

Article No 8

# Gatekeeping the gatekeepers: International community and freedom of information in Kosovo

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## Abstract

The aim of this study is to analyze the impact of the international factors on the implementation of the Freedom of Information (FOI) legislation in Kosovo and to explore how this legislation affects media access to information in this transitional society. The case of Kosovo suggests that the influence of the international community is greater during the process of adopting FOI laws in transitional societies, but less effective on behavioral changes that accommodate the implementation of these laws, thus questioning the role of international factors on democratic consolidation. Three primary explanations for this inefficacy are found: the imitative nature of the FOI laws leads to defective legislation; the lack of a democratic culture within local institutions; and the double standards imposed by the Western organizations when it comes to transparency and access to information. Implications for media freedoms and professionalism are discussed.

## Introduction

In what has been described as the “global trend” of openness (Byrne, 2003), the last decade has seen the adoption of more than half of the Freedom of Information (FOI) laws that exist in

the world (Banisar, 2006). By 2006 more than 80 countries have adopted some constitutional provisions giving citizens the right to information access, nearly 70 countries around the world have now adopted FOI acts, and another fifty have pending efforts to do so (Banisar, 2006). Moreover, FOI has become more widely recognized in international legislation since it has been enshrined in many international documents, including the European Union *Charter of Fundamental Rights* (European Union, 2000).

Caught in the process of globalization and international integration, the majority of the post-communist countries of Eastern and Central Europe (ECE) started their FOI debates in the late 1999 and adopted FOI legislation very early in the process of democratization. Two main reasons explain why ECE countries were so quick to adopt FOI laws. First, FOI laws served as tools for the new regimes to deal with the past and exact revenge against their communist predecessors (Blanton, 2002). Second, the eagerness of former communist countries to integrate in the EU, NATO and other international organizations led the new regimes to adopt legislations in accordance with international standards (Blanton, 2002; Byrne, 2003; Grigorescu, 2003).

The aim of this study is to analyze how FOI legislations work in practice in transitional societies and investigate their implication for media freedoms. More specifically, this paper investigates the role of the international factors in the adoption and implementation of the FOI legislation in Kosovo, a newly independent country in South-Eastern Europe, and explores how this legislation affects media access to information in this country. This study approaches freedom of information from the democratization perspective rather than from a purely legal angle. In this context, freedom of information is conceptualized as an essential aspect of democracy, a tool that enables the public to make informed decisions about government and facilitates journalists' (the proxy of the people) access to government information. The conceptualization of the FOI is explored particularly within the democratization theory that explores the role of the international factors on democratic transition and democratic consolidation to provide a different way to explore what happens when FOI laws are directly or indirectly imposed on countries undergoing political transition.

This study complements the literature on freedom to information in developing countries, by

providing in-depth empirical evidence on how FOI laws are implemented on the ground. Despite the global trend towards openness, Banisar (2006) claims that the adoption has been “in name but not in spirit.” As a consequence of the strong culture of secrecy, which is “not unique to any region or legal system,” the demand for access to information is low while the laws in many countries lay dormant (Banisar, 2006, p.26). The role of the international factors on the implementation of FOI legislation in transitional societies is neglected in the literature, even though studies have identified international organizations as factors that had a positive role in the process of adoption of the FOI laws in ECE countries (Grigorescu, 2003).

Particularly, we lack empirical evidence regarding this legislation’s effects on media freedoms and access to information in transitional societies. Scholars of post-communist media change claim that even though in most countries of ECE the legal and institutional framework of media freedom exists on paper, the consolidation phase of the media freedom remains a “distant promise, creating uncertainty in the role, usage of, manipulability, and effectiveness of media in these changing societies” (Gross, 2004, p.126; see also Jakubowicz & Sukosd, 2008).

### **The international factor in the democratization processes**

The democratization literature has recognized international influences as a crucial factor in the third wave of democratization that began in the 1970s in South Europe and lately spread to Latin America and Eastern Europe, overpowering dozens of communist and authoritarian regimes in these regions. The role of the international factor in the democratization processes is seen as a diffusion process that depends on linkages, or the density of ties across borders between democratic and democratizing countries, and as a ‘promotion’ process that highlights leverages, or the degree to which authoritative governments are vulnerable to external pressure (Levitsky & Way, 2006). Both approaches to international influences raise the cost of autocratic abuses. However, while the linkage dimension concentrates mostly on spatial heterogeneity between countries with similar circumstances of democratization, the leverage approach is rooted in the pressure exercised by the international factor on authoritarian regimes (Lewitsky & Way, 2006).

