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6 November 2003

REGULATION NO. 2003/32

ON THE PROMULGATION OF A LAW ADOPTED BY THE ASSEMBLY OF KOSOVO ON ACCESS TO OFFICIAL DOCUMENTS

The Special Representative of the Secretary-General,

Pursuant to the authority given to him under United Nations Security Council resolution 1244 (1999) of 10 June 1999,

In conformity with paragraphs 8.1, 9.1.44 and 9.1.45 of the Constitutional Framework for Provisional Self-Government (UNMIK Regulation No. 2001/9),

Taking into account communications from the President of the Assembly of Kosovo, dated 26 August 2003 and 17 October 2003 concerning the Law on Access to Official Documents adopted by the Assembly of Kosovo on 16 October 2003,

Duly noting the Decision dated 24 September 2003 of the Special Panel that acted pursuant to paragraph 9.1.41 of the Constitutional Framework for Provisional Self-Government, and the action taken thereon by the Assembly of Kosovo, including its rejection of the Panel's recommendations regarding section 4.1 and the new section 4.2,

A. Hereby promulgates effective as of the date of signature, subject to Part B below, the Law on Access to Official Documents attached to the present Regulation (Law No. 2003/12) and

B. Determines that the following changes, which are based on the recommendations of the Panel and which also relate to the reserved powers and responsibilities of the SRSG, are hereby made to the Law:

1. Section 4.1 shall read:

"4.1 The institutions shall refuse access to a document where disclosure would undermine the protection of:

(a) the public interest as regards:

(i) public safety;
(ii) civil protection;
(iii) international cooperation;
(iv) financial or economic policy of the PISG;

(b) privacy and the integrity of the individual, in particular in accordance with the applicable legislation regarding the protection of personal data."

2. A new section 4.2 shall be added as follows:

"4.2 Access to and classification of documents relating to reserved matters, including security, defense and military matters, external relations and monetary policy, within the area of responsibility of the Special Representative of the Secretary-General shall be regulated by UNMIK."

These changes shall be reflected in the final official text of the Law.

Signed on this 6th day of November 2003.

Harri Holkeri
Special Representative of the Secretary-General

PROVISIONAL INSTITUTIONS OF SELF GOVERNMENT

KUVENDI I KOSOVËS
СКУПШТИНА КОСОВА
ASSEMBLY OF KOSOVO

Law No. 2003 / 12

LAW

ON ACCESS TO OFFICIAL DOCUMENTS

Pursuant to Chapter 9.1.26 (a) of the Constitutional Framework,

For the purpose of enabling citizens of Kosovo to participate more closely in the decision-making process of public institutions and guaranteeing that the public institutions enjoy greater legitimacy, transparency and are more effective and more accountable to the citizens of Kosovo,

the Assembly of Kosovo hereby adopts the following:

I. GENERAL PROVISIONS

Section 1
Purpose

The purpose of this Law is:

(a) to define the principles, conditions and limits on grounds of public or private interest governing the right of access to documents of:

(i) any Provisional Institution of Self-Government (PISG) organ or agency thereof,
(ii) any municipality organ or agency thereof,
(iii) any of the independent bodies and offices listed in or established under Chapter 11 of UNMIK Regulation No. 2001/9 (Constitutional Framework);
(iv) Kosovo Trust Agency

(b) to establish rules ensuring the easiest possible exercise of this right; and

(c) to promote good administrative practice on access to documents.

Section 2
Definitions

For the purpose of this Law:

(a) " institutions" shall include all Provisional Institution of Self-Government organs and agencies thereof, KTA, municipality organs **,** agencies thereof , as well as independent bodies and offices also listed in or established under chapter 11 of the Constitutional Framework,

(b) "document" shall mean any content whatever its medium (written on paper or stored in electronic form or as a sound, visual or audiovisual recording) concerning a matter relating to the policies, activities and decisions falling within the institution's sphere of responsibility;

(c) "third party" shall mean any natural or legal person, or any entity outside the institution concerned.

Section 3
Beneficiaries and scope

3.1.Any habitual resident of Kosovo or any person who meets eligibility requirements for registration as a habitual resident of Kosovo, and any natural or legal person residing or having its registered office in Kosovo, has a right of access to documents of the institutions, subject to the principles, conditions and limits defined in this Law.

3.2.The institutions may, subject to the same principles, conditions and limits, grant access to documents to any natural or legal person not residing or not having its registered office in Kosovo.

3.3.This Law shall apply to all documents held by an institution, drawn up or received by it and in its possession, in all areas of activity of the institutions.

3.4.Without prejudice to sections 4 and 8, documents shall be made accessible to the public either following a written application or directly in electronic form or through a register. In particular, documents drawn up or received in the course of a legislative procedure shall be made directly accessible in accordance with section 11.

