

Republika e Kosovës

Republika Kosova - Republic of Kosovo

*Qeveria - Vlada - Government*

**MINISTRIA E ADMINISTRIMIT TE PUSHTETIT LOKAL**

**MINISTARSTVO ADMINISTRACIJE LOKALNE SAMOUPRAVE/** **MINISTRY OF LOCAL GOVERNMENT ADMINISTRATION**

**TABLE OF COMMENTS FOR THE DRAFT ADMINISTRATIVE INSTRUCTION FOR THE CITIZENS' INITIATIVE FOR THE REMOVAL OF THE MAYOR OF THE MUNICIPALITY FROM OFFICE**

August, 2023

**Introduction**

This Instruction aims to set the procedure for initiating, organizing and submitting citizens' initiatives for the removal of the mayor from office.

The drafting of the amendment of this draft instruction was made by the Working Group led by the Legal Department and Monitoring of Municipalities in the Ministry of Local Government Administration, where the members were from the Division for Monitoring of Municipalities, the Division for European Integration and the Division for Human Rights.

After the preparation of the initial draft by the responsible Official, the Working Group held meetings where the draft of the Instruction was finalized.

The finalization of the Draft-Instruction should be subject to the procedures for the public and preliminary consultation process to enable all citizens of the Republic of Kosovo and various experts to provide comments. The consultation of this Draft-Instruction will be done in full compliance with Regulation No. 05/2016 on the minimum standards for the public consultation process.

**The progress of the consultation process**

The consultation through the electronic platform will be a sufficient means to receive all contributions from the interested parties, also taking into account their nature and the interests affected by the Draft-Instruction.

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| Consultation method | Date/deadline | Number of participants/contributors |
| 1. Consultations in writing/electronically | 6 calendar days | Contributors |
| 1. Publication on website/e-platform | 6 calendar days | 4 Contributors |

**Summary of the contributions received during the consultation process**

Contributions for the Draft - Instruction for the citizens' initiative for the removal of the mayor from office by the interested parties were provided during the written consultation electronically, i.e. through e-mail and through public meetings.

**Other issues**

All the contributions that will be accepted will be reviewed separately, while the detailed report on the comments received, the contributors and the status of the contributions will be presented in full form in the table format.

**Next steps**

Draft – Instruction for the citizens' initiative for the removal of the mayor from office, after the end of the public consultation, will be proceeded for approval to the minister of MLGA.

