theirs might be made public, and thus the privacy of the public official might be infringed.

Most relevant public documents continue to be closed for public while referring to different reasons for that. Amongst them are also expenses generated through duty credit cards of senior public officials, highway contracts, memorandum on homologation of vehicles, etc. In some cases, the applicants requesting to have access to public documents also filed complaints with the Office of Ombudsperson and with courts against institutions who have failed to make public the requested documents.

The Unit for investigating complaints related to access to public documents functions within the Legal Department of the Ombudsperson Institution (OI). However, OI does not have executive power when it comes to deciding on cases of violation of the right to have access to public documents. The incompetence of the OI is also proven in cases when the said institution itself failed to exercise its right to have access to public documents. On 25 October 2010, the OI representative had filed an application to have access to the Regulation on Noise Pollution in Municipality of Pristina, but the said application was rejected.⁴⁵

The number of complaints submitted before the OI against public institutions for not granting access to public documents has increased from one year to another. According to annual reports of the OI, in 2011 there were 10 complaints, 17 complaints in 2012, 31 complaints in 2013, 33 complaints in 2015 and 24 complaints in 2016.⁴⁶

The Ombudsperson Annual Report 2016 reads that although the right to have access to public documents is a right guaranteed by the Constitution, and is made concrete with the Law on Access to Public Documents, respect of such right and implementation of the law remain a challenge, both due to vagueness of the law itself and due to lack of capacity of the responsible officials to deal with applications requesting access to public documents, but also due to lack of will of the institutions to implement the law.⁴⁷ As of 2012, in every annual report, the Ombudsperson calls to amend and supplement the Law on Access to Public Documents, in particular with reference to swift handling of complaints due to rejected access to public documents.

44 BIRN. State 30% Accessible for Citizens. Pristina, June 2013. Source: <http://bit.ly/2DR4yon>

45 Institution of the Ombudsperson. Tenth Annual Report 2010. Pristina, 2011. Source: <http://bit.ly/2Dzwlq1>

46 Institution of the Ombudsperson. Annual Reports. Source: <http://bit.ly/2bYUWdQ>

47 Institution of the Ombudsperson. Annual Report 2016. Pristina 2017. Source: <http://bit.ly/2BwtvjH>

In 2015 report, the Ombudsperson finds it discouraging that citizens have to address a court of law in order to realize their right to have access to public documents because of procrastination of court proceedings.⁴⁸ In the course of these years, there are only two solved cases in a court of law which related to lawsuits because of rejection of access to public documents: the process of BIRN vs Office of Prime Minister, and the process GAP Institute vs Ministry of Economic Development (MED).

Case 1: BIRN vs Office of the Prime Minister⁴⁹

On 12 September 2012, BIRN filed an application with the Office of Prime Minister requesting access to the invoiced expenses of the Prime Minister and six Deputy Prime Ministers. The Office of Prime Minister disagreed to allow access to the expenses of the Prime Minister and the six Deputy Prime Ministers referring to the Law on Protection of Personal Data.

On 12 November 2012, BIRN filed an administrative conflict indictment against the Office of Prime Minister. On 26 May 2015, Basic Court of Pristina issued a judgment in favor of the claimant and obliged the Office of Prime Minister, within 30 days, to allow access to the documents requested by BIRN. On 16 May 2015, Office of Prime Minister filed an appeal with the Court of Appeals. On 10 December 2015, by its decision, the Court of Appeals rejected as ungrounded the appeal of the Office of Prime Minister. The Judgment of the Basic Court of Pristina became final on 16 September 2015; however, notwithstanding the finality of the judgment, the Office of Prime Minister denied access to the requested documents.

On 2 December 2015, following the changes in the Office of Prime Minister after the parliamentary elections, BIRN resubmitted an application requesting that the judgment of the Basic Court of Pristina be respected. On 2 February 2016, the Office of Prime Minister replied to BIRN, but did not deliver the requested information for which a court judgment was already rendered.

On 28 January 2016, the Supreme Court also ruled in favor of BIRN, following the appeal of the Office of Prime Minister which was filed on 26 May 2015. In spite of decisions rendered by the courts of three instances, the Office of Prime Minister rejected to make public the expenses sought by BIRN.

On 3 March 2016, BIRN filed criminal charges against official persons for non-compliance with court judgments and this case is still in court.

48 Institution of the Ombudsperson. Annual Report 2017. Pristina 2016. Source: <http://bit.ly/2Bvqf8r>

49 Excerpt from the Claim acquired from BIRN for the purpose of this report.

The two above court cases prove that institutions do not respect even court decisions in the case of indictments requesting access to public documents, and on the other hand, because of elongation of decision-making procedures in courts, the decisions are belated. Although the Law on Access to Public Documents foresees also financial penalties for the responsible institution or person(s) who breach such law, hitherto court decisions do not contain such penalties.

Therefore, although there are sufficient reasons to amend the Law on Access to Public Documents, this will not solve the issue relating to the right to be informed for as long as public officials do not respect even court decisions.

Case 2: GAP Institute vs Ministry of Economic Development

In 2013, GAP Institute, on behalf of Kosovo Civil Society Consortium for Sustainable Development (KOSID), submitted several applications with the Ministry of Economic Development and with Kosovo Energy Corporation (KEK) requesting to have access on the privatization assets of the energy network and to have access to tender documents for the power plant “Kosova e Re”. However, GAP Institute had received rejecting replies to all of its applications with the following reasoning: the requested documents are in the form of a draft and access to them cannot be granted; documents are confidential and, in the case of KEK, the Law on Access to Public Documents does not apply also for public enterprises.

On 3 June 2013, GAP Institute filed an indictment against MED for denying access to public documents. On 17 December 2017, Basic Court of Pristina rendered the Judgment⁵⁰ approving as grounded the indictment of GAP Institute and obliging the MED to grant access to the requested documents within 30 days.

In the time period of four and a half years, from the moment the indictment was filed until the judgment was issued, the MED had completed the privatization process of energy network (KEDS) and had made public all the contracts, and the tendering process for “Kosova e Re” has been concluded and a contract for the construction of “Kosova e Re” was already signed.

The Basic Court of Pristina Judgment provides three important interpretations regarding the Law on Access to Public Documents: 1. Draft documents are public documents and access to them must be granted; 2. Classification of documents as confidential must be done in line with the legal procedures and only in specific cases; and 3. Public enterprises are also subjected to the Law on Access to Public Documents.

⁵⁰ Basic Court of Pristina. Judgement No.750/13, dated 17 December 2017. Source: <http://bit.ly/2ndwMjL>

6.2. Consultation

Consultations represent one step beyond the level of information. With consultations, decision-making institutions seek to obtain reactions on policies. Consultations should take place in every step of policy-making, starting from agenda setting and all the way to reformulation of policies. Different countries apply different practices of consultation. The most renowned case is Switzerland, a country which holds referendums for every decision that affects the interests of its citizens.