Lewitsky and Way (2006) claim that the most important dimension of the Western linkages is

the geographic proximity to the Western democratic countries, and within this category the linkages that are a product of colonial heritage, military occupation, or long-standing geopolitical alliances (p.384). Linkages generate antiauthoritarian pressure by heightening the international salience of autocratic abuse and increasing the chance that the Western governments will take action against those abuses. The leverage dimension, on the other hand, emphasizes the role of international factors in promoting democracy by exerting direct pressure on authoritarian countries. This process is implemented through positive conditionality, such as membership in international organizations, punitive sanctions that deal with economic pressure, diplomatic persuasion, military force, and elite acquiescence to liberalization (Lewitsky & Way, 2006; see also Pevehouse, 2002).

When it comes to the causal mechanisms linking international factors to democratization processes within countries, the literature points out that external influences promote democratization through modernization processes and through the change of elite preferences. Giving an upper hand to the structuralist approach, Lewitsky and Way (2006) claim that linkage to the West is the product of economic development, which creates “economic integration, cross-border communication, education and travel, and more extensive ties to transnational civil society” (p.396), which in turn produce political and civic culture essential for democracy. Moreover, diffusion is also defined in terms of how “linkages to external actors and events influence the relative power and the likely strategies and choices of relevant groups in struggles over political institutions and outcomes” (Gleditsch & Ward, 2006, p.918). The geographical location of a country provides an important contextual dimension that provides powerful constraints that shape the choices available to transforming elites (Kopstein & Reilly, 2000).

The theory of the international factors’ role on democratization provides a fruitful theoretical framework to explain the adoption of the FOI legislation in transitional societies of Eastern

Europe. It suggests that the spread of freedom of information laws was the consequence of appearance and promotion of the norm of transparency in the Western world; which was transmitted to their neighboring countries through the process of linkage – the flow of the norm of transparency among states that are geographically and culturally close – and leverage – conditionality of membership and aid on transparency norm.

### **Mimetic versus Atavistic media orientations in Eastern Europe**

After the fall of communism in Eastern Europe, a mixture of two media policy orientations emerged that shaped the views of new media order: mimetic and atavistic (Jakubowicz & Sukosd, 2008; Jakubowicz, 2008), or imitating external environment and imitating the past (Splichal, 2001). The “mimetic” orientation in media policy is defined as “transplanting — in some aspects importing without any change — Western European media institutions and policy models” (Jakubowicz & Sukosd, 2008, p.19). The implementation of this media policy in ECE countries was done in order to approximate their media systems to the “West.”

Scholars argue that the unilateral imitation of the Western media systems in ECE countries was intensified by the efforts of the post-communist courtiers to join international organizations in the process of international integration (Splichal, 2001; Jakubowicz & Sukosd, 2008, Jakubowicz, 2007). Thus, external factors played a major role in post-communist countries’ adoption of the Western media policies through deliberate policy imposition. The prospect of joining the EU and other international institutions meant that aspiring accession countries had to harmonize their legislation in line with European standards and undergo detailed processes of screening to make sure that the legal framework and institutions have been created in line with requirements of EU and other organizations (Jakubowicz, 2007).

This same explanation applies to the adoption of the FOI legislation in ECE. This is one of the regions where the movement for freedom of information has been most effective, producing some kind of FOI legislation in almost every county that emerged from the Eastern bloc. The FOI laws in most of the countries in this region share certain common features given that they are all “based on the examples provided by the United States, Canada, and Australia” (Byrne, 2003, p.56). Grigorescu (2003) explains that role of the international institutions during the

process of adopting FOI laws in ECE countries was an indirect one. Given that some of the traditional democracies have not themselves adopted transparency practices, initially international organizations laid weak norms of transparency, which until recently were only applied in specific areas such as the environment (Grigorescu, 2003). International organizations affected transparency in this region through three channels: conditionality, spillover, and by serving as alternative sources of information, says Grigorescu.

Even though they mimicked the Western systems on paper, in other areas of media policy political elites in ECE managed to retain some atavistic orientation, unwilling “to give up all the control of, or the ability to influence the media” (Jakubowicz, 2008, p.112). Even though the new media laws in ECE countries resemble the Western ones, they are still interpreted and applied in a manner different from those in Western Europe (Jakubowicz, 2007). In general, the pressure from international factor to “Europeanize” the interpretation and implementation of these laws has fallen into deaf ears (Gross, 2004, p.119). When it comes to the implementation of the FOI laws in this region, some scholars imply that these laws might lay dormant (Banisar, 2006) while some enthusiasts claim that “despite many problems, the trend toward openness in Eastern and Central Europe over the past decade has been more productive than developments in Western Europe and the United States” (Byrne, 2003, p. 56). However, there is hardly any in-depth empirical analysis to back up any of these claims, especially in the Balkan region.