3.5.Sensitive documents as defined in section 8.1 shall be subject to special treatment in accordance with that section.

3.6.This Law shall be without prejudice to rights of public access to documents held by the institutions which might follow from instruments of international law or acts of the institutions implementing them.

Section 4
Exceptions

4.1.The institutions shall refuse access to a document where disclosure would undermine the protection of

(a) the public interest as regards:
(i) public security,
(ii) defense and military matters,
(iii) international relations,
(iv) the financial, monetary or economic policy of the PISG;

(b) the privacy and the integrity of the individual, in particular in accordance with the applicable legislation regarding the protection of personal data.

4.2.The institutions shall refuse access to a document where disclosure would undermine the protection of:

(a) commercial interests of a natural or legal person, including intellectual property,
(b) court proceedings and legal advice,
(c) the purpose of inspections, investigations and audits,

unless there is an overriding public interest in disclosure.

4.3.Government shall draft the list of the documents, which shall be treated as sensitive documents to the actions foreseen under section 4 and 8, in order to protect the public interests.

4.4.Access to a document, drawn up by an institution for internal use or received by an institution, which relates to a matter where the decision has not been taken by the institution, shall be refused if disclosure of the document would seriously undermine the institution's decision-making process, unless there is an overriding public interest in disclosure.

4.5.Access to a document containing opinions for internal use as part of deliberations and preliminary consultations within the institution concerned shall be refused even after the decision has been taken if disclosure of the document would seriously undermine the institution's decision-making process, unless there is an overriding public interest in disclosure.

4.6.As regards third-party documents, the institution shall consult the third party with a view to assessing whether an exception in section 4.1 or 4.2 is applicable, unless it is clear that the document shall or shall not be disclosed.

4.7.If only parts of the requested document are covered by any of the exceptions, the remaining parts of the document shall be released.

4.8.The exceptions as laid down in sections 4.1 to 4.4 shall only apply for the period during which protection is justified on the basis of the content of the document. The exceptions may apply for a period of 30 years from the creation of the document.

4.9. In determining whether there is an overriding public interest in disclosure the institutions shall have due regard to considerations such as any failure to comply with a legal obligation, the existence of any offence, miscarriage of justice, abuse of authority or neglect in the performance of an official duty, unauthorized use of public funds, or danger to the health or safety of an individual or the general public.

II. PROCESSING OF APPLICATIONS

Section 5
Applications

5.1.Applications for access to a document shall be made in any written form, including electronic form, and in a sufficiently precise manner to enable the institution to identify the document. The applicant is not obliged to state reasons for the application.

5.2.If an application is not sufficiently precise, the institution shall ask the applicant to clarify the application and shall assist the applicant in doing so, for example, by providing information on the use of the public registers of documents.

5.3.In the event of an application relating to a very long document or to a very large number of documents, the institution concerned may confer with the applicant informally, with a view to finding a fair solution.

5.4.The institutions shall provide information and assistance to persons on how and where applications for access to documents can be made.

Section 6
Processing of initial applications

6.1.An application for access to a document shall be handled promptly. An acknowledgement of receipt shall be sent to the applicant. Within 15 working days from registration of the application, the institution shall either grant access to the document requested and provide access in accordance with section 9 within that period or, in a written reply, state the reasons for the total or partial refusal and inform the applicant of his or her right to make a confirmatory application in accordance with section 6.2.

6.2.In the event of a total or partial refusal, the applicant may, within 15 working days of receiving the institution's reply, make a confirmatory application asking the institution to reconsider its position.

6.3.In exceptional cases, where an application relates to a very long document or to a very large number of documents, the time-limit provided for in section 6.1 may be extended by 15 working days, provided that the applicant is notified in advance and that detailed reasons are given.

6.4.Failure by the institution to reply within the prescribed time-limit shall entitle the applicant to make a confirmatory application.

Section 7
Processing of confirmatory applications

7.1.A confirmatory application shall be handled promptly. Within 15 working days from registration of such an application, the institution shall either grant access to the document requested and provide access in accordance with section 9 within that period or, in a written reply, state the reasons for the total or partial refusal. In the event of a total or partial refusal, the institution shall inform the applicant of the remedies open to him or her, namely instituting court proceedings against the institution pursuant to the provisions of the relevant applicable law and/or filing a complaint with the Ombudsperson pursuant to Chapter 10 of the Constitutional Framework and UNMIK Regulation No. 2000/38.

7.2.In exceptional cases, where an application relates to a very long document or to a very large number of documents, the time limit provided for in section 7.1 may be extended by 15 working days, provided that the applicant is notified in advance and that detailed reasons are given.

7.3.Failure by the institution to reply within the prescribed time limit shall be considered as a negative reply and entitle the applicant to institute court proceedings against the institution pursuant to the provisions of the relevant applicable law and/or file a complaint with the Ombudsperson following the provisions of Chapter 10 of the Constitutional Framework and UNMIK Regulation No. 2000/38.