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| **Consultation themes** | **Comments** | **Who has commented** | **Status of the comments**  **- accepted; partially accepted, non-accepted** | **Comments (on the partially accepted and not accepted comments is mandatory)** |
| **THEME;**  **DRAFT INSTRUCTION FOR THE CITIZENS' INITIATIVE FOR THE REMOVAL OF THE MAYOR OF THE MUNICIPALITY FROM OFFICE** | Article 4: Initiation of the request for the removal of the mayor of the municipality  The proposed change:  4.6. The Municipality, respectively the Ministry from the moment of acceptance of the request, requests from the Central Elections Commission  the number of registered voters for the respective municipality, based on  which the minimum necessary number of signatures of fifteen percent (15%) is calculated.  Reasoning: Noting that the active participation of registered voters fluctuates between 35-45%, it is senseless to request a signature of 20% which effectively constitutes half of the people who have gone to the polls, therefore the number of 5%-15% is the practice of more democratic countries (e.g. Sweden, Norway) which at the same time takes into account the number of minority nationalities in some cities of Kosovo.  Such a number of 20% for illustration would not be able to give the opportunity to the Bosnian community or RAE in Peja to have a dignified representation with the same potential as the majority population or the case of the Albanian nationality in municipalities with a Serbian majority.  Also, the number 10% is not representative enough, whereas 15% will push the initiators to convince citizens of their model, ideals, improvements, proposals and compromises, that's why we propose 15% instead of 20%. | United Healthcare of Kosovo | Rejected | The proposal is rejected entirely. |
|  | 4.1.1 Exceptionally, if certain persons or groups have been confirmed to have manipulated and misused electoral processes in the past by decision of the CEC, they cannot participate in the initiation of the initiative and will be punished with the prohibition of initiation and active participation for a period of 5 years.  4.1.2 These measures must be implemented to maintain the integrity and fairness of the initiative process. Active participation means organization, initiation, assistance in the process, financing.  4.1.3 If such an initiative contains such individuals and groups in leadership and organization, then it must be thrown down.  Reasoning: These provisions will ensure that there is no manipulation. People who have been convicted and sentenced by the CEC for manipulations, such as various frauds, do not dare to recreate initiatives, signatures and frequent votes that mislead the institutions and the public, causing unnecessary administrative expenses. | United Healthcare of Kosovo | Rejected | The proposal is rejected entirely. |
|  | 4.1.1 Exceptionally, if certain persons or groups have been confirmed to have manipulated and misused electoral processes in the past by decision of the CEC, they cannot participate in the initiation of the initiative and will be punished with the prohibition of initiation and active participation for a period of 5 years.  4.1.2 These measures must be implemented to maintain the integrity and fairness of the initiative process. Active participation means organization, initiation, assistance in the process, financing.  4.1.3 If such an initiative contains such individuals and groups in the leadership and organization, then it should be thrown down.  Reason: These provisions will ensure that there is no manipulation. People who have been convicted and sentenced by the CEC for manipulations, such as various frauds, do not dare to recreate initiatives, signatures and frequent votes that mislead the institutions and the public, causing unnecessary administrative expenses. | United Healthcare of Kosovo | Rejected | The proposal is rejected entirely. |
|  | The proposed Addition:  4.2. Each citizen or group of citizens who undertakes the initiative will have to define concrete and detailed reasons why they want the initiative. These reasons will be included in the relevant documentation.  4.2.1 The reasons can be one or more:  1. Lack of effective performance in municipal budget management.  2. Corruption and lack of transparency in local government.  3. Bad relations with contractors and violations of public procurement procedures.  4. Lack of responsibility in the development of infrastructure and municipal services.  5. Non-implementation of campaign promises and lack of responsibility towards citizens.  6. Threat to local security and public order. | United Healthcare of Kosovo | Rejected | The proposal is rejected entirely. |
|  | 5.1 The citizen initiative must collect the required number of signatures no later than forty-five (45) days after being equipped with the necessary documentation.  Reasoning: The 30-day period is insufficient for advocacy, holding meetings and debates regarding the specific issue, we are dealing with tens of thousands of signatures, therefore the 45-day calendar period would include them all in order to have a dignified involvement of all communities, the 30-day period guarantees only one thing, failure of the initiative and insufficient citizen participation. | United Healthcareof Kosovo | Rejected | The proposal is rejected entirely. |
|  | **Proposed Addition:**  **5.2.1. To promote inclusion and change in ethnic membership, the civic initiative is encouraged to engage with ethnic and minority communities to ensure their participation in the signature collection process.**  **Proposed Addition:**  **5.3.1. Citizens' initiatives can partner with local and national organizations to provide resources, training, and assistance in collecting and verifying signatures.**  **Proposed Addition:**  **5.4.1. Online signatures: Exceptionally, the Citizens' Initiative could offer a way for citizens to sign electronically through an official government platform if it exists and is functional. To ensure the security and authenticity of online signatures, appropriate security and verification measures would be implemented.**  **Reasoning: The digitization and introduction of electronic signatures, as well as the use of electronic mail as a currently acceptable means of contact should be part of the instruction, with this article it is provided that the instruction be part of the Government and Open Data initiatives whenever the Government creates a secure platform.** |  | Rejected | The proposal is rejected entirely. |