Most scholars explain the failure of the new media laws to induce behavioral change of the political elites in Eastern Europe with the lack of democratic political culture (Jakubowicz, 2007, 2008; Bajomi-Lazar, 2008; Gross, 2004). The reinterpretation of media roles in society according to the “Western standards” is not possible until the ECE media fully institutionalize the cultural changes that encompass acceptance of rule of law and restraints on the exercise of power on the media (Gross, 2004). Nevertheless, the literature fails to explain the complex interaction between legislation design and political cultural and their effects on media freedom (Bajomi-Lazar 2008).

Another important aspect of the “imposed” change in media policy might have to do with the unrealistic expectations of the international factor. A multiple range of changes in the media

system was expected from the post-communist ECE countries in a short period of time, while these media changes in the Western countries occurred over many decades of social and technological evolution. Jakubowicz and Sukosd (2008) describe this process as follows. "The international community and organizations, as well as all the other Western players involved in the process, presented to post-communist societies an unrealistic, idealized and wart-free image of "free and democratic" media and journalism to emulate, while the reality in their own countries may have been different" (p.19).

This paper investigates the effects of international factors on Kosovar governmental transparency through two channels: the promotion of the FOI legislation adoption and implementation, and through transparency norms practiced by the international organizations operating in Kosovo.

### **Method**

The first part of the study uses primary and secondary sources to analyze the content of the FOI legislation in Kosovo. It relies on various documents and open ended face-to-face and electronic interviews with NGO representatives to understand the process that led to the adoption of the FOI legislation in Kosovo and the efforts made to facilitate its implementation.

This study was also interested in the experience of Kosovar journalists accessing information to explore the effects of this legislation on media freedoms. Thus, the in-depth interviewing technique was employed, which is an adequate method to "understand themes of the lived everyday world from the subject's own perspective" (Kvale, 1996, p.27). This study used a purposive sample. Since I was interested in variations in access to information in Kosovo during the post-conflict period to test the effect of the FOI law on information access, the first criterion of subject selection was the journalism experience of the subjects. Every interviewed participant has been working as a journalist in Kosovo at least since 1999, with their media experience ranging from ten to fifteen years. The second criterion of the sample selection was media independence. This study included journalists that have been working for media that retained some degree of freedom, in order to obtain an assessment of governmental information access as objectively as possible. In making these decisions the author was guided by different national and international reports on media environment in Kosovo as well

as her own personal experience working with media in this country.

Nineteen news editors and journalists from eight Kosovo media outlets were interviewed for the purpose of this study (13 from newspapers, 5 from television, 1 from a news agency), eight of whom were females and eleven were males. The author conducted structured face-to-face interviews in the native language of the subjects. Each interview, which lasted from 45 minutes to an hour, was tape recorded with the permission of the participants. The recorded material was transcribed and translated by the author.

These interviews were focused around three main categories of questions. First, journalists were asked about their perceptions regarding governmental transparency and their general experiences accessing information within political institutions in Kosovo. Some questions included in this section were: "How hard is to access information in Kosovo? How comfortable do you feel contacting governmental officials to ask for information? How likely are you to obtain the information you need? What are some of typical ways in which governmental officials/institutions deal with journalists' requests for information?" The second category of questions explored variations in information access between different levels of local government (Do you see any difference in access to information in the local versus central government institutions? Which branches of government do you feel are more transparent than others?); between local and international institutions (Have you noticed any difference between local and international institutions, when it comes to access to information? What is your experience in terms of the international institutions' treatment of your request for information?), and variations in information access across time (Do you think that the governmental officials' attitude towards journalists' request for information has changed at all while you have been working as a journalist? Describe me an example how this attitude has/hasn't changed?). Finally, journalists were probed about their awareness of the FOI legislation in Kosovo (Did you even hear about Freedom of Information law? Can you describe what this law is about? Do you know when was this law approved?) and their experience using this legislation to access information (Have you ever relied on the FOI legislation to request official information? Do governmental officials ever refer to this law when dealing with information request from journalists? Do you think there is more freedom of

information access than it was three years ago before the FOI law was adopted?).

### **Freedom of Information legislation in Kosovo**

#### *Promoting FOI adoption*

Kosovo represents a compelling case where linkage and leverage influences of the international community have been felt more than anyplace else in the post-communist transitional societies. During the last decade, Kosovo has been under the international protectorate of the United Nations, while at the same time has pursued two parallel processes: gaining full independence as a sovereign state and preparing for international integration.