In Kosovo, various local and central level institutions apply different consultation practices. The legal basis provides sufficient room for consultation. Because of different consultation practices, this section will analyze separately local level consultation, Government level consultation and Assembly consultation.

6.2.1. Local Level Consultation

More citizens, not represented in associations or non-governmental organizations, participate at local level consultations than at central level consultations. Law on Local Government obliges municipalities to organize public consultation with citizens at least twice a year. Moreover, Law on Public Financial Management and Accountability⁵¹ requires that municipal assemblies hold public hearings concerning the municipality budget. Such an obligation is also indicated in the budgetary circulars issued by the Ministry of Finance. Municipal Regulation on Transparency foresees that a public hearing in towns and villages must be organized for any act of the municipality.⁵²

According to a report of Organization for Security and Cooperation in Europe (OSCE) on the budgetary process in municipalities for the 2012 budget, it appears that all municipalities have made efforts to meet the legal requirements with regards to consulting the public with regards to the municipality budget.⁵³ However, municipalities still lag in terms of notifying the public, the duration of consultations, the way of organizing and citizens participation in the consultation process. During 2012, in 75% of municipalities, not one single person participated in the meetings of the Municipal Committees on Policy and Finance, as one of the most important committees of the municipality, whereas in nine municipalities citizens never participated even at meetings of the municipal assembly. Even in cases when citizens participate at meetings of municipal legislative bodies, in the vast majority of such meetings the number of participants is not greater than five.⁵⁴

According to an MLGA report, in 2016 only in 45% of cases have the municipal assemblies consulted the public while adopting municipal acts, whereas regarding the Mid-term Budget Framework and regarding the budget of the municipality, the public was consulted in 96% of cases.⁵⁵ In 2016, vast majority of municipalities have held

51 Official Gazette of the Republic of Kosovo. Law no. 03/L-048 on the management of public finances and responsibilities, Article 61.2. Source: <http://bit.ly/2ng338U>

52 Official Gazette of the Republic of Kosovo. Regulation no. 01/2015 on transparency in municipalities, Article 8. Source: <http://bit.ly/2Fkxdzj>

53 OSCE. 2012 process of budget development in municipalities of Kosovo: assessment. May 2012. Source: <http://bit.ly/2nfCfXe>

54 OSCE. 2012 process of budget development in municipalities of Kosovo: assessment. May 2012. Source: <http://bit.ly/2nfCfXe>

55 GAP Institute. Kosovo Budget – Transparency and Forms of Budget Reporting. March 2013. Source: <http://bit.ly/1K3nson>

four public consultations each, in relation to the budget of 2017. On the other hand, citizens' awareness about the consultation process is quite poor. According to a study conducted at the beginning of 2016, only 52% of respondents are aware that it is an obligation of the municipality to organize budget hearings, whereas 81% of respondents have not participated in consultations regarding the budget.⁵⁶ Nearly similar figures result from an opinion study conducted in 2015 by Riinvest Institute.⁵⁷ The reasons for citizens' non-participation in public hearings are considered to be their lack of interest for such meetings and their conviction that the suggestions made would not be taken into consideration by municipal officials. Only 6.2% of citizens trust their suggestions would be taken into consideration by their municipality when rendering decisions.⁵⁸

Even in cases when citizens and civil society organizations participate in the consultation process, their requests are quite often neglected. CSOs remained discontented also in cases when they were involved in legislative initiatives of municipal authorities or when they submitted petitions on certain issues.

With the support of the OSCE, the "Digital Platform for Public Participation"⁵⁹ was launched as of November 2016, and it covers Municipality of Pristina and Municipality of Gjakova. Citizens can express on this platform their requests for intervention in infrastructure; they may propose new projects, open discussions. The platform does not provide collected statistical data on the number of requests, suggestions, complaints, proposals made by citizens, nor the number of replies provided by these two municipalities. The only way to come to such data is by counting each and every contribution of the citizens. Out of 23 requests, ideas, suggestions submitted by citizens in the Municipality of Gjakova on the said platform from November 2016 until the end of January 2017, municipality provided no replies. Out of 271 citizens' contributions provided in Pristina, the Municipality replied only on two of them.

The non-governmental organization "Democracy Plus" in 2017 launched the platform "Ndreqe"⁶⁰ (Fix It) with the purpose of collecting citizens' complaints on public utility services and presenting them in an interactive map. This would then enable municipal governments to exactly identify problems and intervene accordingly. Within a one-year period of time (February 2016 – January 2017), citizens reported 660 cases on this platform that required the intervention of the municipality. However, within the same period of time, municipality intervened in 19.5% of cases (in 129 reports).⁶¹ Citizens are more likely to report on infrastructural issues, for example pot-holes on the road, lack of sidewalks or public lighting (88% of reports), than on breaches of law, for example smoking in public indoor premises (0.9% of reports), or illegal parking of vehicles (10.4% of reports).

56 GAP Institute. Kosovo Budget – Transparency and Forms of Budget Reporting. March 2013. Source: <http://bit.ly/1K3nson>

57 Riinvest. Budget Transparency and Citizens Budget: Guideline Paper. Pristina, January 2016. Source: <http://bit.ly/2DEV6pH>

58 Riinvest. Budget Transparency and Citizens Budget: Guideline Paper. Pristina, January 2016. Source: <http://bit.ly/2DEV6pH>

59 <https://platformadigitale.com/>

60 <https://ndreqe.com>

61 Statistics obtained by Democracy Plus for the purposes of this report. Because the platform was initially launched only in two municipalities (Pristina and Gračanica) and there was a closer cooperation between the organization and the municipalities, the response rate of institutions in these two municipalities is higher than in other municipalities.

Figure 7:
Types of citizens' reporting



Source: Statistics obtained by Democracy Plus for the purposes of this report.

Types of citizen reporting also show their preferences in terms of what public issues they consider more important. The above data show that citizens react more on infrastructural issues than on violation of laws, such as illegal parking or smoking in public indoor premises.

In addition, institutions low rate of intervention disheartens citizens' participation and contribution to local policies.

Unlike the central level, where a detailed regulation exists on the public consultation process, there is no such regulation at local level. The Regulation of MLGA on Transparency in Municipalities mentions the issue of consultation only in one article, whereas municipal regulations on transparency sufficed by copying verbatim the MLGA regulation. Therefore, in order to materialize and impose additional obligations to municipalities, adopting a guideline, which would further advance the consultation process at local level, is required.