Section 8
Treatment of sensitive documents

8.1.Sensitive documents are documents originating from the institutions classified in accordance with the rules of the institution concerned, which protect essential interests of the PISG.

8.2.Applications for access to sensitive documents under the procedures laid down in sections 6 and 7 shall be handled only by those persons who have a right to acquaint themselves with those documents. These persons shall also assess which references to sensitive documents could be made in the public register.

8.3.Sensitive documents shall be recorded in the register or released only with the consent of the originator.

8.4.An institution which decides to refuse access to a sensitive document shall give the reasons for its decision in a manner which does not harm the interests protected in section 4.

8.5.The rules of the institutions concerning sensitive documents shall be made public.

Section 9
Access following an application

9.1.The applicant shall have access to documents either by consulting them on the spot or by receiving a copy, including, where available, an electronic copy, according to the applicant's preference. The cost of producing and sending copies may be charged to the applicant. This charge shall not exceed the real cost of producing and sending the copies. Consultation on the spot, copies of less than 20 A4 pages and direct access in electronic form or through the register shall be free of charge.

9.2.If a document has already been released by the institution concerned and is easily accessible to the applicant, the institution may fulfill its obligation of granting access to documents by informing the applicant how to obtain the requested document.

9.3.Documents shall be supplied in an existing version and format (including electronically or in an alternative format such as Braille, large print or tape) with full regard to the applicant's preference.

III. REGISTERS

Section 10
Registers

10.1.Each institution shall provide public access to a register of documents. Access to the register should be provided, where possible, in electronic form. References to documents shall be recorded in the register without delay.

10.2.For each document the register shall contain a reference number, the subject matter and a short description of the content of the document and the date on which it was received or drawn up and recorded in the register. References shall be made in a manner which does not undermine protection of the interests in section 4.

10.3.The institutions shall immediately take the measures necessary to establish a register which shall be operational by 1 January 2004.

Section 11
Direct access in electronic form or through a register

11.1.The institutions shall as far as possible make documents directly accessible to the public in electronic form or through a register in accordance with the rules of the institution concerned.

11.2.In particular, legislative documents, including documents drawn up or received in the course of procedures for the adoption of acts which are legally binding shall, subject to sections 4 and 8, be made directly accessible.

11.3.Where possible, other documents, notably documents relating to the development of policy or strategy, should be made directly accessible.

11.4.Where direct access is not given through the register, the register shall as far as possible indicate where the document is located.

IV. IMPLEMENTATION

Section 12
Languages

Members of communities, as defined in the Constitutional Framework, may exercise their rights as set out in this law in their respective language.

Section 13
Information

Each institution shall take the requisite measures to inform the public of

(a) the rights they enjoy under this Law; and
(b) a contact person at the institution to whom questions and concerns can be directed.

Section 14
Administrative practice in the institutions

14.1.The institutions shall develop good administrative practices in order to facilitate the exercise of the right of access guaranteed by this Law.

14.2.The institutions shall establish an inter-institutional committee to examine best practices, to address possible conflicts and to discuss future developments on public access to documents.

14.3.The Government shall have the authority to issue secondary legislation with regard to the implementation of the present Law and in particular with regard to the establishment of rules and procedures with respect to the classification of sensitive documents.

Section 15
Reproduction of documents

This Law shall be without prejudice to any existing rules on copyright which may limit a third party's right to reproduce or exploit released documents.

Section 16
Reports

16.1.Each institution shall publish annually a report for the preceding year including the number of cases in which the institution refused to grant access to documents, the reasons for such refusals and the number of sensitive documents not recorded in the register.

16.2.At the latest by 31 July 2004, and every year thereafter, the Office of the Prime Minister shall publish a report, and file a copy with the Assembly of Kosovo, on the implementation of this Law and shall make recommendations, including, if appropriate, proposals for the revision of this Law and an action programmed of measures to be taken by the institutions.

V. TRANSITIONAL PROVISIONS

Section 17
Transitional Provisions regarding access to sensitive documents

17.1.The Government shall adopt adequate rules and procedures regarding the classification of sensitive documents pursuant to section 8 , sixty days after the Law come to effect.

17.2.Failure to provide rules and procedures in compliance with section **17.1** shall not permit the institutions to deny access to documents pursuant to section 8.

Section 18
Transitional Provisions regarding the protection of personal data

Pending the entry into force of legislation related to the protection of personal data, the institutions may only release such data upon prior and explicit consent of the person affected.

VI. FINAL PROVISION

Section 19
Entry into force

This Law shall enter into force on the day of its promulgation by the Special Representative of the Secretary-General in Kosovo.

Law No.2003/12
16. October 2003