In June 1999, following a NATO campaign against Serb forces, Kosovo seceded from Serbia and Montenegro de facto (if not de jure) and was taken under the governance of the United Nations Mission in Kosovo (UNMIK) in accordance with the UN Resolution 1244. The international community set several democratic standards that Kosovo had to fulfill before the process of the final legal status of the country could be initiated. As defined in the "Standards for Kosovo" UNMIK document, the process of standards implementation was also envisioned as a reinforcing process of Kosovo's parallel European Union Stabilization and Association Process Tracking Mechanism (UNMIK, 2004). Freedom of information was one of the hallmarks of democratic standards imposed by the international community on Kosovo Institutions. The most prioritized benchmark of this document, "Functioning democratic institutions," emphasizes that "permanent structures that would provide civil society organizations with more access to public policy making should be established and respected" (UNMIK, 2004, p.7).

The FOI discourse in Kosovo, however, started much earlier. The Assembly of Kosovo approved the *Law on Access to Official Documents (LAOD)*, on October 16, 2003. The law was officially sponsored by the Office of the Kosovo Prime Minister, but besides the working group established by the Prime minister, in the drafting of the LAOD participated another working group composed of NGOs (ATRC, 2004). The U.S. Agency for International Development (USAID) was one of the major donors that supported the activity of the NGOs in

this process (USAID, 2004) which was mainly composed by the National Democratic Institute (NDI), a U.S. NGO working to strengthen and expand democracy worldwide, and Advocacy Training and Resource Center (ATRC), a local NGO (ATRC, 2004). The adoption of this legislation followed an intense lobbying by the international community in Kosovo. In late 2002 lobbying activities were organized by the International Research and Exchange Board (IREX), a U.S. based non-profit organization, and the Organization for Security and Cooperation in Europe (OSCE) who organized active public discussions on the matter (Bertram et al., 2003, p.29).

The product of these engagements was a FOI law that was deemed in accordance with international standards. The law ensures the right of all "habitual residents" of Kosovo to access documents held by any Provisional Institution of Self-Government and bodies set up under the Constitutional framework. According to the law, the request can be made in any written form, and the institutions must respond in fifteen working days. The law précised the areas of access exemptions that would undermine the public interest, while abides the government to draft a list of documents to be exempted. Appeals of denial can be filed to court or to the Ombudsperson Institution; no fines are established by the law for people who fail to implement this law (Law on Access to Official Documents, NO. 2003/12).

However, due to the specific environment in which the FOI is implemented in Kosovo, the law had several drawbacks. It was noted that the section of the law that allows institutions to draw up internal rules regarding the classification of the "sensitive documents" could undermine the access regime (Article 19, 2003). Further, some concerns were expressed regarding the supervision and appeals mechanisms given the lack of an independent external body that would supervise the implementation of the law (Article 19, 2003).

Initially, the implementation of the LAOD in Kosovo was obstructed by the lack of accompanying legislation that would facilitate its implementation. The government dragged its feet on the drafting and adoption of the Administrative Instruction (AI) which would set out the framework for the classification of official documents within institutions. This document was adopted on April 15, 2006, three years after the actual LAOD came into power. Despite the long public debate on this legislation, the remarks on the classification of the official

documents were not addressed properly (IREX/USAID 2006), thus leaving many loopholes within the legislation that would undermine its implementation.

### **Promoting FOI implementation**

The international community in Kosovo was also very active in promoting the LAOD and providing training for its implementation. International organizations cooperated to form the AVOKO, a coalition of 27 local NGOs that would advocate the implementation of FOI legislation at the local and national levels (USAID, 2004, p.10). However, most of the activities in relation to the FOI in Kosovo were directed by the international NGOs. At the beginning of 2004, NDI organized a training session with fifty members of the Parliament and ministry officials from central government (Cadle, 2004), while during 2006, OSCE assisted the Kosovo Municipality Association and the Ministry of Public Administration in raising awareness of FOI legislation and transparency at the municipality levels through training, public debates, and the delivery of promotional materials (OSCE, 2007). In co-operation with the OSCE Assembly Support Initiative, NDI published a manual for the implementation of the LAOD, which contains an explanation of the text of each section of the law (OSCE, 2005, pp.17-18).

Additional trainings were organized with the media community. IREX organized workshops with media representatives to foster understanding of this legislation among media professionals (IREX, 2004). In another roundtable meeting, ATRC and IREX gathered about 30 governmental, NGO, and media representatives to discuss implementation of FOI legislation in Kosovo (ATRC, 2006).