6.2.2. Consultation at Government Level

Significant progress was made in the recent years in terms of putting in place consultation practices at executive level. Through the Office of Good Governance, non-governmental organizations⁶² managed to make the Government adopt by-laws on participation of public in the decision-making process, on strategy for cooperation with civil society, on consultation platform, etc.

In 2013, the Government approved the Government Strategy for Cooperation with Civil Society 2013-2017⁶³, whose objectives were:

- 1 Guaranteed and empowered participation of civil society in drafting and implementation of policies and legislation;
- 2 Established system of contracting public services for civil society organizations;
- 3 Established system and defined criteria for financial support of civil society organizations;
- 4 Promoting an integrated approach for the development of voluntarism.

Concrete measures, 16 in total, were foreseen for each objective. The time interval for implementation of this strategy ended at the end of 2017, but there is no official or independent report regarding the level of its implementation. During the six-year time period for implementation of the Strategy, one could say that there is a good accomplishment of its first objective, with regards to the increase of civil society participation in the decision-making process, as well as for objective three, regarding the setting of criteria to subsidize non-governmental organizations, following the approval of the Regulation on Criteria, Standards and Procedures for Financing NGOs. However, little or nothing was done in accomplishing objective 2 and 4 for contracting public services to non-governmental organizations and development of voluntarism.

According to the civil society, the legal framework provides abundant possibilities for an open decision-making process, but implementation in practice continues to be deficient.⁶⁴ Public consultation is mainly limited to the process of drafting laws, whereas other documents generated by the Government are seldom consulted with the civil society and general public. Some of the important documents which are not consulted with the public are Annual Work Plans of Ministries or of the Government, Legislation Program, Strategic Documents Program and the list of issues that require a Concept Document be developed. Concept Documents are rarely consulted about, and likewise happens with the numerous Administrative Instructions drafted by different ministries.⁶⁵

62 One of the organizations that contributed most in the process of opening of the Government and setting the regulation for public participation in the decision-making process is Kosovo Civil Society Foundation (KCSF). One of the organizations that contributed most in the process of opening of the Government and setting the regulation for public participation in the decision-making process is Kosovo Civil Society Foundation (KCSF).

63 Office for Good Governance - Prime Minister's Office. Government Strategy for Cooperation with Civil Society 2013-2017. Source: <http://bit.ly/23cES9w>

64 KCSF. Incomplete Chain. January 2015. Source: <http://bit.ly/1VYqO0B>

65 KCSF. Incomplete Chain. January 2015. Source: <http://bit.ly/1VYqO0B>

Figure 8:
Types of documents for
public discussion through
the consultation platform



Source: Office of Good Governance, Consultation Platform

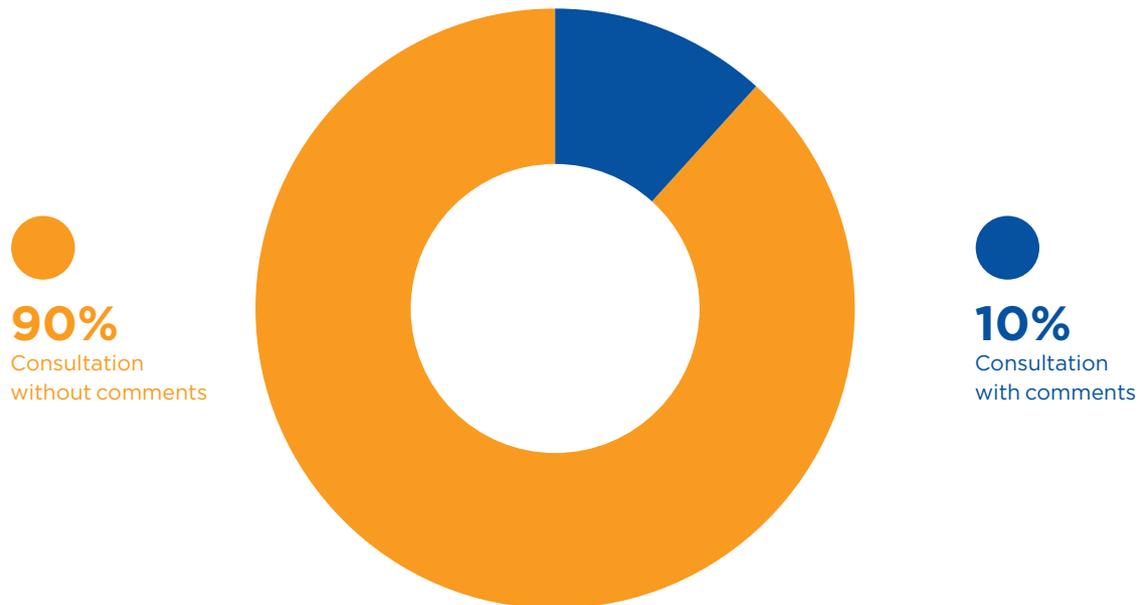
Based on KCSF, there is a range of challenges that follow the consultation process, such as: lack of standard approach by all government units; belated consultations; limited consultation methods; limited range of documents presented for public consultations; lack of feedback on the outcome of the public consultation; lack of mechanisms for selection of CSOs representative, etc.

In February 2017, Office of Good Governance, with the support of civil society and EU Office in Pristina, launched the online platform for public consultation.⁶⁶ The platform advances furthermore the consultation process by not limiting only on draft-laws. From February 2017 until 25 January 2018, 214 public discussions were launched through the online platform, out of which: 93 administrative instructions, 46 regulations, 42 laws, 23 concept documents, five action plans and four strategies.⁶⁷

66 <http://konsultimet.rks-gov.net/>

67 Office for Good Governance. Consultation Platform. Source: <http://bit.ly/2Ef3W9H>

Figure 9:
**Commenting on the
Consultation Platform**



Source: Data obtained from OGG for the purpose of this report

In order to receive information on documents presented for public consultation through the online platform, 220 NGOs and individuals have been registered to the present date. The platform is managed by 21 coordinators in all the ministries and in the Office of Prime Minister. During this period of time, 17 different institutions have launched documents for public consultation through the online platform. However, comments from individuals or NGOs were received only for 10% of documents. In 63% of cases, institutions did not compile a final report on the consultation process, as is required by the Regulation on Minimum Standards of the Public Consultation Process.⁶⁸

Public institutions assess that civil society is not so much interested to participate in public consultation process. However, the justification of CSOs is that most of the documents are technical documents, for which there is not enough expertise in the civil society sector; but an obstacle is also lack of a concrete plan on publishing legal acts and policy documents. Although the Government Legislative Program contains the deadlines when it is expected to approve a draft law at the Government, the program does not contain the deadline when such a document is expected to be finalized at the ministries' level. Furthermore, in most cases the deadlines, foreseen under the program for delivering legal acts to the Government for approval, are not respected, affecting in this way also the work plan of the Government and Assembly.