|  | **Proposed Addition:**  **5.4.2. Signature by mail outside the Republic of Kosovo: Citizens who cannot collect signatures or sign in person within the territory of the Republic of Kosovo will be able to participate in the initiative process through signature and mailing. In order to ensure the integrity of this process, the signature on the list and the mailing must include as a copy a valid document of the Republic of Kosovo for each signatory.**  **Reasoning: It is the constitutional right of every citizen of Kosovo to participate in democratic initiatives, the inclusion of the diaspora in democratic processes is an inseparable condition of any initiative.** | **United Healthcare of Kosovo** | Rejected | The proposal is rejected entirely. |
|  | **Proposed Addition:**  **5.4.3. Power of attorney (notary) signatures: Citizens who cannot sign in person may authorize a third person, who is authorized by a notary's power of attorney, to sign on their behalf.** |  | Rejected | The proposal is rejected entirely. |
|  | **Proposed Addition:**  **5.5.1. In order to ensure an honest and fair campaign for everyone, during the period of the initiative, campaigning and public information is allowed, the municipality should allow the use of public spaces and halls that are usually used for voting to be used for this campaign and collecting signatures.** | **United Healthcare of Kosovo** | Rejected | The proposal is rejected entirely. |
|  | Proposed change:  5.10 If it is concluded that the minimum number of 15% of registered voters has not been reached, then the citizen initiative is given the opportunity to complete the request with additional signatures within ten (10) days. | **United Healthcare of Kosovo** | Rejected | The proposal is rejected entirely. |
|  | 5.11 If it is concluded that the request is supported by at least fifteen percent (15%) of the registered voters, a vote is organized for the removal of the mayor from office. | **United Healthcare of Kosovo** | Rejected | The proposal is rejected entirely. |
|  | 1. Lack of legal basis:    First of all, the article within the draft instruction, the reference for legal basis, namely article 72, of the Law on Local Self-Government, is insufficient for the issuance of such an act, due to the fact that this article does not specifically define the issuance of a bylaw, therefore I estimate that there is a lack of legal basis; | **Municipality of Gllogoc and Prizren** | Rejected | The proposal is rejected entirely. |
|  | 2. Legal uncertainty for mayors    Through this draft, legal uncertainty is created for the mayors of municipalities, since the draft as such gives the right to each citizen, or group of citizens, to take the initiative to remove the mayor in the future. So, in addition to not specifying how large this "group of citizens" can and should be, leaving the opportunity for each citizen, as well as not specifying the time, leaves open the possibility that this mechanism will be used endlessly, consequently misused; | **Municipality of Gllogoc and Prizren** | Rejected | The proposal is rejected entirely. |
|  | 3. Interference from the central government to the local one    Also, within the provisions of the draft, the possibility of involvement of the Ministry responsible for the administration of local government is foreseen (Article 4, Paragraph 5 and 6 as well as Article 6 of the draft), this involvement is contrary to the principles and the way how the local government works, due to the fact that the local government works as an independent institution from the central one, as defined by the Constitution of the Republic of Kosovo, chapter X, respectively articles 123 and 124; | **Municipality of Gllogoc and Prizren** | Rejected | The proposal is rejected entirely. |
|  | Violation of the law    There is a violation of the legal provisions, the case is in Article 5, paragraph 10 which states: If it is defined that the minimum number of 20% of registered voters has not been reached, then the citizen initiative is given the opportunity to complete the request with additional signatures within ten (10) days. Providing an additional deadline is violation of the provisions of the law; | **Municipality of Gllogoc and Prizren** | Rejected | The proposal is rejected entirely. |
|  | Technical problems, unnecessary articles and re-description of legal provisions.    In the technical aspect, there is a description of the provisions of the law, namely the relevant Article (72) of the Law on Local Self-Government, there are also unnecessary provisions, as is the case with Article 5, paragraph 5, because it is implicit. | **Municipality of Gllogoc and Prizren** | Rejected | The proposal is rejected entirely. |
|  | General points  The responsibility for referendums belongs to the Central Election Commission (CEC) according to Article 139 of the Constitution. While this AI is specifically concerned with the initiation, organization and presentation of requests for the removal of the mayor according to Articles 72.1 and 72.2 of the Law on Local Self-Government (LLG), attention can also be paid to the AI that reiterates the responsibility of CEC for the electoral process after the removal of the mayor.  The provisions of Government Regulation 14/2023 formulate and limit the competences of the Ministry of Local Government Administration (MLGA), which can be summarized in providing legal advice and instructions to municipalities and the development of monitoring and supervision of municipalities. In this regard, it may be desirable to consider some further clarifications in the drafting of this Administrative Instruction (AI).  Definitions and terminology  • It may be considered useful to include a formal definition of “removal” in the AI.  • Given the importance of the responsible contact person for a removal initiative, it may also be considered useful to add a formal definition of the role of the responsible contact person to this AI. | **European Union** | Rejected | The proposal is rejected entirely. |
|  | The initial phase of the removal process consists of notifying citizens of the intention to submit a request for removal, providing official documentation to do so, and collecting their signatures in support of this initiative. It is covered by Article 72.1 of the Law on Local Self-Government (LLG), which however does not address the procedures to be followed. These procedures are presented in Article 4 of the draft AI.   Since the constitutional responsibility for referendums belongs to the CEC, it can be considered for simplicity that the body that receives the notification from the responsible contact person of the citizen initiative and ensures the formal documentation and the required number of signatures is the CEC, instead of the chairman of the municipal assembly, as provided in Article 4.3. | **European Union** | Rejected | The proposal is rejected entirely. |