### **Journalists' experience accessing official information**

#### *Gate-keeping the information within local institutions*

Despite all these efforts to bring transparency into Kosovo institutions, the reports from the terrain depict a grey picture when it comes to access to information, particularly by media professionals. The non-transparency of government institutions was emphasized as one of the major obstructions that Kosovo journalists faced in their daily work during the last decade of political transition in the country. Information access within governmental structures was

reserved mostly for journalists working for the “government friendly” media, while investigative reporters have been boycotted through “silence.” Salie Gajtani, a senior journalist covering economy at the daily *Koha Ditore*, has been investigating corruption affairs within Kosovo administration for years. Gajtani characterized conditions this way. “Kosovo institutions have a tendency to close the door to journalists who do investigative reporting, and expect you to report only the information that is given during their press conference when they promote themselves...When you knock on their (institution’s) door without being invited, they will always look at you with a suspicious eye.”

Access to information within Kosovo government was described as very centralized, making it hard for journalists to operate in the political environment in which Prime Minister, Hashim Thaci, keeps tight control over what can be released to the press. During the period this research was being conducted, the Kosovo government did not have an official spokesperson. Prime-minister Thaci has delegated his deputy, Hajredin Kuci, to act as a spokesperson for the whole Kosovo government, while the Ministries and other government institutions have been instructed not to interact with the journalists. Seven months after the Thaci government was consolidated, Mr. Kuci was still acting as the government voice, operating on an one hour per day schedule to deal with journalists’ inquiries and request for information.

Though over the past eight years Kosovo has been administered by three different coalition governments led by four different prime ministers representing three different political parties, access to official information has always been a challenge for journalists. In fact, a survey on the implementation of the LAOD in Kosovo has suggested a deterioration of the access regime, as journalists’ access to official document was down from 23.5 percent in 2007 to 14.75 percent in 2008 (USAID, 2008). Kosovo journalists remarked that to a great degree access to information depended on the ability of journalists to rely on informal sources within institutions. “The only way to obtain information for journalists is to smuggle the documents through informal sources,” claimed Sami Kastrati, political affairs reporter with the *Koha Ditore* daily.

The adoption of the LAOD in Kosovo has not significantly changed journalists’ access to

information. Even though all of the 19 interviewed journalists for this study were fully aware of the existence of the LAOD and its procedures, only 12 of them reported to have relied on this legislation to access to information emphasizing that their experience was not satisfactory. These data are consistent with the results of a survey on journalists' access to information conducted by the USAID in April 2008. Twenty three journalists from ten media organizations in Kosovo participated in the USAID survey on the implementation of the LAOD, submitting about 61 document requests, related to the story ideas they were pursuing, to 27 governmental institutions. More than 68% of the journalists' requests did not receive a reply, about 16% requests were replied inappropriately, while only about 14% of the journalists' were granted access to the requested information (USAID, 2008).

As Syzana Bytyci, editor of *Koha Ditore Daily*, explained two main reasons why this law is of little use to journalists in Kosovo include the lengthy period the officials have to respond to information request and the lack of a systematic classification of official documents within institutions. According to Kosovo journalists, these two elements are being misused by the public officials when dealing with journalists' information request, especially if the requested information deals with financials issues such as governmental spending, political and administrative appointments, and procedures of policy implementation.

For example, referring to the LAOD, Ganimete Shaqiri, reporter at the private television TV 21, submitted a formal request to the Ministry of Public Services to access personal documents (travel and ID document). She was investigating a story on the appearance of false travel documents in some parts of Kosovo. "I was offered the requested document," she said, " but I had to wait for it 3 weeks. I am aware that the law says the requests should be answered within 15 days. However, at the Ministry I was told they had some technical problems, the person responsible was on vacation and I had to wait until she came back or something."

Monitoring reports on LAOD implementation in Kosovo have pointed out that the deadlines envisioned by this law have not been met as most of the Kosovo governmental institutions did not establish document registers, did not adopt rules and procedures regarding the classification of sensitive documents, and have failed to publish reports on the LAOD

implementation (OSCE, 2005, pp.17-18). Moreover, among the major obstacles to implementing the FOI legislation in Kosovo was identified a notable lack of resources and proper training of the institutional officials to deal with LAOD requests (OSCE, 2007).