⁶⁸ Data obtained from Office for Good Governance for the purposes of this report. OGG is in the process of preparing its annual report, which is expected to cover the on-year period of time since the consultation platform was launched.

Another reason for the low level of commenting on the online consultation platform is also the lack of adequate information on the possibilities the platform provides. This is proven also by the not so big number of organizations and individuals registered in this platform to receive information related to open documents for public consultation. Most of the active CSOs are organizations specialized mainly in the area of human rights or good governance, and very few of them on professional technical areas such as, energy, metrology standards, electronic communication, etc. This is also evidenced by lack of comments on the documents launched for consultation by the Ministry of Infrastructure. Out of 42 documents for consultation, this ministry received comments only on one document.

The platform is a project that will continue improving by leaving the possibility open for interested parties to obtain information for public consultation; to have the possibility to select beforehand not only the institution but also the documents they wish to be informed about. In addition, the platform is expected to be updated in real time, reflecting also in real time the received comments.

Although it is an efficient public consultation mechanism, the platform should not substitute direct meetings with citizens and CSOs, because not all citizens and CSOs have the knowledge on legal techniques and/or use of the electronic platform.

6.2.3. Consultations at the Assembly level

The Assembly of Kosovo has been one of the first institutions to launch the process of consultations with citizens and civil society organizations. Civil society organizations and international organizations have to a great extent influenced in the opening up of the Kosovo Assembly to the public. Unlike the executive branch, where it is not quite clear when a process or drafting of a legal act starts, this information is public in the Assembly of Kosovo from the moment a draft law, a strategy, an agreement or any other document is submitted to the Assembly for discussion and approval.

The majority of legal acts discussed and approved in the Assembly are documents which are drafted by the Executive, and submitted to the Assembly only for approval. The number of public hearings organized by the parliamentary committees has increased year by year, while the media and organizations which monitor the work of the Assembly participate in the majority of parliamentary committee meetings. According to the KDI platform on monitoring the Assembly work, the parliamentary committees in the previous legislature (fifth legislature: July 2014-May 2017), out of 44 draft-laws which were reviewed by the functional committees throughout their mandate, in total, 59 public hearings were held.⁶⁹

69 KDI. Platform "My vote" - www.votaimo.org

While the number of public hearings compared to the draft laws and the monitored laws has increased, the total number of public hearings in a year has decreased due to political crises since the parliamentary elections in June 2014. In 2011, the Assembly had held a total of 68 public hearings⁷⁰, much more than during the entire mandate of the fifth legislature.

One of the reasons why the Assembly has been more open to consultations with civil society organizations has to do also with the Assembly administration capacities, which were limited in terms of providing policy, legislation and budget analysis, but also taking into account the absence of support for parliamentary groups by the experts engaged by political parties. In the absence of internal expertise, civil society organizations have served as an important source of information and expertise.

The Assembly has established a database of NGOs keeping them informed continuously on the agenda of the Assembly and of the Committees. However, the NGO database requires from the NGOs to register in order to receive information following each new legislature, and this, according to the NGOs is unnecessary. Currently, following the establishment of the sixth legislature, it appears that only five organizations have registered on the Assembly website.⁷¹

The Assembly has established an NGO Liaison Office and the Transparency Forum, consisting of civil society organizations as well. The forum was established in May 2015, and since then, it has held regular meetings.⁷² The Forum has been conceived as a consultative body for the Assembly Presidency on issues related to transparency, accountability and integrity. During 2016, the Forum carried out an assessment to evaluate to what extent the Assembly has managed to meet the standards set out in the Declaration on Parliamentary Transparency⁷³, and based on these findings, it has set concrete measures which are to be undertaken in order to meet these standards. These measures are included in the Open Assembly Plan 2017-2020, which has also been approved by the Assembly Presidency.

But the number of CSOs participating in consultations in the Assembly is small and counting up to 20 organizations which are regular participants to these meetings. The Assembly usually holds consultations in Pristina, mainly in the Assembly building, but also in other conference rooms outside the Assembly premises. Consultative meetings are rarely organized outside Pristina. According to the Assembly, one of the reasons for this is the meeting transcription technology, which is installed in the Assembly. The Assembly has not established yet a practice to inform the participants in these consultations on what happens with their recommendations which are raised in public meetings or hearings.

70 Kosovo Assembly. Legislative activities of the Assembly during 2011 (February-December 2011). Pristina, 22 December 2011. Source: <http://bit.ly/2DSKUll>

71 Kosovo Assembly. Source: <http://bit.ly/2FIUH72>

72 Kosovo Assembly. Forum for Transparency. Source: <http://bit.ly/2Gj5D6J>

73 Parliamentary Transparency Declaration is a declaration of over 140 NGOs from all over the world, which presents some recommendations on parliamentary transparency. This declaration was also approved by the Assembly on 4 May 2015. Source: <http://bit.ly/2Gj5D6J>

Participation and Impact of Civil Society Organizations in Policy-Making and Decision-Making Processes in Kosovo

The Assembly has quite often ignored the legal initiatives of citizens and civil society organizations. In 2013, NGOs had collected over 12 thousand signatures of citizens demanding not to approve the Law on Amnesty⁷⁴, however, these signatures were not taken into account. In January 2015, the Coalition of Consumer Citizens, Trade Unions and Non-Governmental Organizations submitted to the Assembly a petition with 33 thousand signatures collected, demanding to change the legal basis and the criteria on setting the price of electric power.⁷⁵ The petition has been discussed in several parliamentary committees, however, no decision has ever been taken regarding it. The same thing has happened also with the petition on demarcation, the petition to investigate the circumstances of death of the activist Astrit Dehari in prison. On the other hand, the petition of the organizations deriving from the KLA war on abolishing the Law on the Special Court received the support of 43 MPs and was included in the Assembly procedure, prior to the verification of the signatures by the Central Election Commission (CEC), as required by the Law on Legislative Initiatives.⁷⁶

Nevertheless, there are also cases when petitions of citizens have resulted in legal initiatives. On 2 April 2014, the Campaign “Justice and Citizens” submitted to the Assembly over 13 thousand signatures of citizens in support to the initiative for “Amending the Law on Public Financial Management and Accountability”. The initiative had to do with recognizing the right to compensation for non-economic and non-material damages to human rights victims as a necessary reform to promote governance accountability and justice for citizens. On 30 March 2016, the Kosovo Assembly amended the law in accordance with citizens’ demands.⁷⁷

74 Official Gazette of the Republic of Kosovo. Law no. 04/L-209 on Amnesty. Source: <http://bit.ly/2EcZsVX>

75 For more information on this initiative: <http://bit.ly/2ByelKF>

76 Official Gazette of the Republic of Kosovo. Law no. 04/L-025 on legislative initiatives, Article 17. Source: <http://bit.ly/2DmYCUy>