|  |  If it is decided that it is preferable to retain the chairperson of the municipal assembly at this stage of the process, it is desirable that there be a mechanism to resolve the situation where there is no chairperson of the municipal assembly on duty to receive the notification. This could be achieved by considering adding text to Article 4 that reflects the text of Article 5.5, which already addresses the identical issue at the next stage of the process. | **European Union** | Rejected | The proposal is rejected entirely. |
|  |  The Draft AI recognizes in Article 4.5 the desire to have a mechanism to resolve the situation when a notification has been submitted to the chairman of the municipal assembly and no action has been taken within the specified time period. However, in accordance with the principles set out in Article 8 of the European Charter for Local Self-Government and taking into account the scope of its competences according to Government Regulation 14/2023, it would be undesirable for MLGA to be required to be a direct stakeholder in the request initiation procedure as provided for in Article 4.5 of the draft AI. However, it can be considered whether MLGA can collect and publish information about the receipt of notices by the chairpersons of municipal assemblies within the scope of its supervisory competences. The nature and scope of executive oversight of competences are defined in legislation and have been the subject of several court decisions, making it important to accurately detail each such provision. | **European Union** | Rejected | The proposal is rejected entirely. |
|  |  A simple alternative procedure that could be considered would be to enable the responsible contact person, if he has not received a response containing formal documentation and information within the specified time, to resend the notification directly to the CEC, while notifying the chairman of the municipal assembly and the MLGA that he/she is doing this. The official information of the acting mayor can also be taken into account. | **European Union** | Rejected | The proposal is rejected entirely. |
|  |  The time period in which the head of the municipal authority is required to respond to a notice, is proposed in Article 4.5 to be three working days. This may be potentially insufficient and may not take into account the possibility of short-term absence or sickness. It is suggested that this period be extended to five working days. | **European Union** | Rejected | The proposal is rejected entirely. |
|  | Article 72.2 of the LLG requires that the request for removal be supported by the signatures of 20% of the registered voters within the municipality. However, the total number of registered voters is constantly changing, for example as a result of deaths. To prevent the possibility of confusion and challenge when the final number of valid signatures submitted falls slightly below the required 20%, a provision specifying a date to be used to define the total electorate number that will be used as a basis for the calculation required by articles 4.6, 5.10 and 5.11. | **European Union** | Rejected | The proposal is rejected entirely. |
|  | The official removal request signature sheet is set out in Article 4.7 and will be added to the AI as Annex 1. For clarity and transparency, it may be considered valid for the signature sheet to contain an official title, for example 'Request for the removal of the mayor of the municipality (space for entering the name of the mayor)', except for the spaces for entering the specified data in Article 4.8. | **European Union** | Rejected | The proposal is rejected entirely. |
|  | Submission of the request for removal and verification of signatures.  The second stage of the removal process consists in submitting the signatures of the removal request from the responsible contact person to the chairman of the municipal assembly, who forwards it to that of the CEC. This is specified in Article 72.2 of the Law on Local Self-Government (LLG).  The procedures are defined in Article 5 of the draft AI.   As in the initial stage of the process, it may be desirable to consider a mechanism for resolving the situation when the signatures for the removal request have been submitted to the chairperson of the municipal assembly and no action has been taken within the specified time period. However, it may be considered whether the MLGA within the scope of its supervisory compentences may collect and publish information on the acceptance of removal requests with signatures by the chairperson of the municipal assembly, in parallel with any such duty regarding notices. Even in this case, the nature and scope of the executive supervision competences are defined in the legislation and have been the subject of several court decisions, which made the exact detail of each such provision important. | **European Union** | Rejected | The proposal is rejected entirely. |
|  | In contrast to the initial stage of the process, the duty of the chairman of the municipal assembly to transmit the requests for removal with signatures is a specific requirement of the legislation according to Article 72.2 of the LLG, where legal provisions and procedures exist which enable action to be taken against the chairman of the municipal assembly for non-performance of the statutory duty, thus it may be considered appropriate to specify their use in these circumstances.  However, it is known that such enforcement action may not be effective within any time frame suitable for holding the exit referendum. It can also be considered the above suggested procedure in relation to the initial phase, which enables the responsible contact person, if within the specified period he has not received a response containing the documentation and formal information, to re-submit the signatures for the removal request directly to the CEC, notifying the chairman of the municipal assembly, the acting chairman and the MLGA that he/she is doing this. | **European Union** | Rejected | The proposal is rejected entirely. |
|  | When the CEC has verified the signatures on a request for removal and has assessed that the request is valid, the removal referendum period begins and it is the responsibility of the CEC to organize it. To be consistent with this, it can be considered that the CEC assessment response required by Article 5.8 is addressed and received directly by the responsible contact person of the citizens' initiative. This answer would be sent for information to the chairman of the municipal assembly, the acting chairman and the MLGA. | **European Union** | Rejected | The proposal is rejected entirely. |
|  |  |  | Rejected | The proposal is rejected entirely. |