While investigating a story on governmental spending on advertisement and PR activities, Serbeze Haxhia, a journalist with the daily newspaper 'Lajm,' e-mailed the public official responsible to deal with information requests asking for the exact amount of money the government has spent on ads during the last year. She was told that the e-mail was not an acceptable form of request in accordance with the LAOD law, and she had to submit the request in a printed form. Her frustration is evident in her reaction. "I ask them where to obtain those forms, and she responds 'I don't know that, but you should go and ask people at "COHU" because they have brought some forms recently.' Imagine this response. First of all she does not accept my request because I am not using the proper form, then she tells me to go ask for forms at a nongovernmental organization that has nothing to do with it. It's nonsensical."

Among the major obstacles in the implantation of the FOI legislation is the lack of political will within institutions, though. The Youth Initiative for Human Rights (YIHR), a local NGO that monitored LAOD implementation in Kosovo during 2006, concluded that "the level of FOI implementation in Kosovo is extremely low and nobody is held responsible for this issue" (YIHR, 2007, p.6), after their testing results showed that only 15.85 percent of all Kosovo institutions abide by this law.

Journalists interviewed for this study emphasized that the cases when the officials seem to be more likely to deal with journalists' request for documents is when the information is already out. Teuta Hykolli, reporter at the news agency Kosovalive, has relied on the LAOD law to request information at the Ministry of Health and managed to obtain the documents only after she confronted the officials with the documents she managed to get from her unofficial sources. "Usually you need to have somebody you know within the institution in order to obtain anything; then you can confront the institution leadership asking for an official confirmation of what you already know," Teuta said.

The only observed effect of the LAOD on the media community in Kosovo was the change in

the relationship between media professionals and governmental officials, which has certainly not been for the better. Journalists noted that very often governmental institutions rely on this law to institutionalize bureaucratic procedures of obtaining information. As Ganimete Shaqiri, from private television TV21 remarked, "If you ask for sensitive information, they point you to the legal way. They throw the LAOD in front of you." This is best exemplified by the experience Sami Kastrati, a political reporter at Koha Ditore, had at the time of the interview while investigating some alleged procedural violation during the purchase of protocol vehicles by the Kosovo government. When he went to the government building to get the contracts of these transactions, which were in amount of 203 000 EURO, he was told he needed to submit a formal request even though just half an hour earlier the official responsible had told him over the phone that he just had to show up at the office to obtain the contracts. "I write the formal request and submit it to the appropriate office," Sami said. "The person who works in the administration there tells me that I shouldn't have written my request in a word document because they don't accept them written in this form. He says I should have used another program, I am not sure what program he referred to because he did not specify the proper format. Later, I go to the Ministry Secretariat and discover that an order was issued within the institution not to release those documents. Everything ended here."

As this case point out, due to the lack of proper classification of the official documents within governmental institutions, the LAOD is very commonly used by officials as a pretext to deny information, categorizing in the "sensitive" category information that should clearly be open to the public. For example, a public official referred to the LAOD to deny Arbana Xharra, an economist journalist at Koha Ditore, the request for information about public officials who had not declared their wealth to the anti-corruption agency. "I had to go and take pictures of the Minister's houses myself. For example, I went to the village of origin of the Energy Minister, Ethem Ceku, to take a picture of his newly built house. I wanted to show people what kind of wealth they have accumulated while being in public office," said Arbana.

In a similar situation, Fatmire Terdevci, a journalist with the Balkan Investigative Reporting Network, was denied the information about the amount of money that public officials spend on official travels. "I made an official written request based on the LAOD...but, I was not provided

with the information. I was told, 'This information is not for the public.' “.

Journalists claim that the only way the FOI legislation would have a chance to function in Kosovo is if rules were established that would specify clearly the document classification in a consistent way across all institutions. Otherwise, “this legal anarchy”, says Shkelzen Coca, news editor at the private national television KTV, “will continue to create a space for all institutional officials to deny official documents based on their secrecy or semi-secrecy (status). In this way, institutions close themselves in front of the media and public (demand).”

#### *Access to information within international institutions*

Access to information held by international bodies that have administered Kosovo during the last decade was limited in general (Banisar, 2006, p.15). Journalists interviewed for this study emphasized many difficulties they have had accessing information within the international administration in Kosovo. When it comes to the lack of transparency, as Ismail Gashi, reporter at national daily Kosova Sot, claims laughingly, “they (international organizations) seem to have been infected by local officials in Kosovo.” Ilir Krasniqi, another journalist from Kosova Sot, said, “Albanian journalists have never had free access to information, especially in the second pillar of UNMIK that deals with administration and rule of law. These are the places where the hottest issues have been handled, including corruption, crime, and major violations (of law)”

For several months, Krasniqi has tried to obtain from the UNMIK police the list of the most persecuted people in Kosovo by Interpol. All he was able to obtain was a number, and the person giving it to him asked to be kept anonymous. Similarly, he was denied the information on the number of Kosovo citizens' complaints about the international administration. “This sounds like banal information, but I did not obtain it,” he claimed.