77 Kosovo Assembly. Transcript of the plenary session dated 30 March 2016. Source: <http://bit.ly/2rM7D4i>

6.3. Partnership

Involvement of citizens in the decision-making process is an advanced form of mutual communication between the government and the citizens. Such a partnership usually involves common responsibilities at every step of the political decision-making process, starting from setting an agenda, drafting it, decision-making and implementation of a political initiative or a respective law. This is the highest form of participation and may include activities such as delegating specific issues to CSOs.⁷⁸

In order to see this partnership happen, some preconditions have to be met. Governing institutions should accept and respect citizens and CSOs as equal partners who can contribute to policy-making. Institutions should involve the public starting from the stage of setting the agenda and work plans. Commitment and assurance from public institutions is required to ensure that the contribution of civil society will be taken into account. On the other hand, civil society should understand the level of responsibility that the policy making process has.⁷⁹

Partnership in decision-making and policy-making in Kosovo is at a very early stage. There still exists a mutual mistrust between the institutions and the CSOs in entering into partnership with regards to policy-making. There is no standard practice in all institutions regarding the inclusion of CSOs starting from the first steps of policy-making.

At the executive level, the institutions continue to ignore civil society in setting the agenda or annual work plans, in drafting the legislative program, in announcing the establishment of working groups or calls for participation in the working groups. Even in the cases when CSOs are involved in working groups, there is no clear procedure on how this happens and how organizations or individuals are selected.

But even in cases when CSOs are included in the working groups, they remain disappointed as a result of a prolonged process or even the non-approval of the documents on which they worked. An example of this is the working group on amending the Law on Energy Efficiency, a process which has started in 2012 and included civil society organizations as well, however, the mentioned Law has not been approved yet by the Government and the Assembly. The same has happened with the Sector Strategy on Work and Employment 2017-2021, which has been developed in partnership with CSOs, and despite the fact that the work has been completed, this strategy has not been approved yet.

At the Assembly level, various committee practices are applied regarding the involvement of civil society organizations in supplementing and amending draft laws which are being reviewed by the respective committees. As a practice, parliamentary committees set up a working group consisting of three or four MPs members of a committee to review a specific draft law. However, depending on the choice of the head of the working group, it is decided whether or not to invite civil society organizations to participate in the process of amendment.

78 Office of the Prime Minister. Guide on public consultations process. Pristina, September 2011. Source: <http://bit.ly/1JhXtU>

79 OECD. Citizens as partners – OECD handbook on information, consultation and public participation in policy-making. 2001. Source: <http://bit.ly/2DzOilp>

Participation and Impact of Civil Society Organizations in Policy-Making and Decision-Making Processes in Kosovo

Nevertheless, there are good examples of cooperation both at the executive and legislative levels. CSOs have been or are part of the working groups in a number of draft laws and other documents at the government level. There is no accurate data on the involvement of CSOs in working groups, because decisions on the establishment of the working groups are not made public.

Out of 54 strategies published on the Prime Minister’s Office website, at least in 29 of them, the contribution of local CSOs is recognized, and at least in 21 of them, these organizations are quoted, either as working group members or as consultants during the process. The following table presents some of the strategies which have been developed in collaboration with CSOs.

Table 4: Strategies and organizations which have participated in their drafting

Strategy	Organization
Strategy for inclusion of Roma and Ashkali communities in Kosovar society 2017-2021	KEC, BSFK, RADC, VoRAE, Advancing Together,
Government Strategy on cooperation with civil society 2013-2017	KCSF, KEC, Civikos, KDI
Strategy on Local Governance 2016-2026	GAP Institute, BIRN
Kosovo Education Strategic Plan in Kosovo 2017-2021	KEC, BSFK
Strategy on Quality Assurance for Pre-University Education in Kosovo	KEC
Strategy on Diaspora and Migration 2013-2018	Diaspora for Development, Riinvest, Democracy for Development
Kosovo Strategy on Information Technology	STIKK, ICK
National Action Plan 2014-2016 on Partnership for Open Governance (OGP)	FOL Movement
Strategy on Communities and Returns 2014-2018	ECMI, CDF
National Strategy on Cultural Heritage 2017-2027	EC Ma Ndryshe, CHwB
Spatial Plan of Kosovo 2010-2020+	Riinvest
Consumer Protection Program 2016-2020	LENS, NGO “Consumer”
National Strategy and Plan of Action on Safety in Community 2011-2016	FIQ

Some parliamentary committees have included in their annual work plans the activities in partnership with CSOs.⁸⁰ Non-governmental organizations have also been partners in a number of reports on monitoring the applicable laws.

Nevertheless, civil society is self-critical regarding their professionalism and the ability to engage as an equal partner in all public documents which are drafted by the institutions. This is due to the lack of expertise in some areas, particularly in technical and professional areas. CSOs are specialized in some general areas, such as human rights, good governance, election system, sustainable development, etc. In these areas, CSOs have provided a great contribution to policy-making. According to the Assembly's data, during 2017, parliamentary committees received comments in 25 consultations related to the legislation that was being reviewed by 19 organizations.⁸¹

With USAID support, for several years now, a partnership between the Directorate for Research in the Kosovo Assembly and the Kosovo Democratic Institute (KDI) has been functioning as the implementers of this project aimed at involvement of civil society in parliamentary research. However, the involvement of organizations specialized to give professional opinion on specific laws that are under parliamentary review remains a challenge. Due to this, the project implementers have been forced to engage individual experts or to engage specialized organizations on several occasions. So far, 18 organizations and 12 experts have been engaged in carrying out parliamentary research.⁸²

80 Work plan for 2017 of the Parliamentary Committee for Public Administration, local governance and media had foreseen the monitoring of the Law on local governance in cooperation with CSOs; likewise, the work plan of the Parliamentary Committee for economic development foresees a number of activities with CSOs. For more information, refer to INDEP report on cooperation with the Parliamentary Committee for economic development: <http://bit.ly/2DFlytm>

81 The data provided by Kosovo Assembly for the purpose of this report.

82 The data provided by KDI for the purpose of this report.

The below-mentioned example of cooperation of CSOs with the institutions provides the best evidence how cooperation with CSOs raises the consensus on decision-making, changing a legal act from absolute opposition to absolute acceptance by MPs from all political parties. But even in this case, as in many other cases when civil society is included in working groups, there is no transparent selection system of CSOs, and this is usually done arbitrarily by the institution leaders. Therefore, it is necessary to establish a standard and transparent practice for notification, call, inclusion and partnership with CSOs and individual experts.

Case 3: Drafting and approval process of the Law on interception of electronic communications

The Law on Interception of electronic communications had been foreseen in the legislative program since 2012. Drafted by the Prime Minister's Office, the draft law was approved in December 2012. This draft law was not in line with European best practices as it did not make any distinction between the judicial interceptions and intelligence interceptions. Following the objections raised by the EU Office in Kosovo and other organizations, the draft law was withdrawn from the parliamentary procedure in June 2013.

The drafting of the new draft law was entrusted to the Ministry of European Integrations and the new draft law was approved by the Government in April 2014. As in the case of the first draft law, the new draft law did not bring anything new with regards to the right on privacy and control mechanisms for telecommunications interception. The draft law foresaw to place surveillance equipment in security institutions, and this posed the risk of misusing and bypassing judicial institutions. The content of the draft law was criticized by civil society.⁸³

Following the advocacy campaign of non-governmental organizations in Assembly parliamentary committees, the draft law was not approved by the Assembly in January 2015. Seventy-four MPs voted against it, three voted for, and four MPs abstained.⁸⁴ Following that, the Ministry of European Integrations set up a new working group, this time involving CSO representatives.⁸⁵ The new draft law was submitted to the Parliament within few months and was approved by the Assembly on 28 May 2015, with 69 votes in favor, no votes against and four abstentions.⁸⁶ According to the new law on interception, no interception can be initiated without the permission of the prosecution.

83 Regarding the background of the draft-law see the analysis of GAP Institute - "Negligence of Privacy - control of telecommunications interception in Kosovo". November 2014. Source: <http://bit.ly/2EikUUG>

84 Kosovo Assembly. Minutes of the plenary session of 23rd and 26th January 2015. Source: <http://bit.ly/2DFwfgw>

85 Part of the working group were also the Group for Legal Studies and Policies and GAP Institute.

86 Kosovo Assembly. Transcript of the plenary session dated 28 May 2015. Source: <http://bit.ly/1HJ4VfS>

6.4. Participation of civil society in public bodies

Some laws in force foresee participation of civil society in different public bodies, such as local committees on communities, Community Consultative Council, Kosovo Prosecutorial Council, selection of candidates for senior positions in the civil service, etc. But, due to the fact that the laws do not provide clear procedures on the representation of civil society members in these bodies, in majority of the cases, the institutions misuse this space dedicated to CSOs.

One of the best known examples is the Kosovo Prosecutorial Council. According to the law⁸⁷, one out of the nine members of the KPC should be represented by CSOs. However, the law does not specify how a member of CSOs should be selected. This legal gap has been used by the institutions to select individuals who are supported by organizations that do not have any activity, but are activated depending on political needs.

Another example is the representation of CSOs in the Commissions for the evaluation of candidates for senior positions in the civil service. According to the law⁸⁸, the Ministry of Public Administration has to establish a commission of five members, one of them being a representative from the civil society. However, there is no criterion on how to conduct the selection. In majority of the cases, the Ministry has selected individuals from civil society who serve to legitimize the politicization practices in the civil service.

The Consultative Council for Communities (CCC) functions within the Office of the President. According to the law⁸⁹, the responsibility of the Council is to mediate and advocate to the public institutions for the rights of communities. In addition to the institutions and the MPs representing non-majority communities, the CCC includes also the members from civil society. But even in the CCC, there is not sufficient information on how the representatives are selected. According to an assessment report⁹⁰ related to the work of the CCC, there is a low level of information sharing among community members related to the representation procedures in the CCC. Consequently, many CSOs representing communities do not apply for accreditation at the Office of the President, a process which would enable them representation in the Council.

87 Official Gazette of the Republic of Kosovo. Law no.03/L-224 on the Prosecutorial Council of Kosovo, Article 5. Source: <http://bit.ly/1Y4itdp>

88 Official Gazette of the Republic of Kosovo. Law no. 03/L-149 on civil service, Article 15. Source: <http://bit.ly/2FSB4nw>

89 Official Gazette of the Republic of Kosovo. Law no.03/L-047 on protection and promotion of the rights of communities and their members in the Republic of Kosovo, Article 12. Source: <http://bit.ly/2C1TIMO>

90 OSCE. Performance and impact of the Consultative Council for Communities 2015-2016. Source: <http://bit.ly/2Esqp5V>

Case 4: Representation of civil society in the Prosecutorial Council of Kosovo

After the entry into force of the Law on Kosovo Prosecutorial Council at the end of 2010, former Council members had sent an invitation to civil society organizations to nominate a representative who would be considered to become a KPC member from civil society. On 13 January 2011, a significant number of NGOs gathered and voted for 11 candidacies from civil society. Eventually, two names were sent to KPC, and one of them was selected as a representative.

Following the resignation of the representative of CSOs in 2014, KPC did not follow the same procedure as in 2011, but through a public call requested proposals for civil society representatives in KPC. Some NGOs submitted their proposals, and eventually, KPC selected a representative who was nominated by an NGO, the mission of which was the protection of the rights of students at Pristina University. Following that, CiviKos, a network of around 150 NGOs, reacted⁹¹ against the process, demanding to have the selection process of the representative from NGOs repeated and draft a regulation which would define procedures for civil society representation in KPC. Requests of the NGOs were not taken into account by KPC.

The same practice with the above mentioned examples was followed also in the case of the representation of community members in local communities committees and in local youth action councils.

91 Koha.net. Civil society demands the removal of Florent Muçaj from the Prosecutorial Council of Kosovo. 20 March 2015. Source: <http://bit.ly/2C2zHA6>

7. Best practices in other countries of the European Union

CSO participation practices in decision-making and policy-making process differ from country to country. The history of democratization of a society, general education, governance form, social capital, etc. also play a major role in this. Some cultures support citizen's participation in common social affairs and decision-making, and some discourage these initiatives. While there is extensive practice of consultation of citizens in the USA for each decision at every level of governance, in Italy such practice does not take place, although the two countries have a democratic governing system.⁹² On the other hand, Slovenia and Kosovo, despite the fact that they have approximately the same number of inhabitants, and a common history of a communist system and now both are democratic countries, they have different practices as far as the involvement of civil society in the decision-making process is concerned. While in Kosovo more than 97% of the population is not part of any CSOs, in Slovenia, it is estimated that half of the population is active in one of the 27 thousand organizations.

There are two distinct practices regarding the codification of practices related to the participation of civil society in the decision-making and policy-making processes. Some countries have standardized the process of civil society participation in the decision-making through the so-called "soft" instruments such as guidelines, codes, manuals. Some other countries use more stringent instruments, such as laws or by-laws. Mainly, Western European countries belong to the first group. While countries of Southeast Europe belong to the second group.⁹³

Based on successful examples from other countries and what Kosovo could benefit further in facilitating the participation of CSOs in the decision-making and policy-making processes, we have presented hereunder some successful examples from which Kosovo could benefit in terms of increasing voluntarism, facilitating electronic consultations and partnership.