Kosovo reporters also point out that international administration in Kosovo had a different treatment for journalists working for local versus international media in Kosovo. Fatmire Terdevci had the chance to work for both. “Always the UNMIK administration has implemented dual standards of information access,” she said. “... BBC, AP and AFP journalists are always treated better and always have better access to information than the

local journalists.”

However, one major difference between local and international institutions in terms of access to information was what journalists refer to as “the communication culture” with the media. While local administration would not hesitate to close the door to journalists, international institutions acted more professionally when dealing with media. UNMIK, OSCE, KFOR and all other international organizations acting in Kosovo have had well-established public relations offices. During the time they have jointly administrated Kosovo, UNMIK, OSCE and KFOR have kept regular daily press conferences where PR officials would promote the work of these organizations in Kosovo. Teuta Hykolli, from Kosovoalive news agency, claimed that to some degree accessing some information within UNMIK was easier because international officials “will answer your calls and will not let you go without some kind of answer.” As another journalist put it, “when a journalist need information, he knows where to knock.” However, when it comes to obtaining information regarding important decision-making and sensitive issues of law and order, the local journalists did not seem to be as welcomed. “Journalists usually need to wait for hours outside in the street just to take a statement from a UNMIK official about decision taken during those meetings (policy decision-making), and most of the time you will not get it...when it comes to obtaining important information, things don’t change much,” said Teuta Hykolli.

International administration, especially UNMIK, was described by journalists as very bureaucratic. Even though communication with reporters was institutionalized through well established PR offices, journalists complained that it takes time to obtain information that is beyond the daily routine activities of the administration. Blerim Xhemajli, the editor of the rule of law page in Koha Ditore, was writing a report on a court case that was processed by an international prosecutor in Kosovo. He was asked to submit a FOI request for the information on the case, and waited two weeks to obtain the answer. “I received a mailed envelope with a letter in which the answer said ‘We cannot talk about this case.’ She (the international prosecutor) could have told me this orally, instead of making me submit a written request and wait for two weeks. I believe this is a pretext they use to discourage us from pursuing this issue, so in meantime we give it up and start working on something else,” said Xhemajli.

The reply rate to the FOI request made by the YIHR to the international institutions of the reserved powers (UNMIK) in Kosovo was not satisfactory, as around 60% of the requests were denied (YIHR, 2007). At the time the FOI legislation in Kosovo was drafted, UNMIK infiltrated into the section of the law that deals with exceptions regime a paragraph which stipulated that access to and classification of the documents within the area of responsibility of the Special Representative of the Secretary-General – that included security, defense and military matters, external relations, and monetary policy – shall be regulated by UNMIK (Law on Access to Official Documents, NO. 2003/12). However, UNMIK failed to design legal documents on classification procedures that would regulate the access to the documents held by international administration in Kosovo. In many cases, UNMIK officials denied access to official documents relying on the sections of the law that stipulate the limitation of the documents that compromise the public interest (YIHR, 2007).

### **Conclusion**

In their model of the role of the international factor in democratization, Lewitsky and Way (2006) claim that the most successful democratization processes occur when the leverage and linkage influences from the West are both high. However, this study challenges some of the theoretical underpinnings of this theory. When it comes to governmental transparency and media access to information, this study suggests that the high Western linkage and leverage influences produce some change in democratic legislation, but still fail to generate the behavioral change that accommodate their implementation. Interviews with Kosovo journalists illustrate that the culture of secrecy within the governmental institutions continues while the shortcomings within this legislation obstruct the potential for behavioral change that accommodate transparency and media freedom. These results particularly question the effect of the international factor in the democratic consolidation process, or the phase when democratic rules should be habituated.

Moreover, this study exposes the importance of tackling this theoretical question from a micro-level perspective. Most of the previous studies have sketched the causal mechanisms that make external influences plausible from the macro-level approach. At best, they convincingly argue in favor of the importance of the international factor in the initial phases of

the democratization process, but they fail to specify empirically the full range of possible micro-level processes that tie external influence with democratic consolidation. In order to validate specific causal links between external and internal factors of democratization, micro-level studies have an advantage.

Evidence provided in this case study suggests three explanation for the inefficiency of the international community to generate transparency within Kosovo government: the imitative nature of the FOI legislation which are transplanted from the West without considering the local environment; the lack of the democratic culture within local institutions; and the double standards imposed by the Western organizations when it comes to transparency and access to information.