92 Edward C. Banfield. *The moral bases of a backward society*. The free press, 1958.

93 Centre for Information Service, Co-operation and Development of NGOs. *Public participation in decision-making process – international analysis of the legal framework with a collection of good practices*. Ljubljana, 2014. Source: <http://bit.ly/2DMXfyE>

7.1. Publication of notices regarding the initiatives for drafting legislation or policies

Institutions in Kosovo do not notify the public regarding the initiation of a policy, drafting legislation, strategic documents, concept papers, etc. This practice does not apply to most other European countries either. However, in some countries there are clear rules on the publication of legislative and policy programs and how to engage the public in the drafting process.

In **Finland**, the Guidelines for consultations on drafting legislation⁹⁴ foresee rules on informing the public regarding the stages of drafting legislation and the manner of participation and consultations at all levels, from the initial phase to the final stage of entry into force and monitoring.

For several years now, the Government of Kosovo has been publishing the legislative program and the program of strategic documents, along with information on the institutions responsible for drafting and timelines. However, these documents do not contain data on how civil society could get involved in the drafting process.

7.2. Possibility to register for participation in the process of drafting a policy or legislation

One of the shortcomings in the process of civil society participation in policy-making in Kosovo is the involvement of CSOs at later stages of the process and absence of their participation from the beginning of the process when an institution decides to draft legislation or policies.

Based on the Code of best practices for public participation⁹⁵, in **Estonia**, ministries are obliged to publish data on the initiative of drafting public documents, including the contacts of the person responsible for drafting a particular policy. The Code obliges the drafters of the document to come up with a plan of including the public at the initial stage, which should include: identification of key stakeholders to be involved in the decision-making process, the stages of drafting the document, the time when the consultations are expected to begin, forms and methods of including CSOs, and channels of information.

94 Ministry of Justice - Finland. Legislative drafting process guide. Source: <http://bit.ly/2DKa60J>

95 Network of Estonian Nonprofit Organizations. Good Public Engagement Code of Practice, 2012. Source: <http://bit.ly/2ByMn1G>

7.3. Feedback on the comments received or refused by civil society during the consultation process

Another disadvantage related to the consultation process and partnership with civil society in Kosovo is the lack of feedback on comments received and the reason for their rejection in cases when comments are refused.

In **Great Britain**, based on the Consultation Principles⁹⁶, institutions are obliged to respond to comments received within 12 weeks following the conclusion of the consultation process. In **Ireland** as well, through the Guidelines for public sector bodies on consultation process⁹⁷, it is foreseen that institutions should inform the public on having received the comments or recommendations, publish them and within a reasonable timeframe to provide feedback on whether or not the comments and recommendations have been accepted. According to these Guidelines, providing feedback is a form of raising public confidence in the institutions and sending a signal that their contributions have been taken into account. More or less, a similar practice applies to **Finland, Estonia, Latvia**, etc.

7.4. Electronic consultation platforms

As of February 2017, the Kosovo Government has launched an online consultation platform. According to the officials of the Office of Good Governance, this platform has been built based on Croatian model for consultations. Other EU countries apply such platforms, but these platforms provide wider opportunities in involving citizens and CSOs in the decision-making and in proposing initiatives.

The Government of **Estonia** launched a consultation platform called “Today I Decide” in 2001. The platform provided possibilities to citizens to contribute to legislative policies and documents, and, at the same time, to propose initiatives, laws, and strategic documents. More than seven thousand users have been registered on the platform, and over a thousand legislative initiatives have been discussed.⁹⁸ Based on the Estonian model, in 2009, **Slovenia** has also launched such a platform, which, in addition to legislative consultations, provides also suggestions on policies, initiatives, provides opportunities for discussions and voting on proposals⁹⁹.

However, public consultations over the internet should not be exaggerated. If only online consultation formats are applied, the consultation process risks to turn into a dialogue of experts, excluding the majority of citizens, and turn online platforms as mechanisms which risk inclusiveness¹⁰⁰.

96 UK Gov. Consultation Principles, 2016. Source: <http://bit.ly/1Qbc0Km>

97 Reaching out: Guidelines for Consultation for public sector bodies. Source: <http://bit.ly/2BzdQ35>

98 The TID+ project. Source: <http://bit.ly/2nlbPCw>

99 Source: <http://bit.ly/2BzbUru>

100 Centre for Information Service, Co-operation and Development of NGOs. Public participation in decision-making process – international analysis of the legal framework with a collection of good practices. Ljubljana, 2014. Source: <http://bit.ly/2DMXfyE>

7.5. Access to public documents

Different countries in Europe apply different practices related to the right of access to public documents. The responsible institutions guaranteeing access to public documents also vary, such as courts, the Ombudsperson or the information commissioner. In Sweden, Norway, Hungary, Bosnia, the Ombudsperson institution is responsible for complaints raised for non-fulfillment of the right of access to public documents. While in countries such as Slovenia, Belgium, France, Germany, etc., this responsibility falls on the Commissioner responsible for guaranteeing the right of access to public documents.

Kosovo applies a mixed criterion, where the first instance of the appeal is the Ombudsperson, but this does not replace the lawsuit in the competent court. The current practice has shown that public institutions in Kosovo do not respect the non-binding decisions of the Ombudsman, neither the court decisions.

In 2006, **Slovenia** established the institution of the Information Commissioner¹⁰¹, merging two previous institutions, the Commissioner for access to public information and the Inspectorate for personal data protection. Based on the function of the Information Commissioner, this institution is guided by three main principles: information produced by institutions is owned by citizens; transparency on public expenditures; and the lack of response to access to official information is unacceptable. The Slovenian example has also been proposed during the process of drafting the new law on access to public documents in Kosovo.

7.6. Civic activism

The level of civic activism in Kosovo is still low. Despite the fact that there are over eight thousand registered NGOs, the majority of them are not active, while among those that are active, only a small number of them represent particular groups of citizens or have broad membership.

In order to educate younger generations on the importance of civic activism, in many EU countries there are education programs which are also supported by public funds. The non-governmental organization ProDemos in the **Netherlands** is one of the organizations whose mission is to educate young people on the decision-making process, the importance of civic activism and the way of participation in decision-making. ProDemos also organizes visits of groups of citizens to public institutions. A compulsory part of the curriculum in the schools in the Netherlands is also participation in the activities organized by civil society.

101 Information Commissioner. Information Commissioner Act, no.113/2005. Source: <http://bit.ly/2Go10Kb>

In addition, ProDemos also manages the “House of Democracy”, premises of civil society where various civic activities are organized. This could serve as a good example in the case of Kosovo, having in mind that in the absence of funds and a high cost of real estate, civil society organizations could not be organized into a civil society house. Several requests submitted to the Municipality of Pristina to allocate public land for the construction of a civil society building have been rejected by the municipality, justifying it with legal constraints. In December 2017, more than 50 civil society organizations requested the amendment of the Law on allocation for use of municipal property, thus enabling municipal property to be allocated also to non-profit entities, and not only to those that offer the highest price in an open procurement process¹⁰².

7.7. Financing of non-governmental organizations

The NGO financing until now has been done without any clear legal basis, without a transparent process and without a separate fund or budget category. Financing from the category of subsidies and social transfers is not a practice that should be followed, since the financing of non-governmental organizations cannot be classified as subsidies.

In 2013, **Croatia** has established the National Council for Civil Society Development (NFCSD)¹⁰³, which is financed partly by revenues collected from games of luck and not directly by taxpayers. From the funds collected from games of luck and the funding from EU funds, NFCSD finances non-governmental organizations through institutional grants for a maximum of two years.

102 Kallxo.com. NGOs propose a possibility of access to municipal property. 15 December 2017. Source: <http://bit.ly/2C3JGoU>

103 <https://zaklada.civilnodrustvo.hr/en>

8. Conclusions and recommendations

The culture of governance in Kosovo has imposed the need to use strong instruments to regulate public participation in the decision-making process. While for most Western European countries suffice using non-legal rules, handbooks and manuals suffice, Kosovo and other countries in the region have adopted a number of laws and sub-legal acts to oblige institutions to consult CSOs and citizens throughout the policy-making process.

Kosovo institutions have established a good legal basis to involve the public in the decision-making process at all levels and governing institutions. But this legal imposition has remained as such: only the imposition and not the will of the institutions to take in the contribution of those who are affected by a specific policy. Even in cases when the institutions fulfill their legal obligations and hold consultations, in most cases, the participants in the consultations are not informed of what has happened with their recommendations. This, in turn, discourages future participation in these processes.

In addition to the legal basis, institutions have also developed online mechanisms to facilitate the consultation process and obtain suggestions for interventions in projects. However, these costly mechanisms are not reaching their goal and both sides are to blame for this: the contribution of civil society to the documents produced as a result of consultation is still small, while the response of the institutions to the reports and suggestions of the citizens on these platforms is very low.

The culture of governance influences the approach of institutions towards the public, likewise civic education influences the participation of citizens in the decision-making and policy-making. Over 95% of the citizens are not active in non-governmental organizations or in volunteer work. On the other hand, only a small number of registered NGOs are active, and even smaller number of active organizations participate regularly in the decision-making and policy-making processes.

Based on the findings of this report, we recommend:

The Office of the Prime Minister, through the Office for Good Governance and the consultation platform, should create opportunities for citizens and CSOs to propose legislative initiatives, strategic documents or other policies for inclusion in the government program, legislative program and the annual plan of strategic documents.

The legislative program and annual plan of strategic documents, besides containing the data about the institutions responsible for drafting documents and the dates when government approval is expected, they should also contain information on what stage a particular document is at, and the public should be informed on how to get involved at each stage of the process, by publishing information on the office or persons responsible for coordinating the process of drafting documents.

The Office for Good Governance, in the consultation platform should provide the possibility to CSOs, citizens and individual experts to register and become part of the working groups for drafting legislation or policy documents.

The Office for Good Governance should upgrade the consultation platform, by providing possibilities for suggestions regarding new policies or legislation and report on the non-implementation of policies, provide the possibility of selecting documents for consultation, besides the institutions as it currently is, and undertake an information campaign regarding the platform through social and traditional media.

All public institutions that organize consultations with CSOs should set up a system and timeframe to respond to CSOs and citizens on their comments and recommendations, notifying them whether those recommendations are included in the final draft or if they are rejected, with justification why they were rejected. This would send a signal to civil society that their contribution has been taken into account, and the feedback has an influence also in raising the awareness of citizens regarding the process and policies.

Kosovo Assembly should not cancel the entire database of registered organizations at the end of the legislative mandate as it is currently happening. An organization or individual registered in the Assembly database to obtain information should be kept in the information system until the respective organization or individual decides voluntarily to cease receiving information.

Kosovo Assembly should set up a system of involving citizens in the process of amending and supplementing laws by parliamentary committees and working groups. Involvement of CSOs should not be left at the choice of the chairman of the committee or the head of the working group. The Assembly should create the opportunity for CSOs to register to attend the work of the committees and the working groups and provide their contribution.

The Ministry of Local Government Administration should expand the obligations deriving from Article 8 of the Administrative Instruction on transparency in municipalities, dealing with public consultations on municipal legal acts. The new regulation would introduce additional legal obligations on municipal bodies, by addressing the responsibility to organize consultations, types of consultations, feedback on citizens' contributions, the use of online platforms for consultations, registration of CSOs and ways of notifying them.

Amendment of the Law on access to public documents, in particular the provisions related to the classification of documents as confidential, putting the responsibility on the head of the institution, clarification of financial and administrative penalties for responsible persons who do not respond to the requests for access to public documents, and particularly shortening the appeal procedures and response on the lawsuits in courts.

Increasing transparency and accountability with regards to **financing CSOs from the state budget**, and adapting clear rules for contracting services from CSOs. Municipalities and central level institutions should publish public calls for financing CSO projects, establish clear selection criteria and reporting obligations, and penalty measures in cases when CSOs misuse public funds.

Through sub-legal acts or amendment of laws, such as the Law on civil service, the Law on Kosovo Prosecutorial Council, the Law on Protection of the rights of communities, the Law on Youth, etc., procedures for the representation of civil society organizations in decision-making or consultative bodies should be defined.

Amendment of the Law on allocation for use of municipal property, through which, the use of public property for non-governmental organizations is allowed.

All local and central level institutions should launch information campaigns on the process of public participation in decision-making and policy-making. Institutions should also increase their presence and information through social media, taking into account that over 75% of citizens use internet on a daily basis, and that Kosovo has the best internet coverage compared to the countries in the region.

Institutions that have established online consultation platforms should increase the level of feedback and solve the problems reported by citizens. In addition, in order to avoid excessive costs and benefit from the experience of the CSOs, institutions should use the already established platforms by CSOs for consultations.

Civil society organizations should participate more actively in the consultation process, and be better informed on decision-making procedures and forms of intervention. There is also a need for CSO profiling, capacity building, and creation of coalitions in order to increase the impact and share experiences.

In order to raise the awareness of citizens regarding the participation in the decision-making and policy-making process, civil society and institutions should develop civic education programs and deliver lectures in schools on the importance of participation in the decision-making and policy-making process.