The influences of the international community in Kosovo led to the production of FOI legislation that has many loopholes when it is implemented in the environment of Kosovo. The section of the law that allows institutions to draw up internal rules regarding the classification of the “sensitive documents” has proved to undermine the full implementation of the law and the access regime. Moreover, the supervision and appeals mechanisms specified by this law are not adequate given that it does not establish an independent external body that would supervise the implementation of the law, but rather leaves this issue in the hands the Ombudsperson Institutions - a powerless institution in Kosovo - and in the hands of the courts which, due to their inefficiency, have years of backlog in processing cases. In turn, the lack of punitive measures for violations of the FOI law has led to disillusionment amongst the people whom this law was designed to serve. In such a state, the FOI law in Kosovo is turning into just another dormant law in the drawer—or worse, a tool which can be used creatively by public officials to avoid full transparency of the institutions.

Splichal (2001) questions the argument that imitative nature of the changes in the media sphere in ECE countries stimulates democratic transformation. He claims that “uncritical imitation of the democratic institutions developed in older democracies may be a risky business” thus, “a critical view is needed to prevent the ECE countries from becoming a kind of experimental zone” (Splichal, 2001, p.22). In the case of the FOI legislation in Kosovo, this study illustrates the need for a locally generated initiative for transparency and free

information access. The inclusion of the local and regional experts when drafting the FOI laws in the first place is indispensable for these laws to be efficient. The experience from the Western experts represents the initial step in this direction; however, expertise from regional countries with similar experiences provides a more realistic context on how these laws might be implemented and interpreted, thus facilitating the avoidance of the predictable problems.

Moreover, political culture is a complex phenomenon that is rooted in different sources (Inglehart, 1997). While the establishment of democratic institutions provides an initial step towards democratic changes in transitional societies, there is a need for additional measures that assist the proper functioning of those institutions. In the case of the FOI legislation, the provision of punitive measures for noncompliance is a must in these circumstances. Besides, pressure for governmental transparency that comes from within might be more efficient given that in these newly established parliamentary democracies, the power of the voters might have a higher weight than the power of the international organizations. This suggests a need for the empowerment of local civil society groups and NGO that would promote and lobby for governmental transparency and FOI implementation.

Moreover, this study identifies another explanation that might account partially for the lack of political will to implement the FOI legislation. The case of Kosovo suggests that the international institutions seem to impose double standards of transparency. While information access was widely propagated with the local governmental structures, international institutions governing Kosovo were highly closed, at least for the local media. It can be argued that after all, UNMIK representatives were accountable mainly to the Western countries, since their taxpayers' money financed UNMIK institutions. However, critics point out that established democracies did not have FOI legislation until recently while the culture of secrecy has delayed and impeded the implementation of FOI in some of these countries (Birkinshaw, 2002; Banisar, 2006). Even though it passed FOI legislation in 1993, the EU has been known for its lack of transparency (Moser, 2001) while in some cases it did not hesitate to challenge legitimate requests for information (Bunyan, 2002). This is one of the reasons why critics claim the EU did not make access to information a prerequisite norm for prospective members until 2002 (Grigorescu, 2002; Settembri, 2005). The spillover effect of the

international institutions' lack of transparency in Kosovo cannot be neglected.

The failure of FOI legislation to establish transparency and free access to information has important consequences, not only for media freedoms in Eastern Europe, but also for the development of professionalism in journalism practices. As the Kosovo journalists interviewed for this study emphasize, governmental obstruction of access to information that should be free for the public leads journalists to overuse their "informal" and "anonymous" sources, which might affect media credibility. Further, the difficulty in accessing information and the risk that this situation creates leads journalists to give up investigative journalism and produce instead what has been labeled in Kosovo as "protocol journalism," reporting of the information provided by government PR. Finally, the lack of transparency has implications for media professionals' ethics, who do not hesitate to 'smuggle' and steel information from governmental bodies. These areas might offer fertile ground for future research.

As most empirical research, this study has its own limitations. First, the results reported here derive entirely from the impressions and experience of media professionals that represent only one category of citizens for which FOI legislation is designed. Studies investigating access to information for other segments of society might end up with different results. The highly politicization nature of the media institutions in Kosovo might lead to their different governmental treatments in terms of information access compared with civil society organizations (and other citizens) that might not be seen as a political threat. Further, this study represents only one side of the story as narrated by the media professionals' perspective in Kosovo. Similar interviews with governmental representatives might shed additional light on the reasons behind the noncompliance with the FOI legislation in this country. Obviously, comparative research on multiple countries undergoing similar political transition would empower the results generated here by a single case study.

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