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Kosovar Gender Studies Center



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# Protection from Discrimination in Kosovo

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Kosovar Gender Studies Center (KGSC) ([www.kgscenter.net](http://www.kgscenter.net))

KGSC has been contributing to gender mainstreaming since 2002 and continuously makes efforts to achieve gender equality in Kosovo. It has been pioneering changes to the discriminatory system, social norms, and double standards, and is very active in monitoring public institutions. KGSC mission is to integrate gender-sensitive analysis, programs, and policies in all sectors of Kosovar society by increasing gender awareness and focus on gender issues, developing gender studies and ensuring the inclusion of gender-sensitive policies through research, policy development, advocacy, and lobbying.

Center for Social Group Development (CSGD) ([www.csgd-ks.org](http://www.csgd-ks.org))

CSGD has been working with the LGBTI community since October 2003. The aim of CSGD is to support, protect, and advocate for the rights of LGBTI community in Kosovo. Since then, CSGD has made maximum efforts to work in the area of empowering the LGBTI community in Kosovo, raise awareness to the general population and advocate for the LGBTI rights, and work on HIV prevention among MSM in Kosovo.

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## Abbreviations

AGE	Agency for Gender Equality
CEL	Centre for Equality and Liberty
CSGD	Centre for Social Group Development
HRUs	Human Rights Units
KWN	Kosovo Women's Network
LGBTI	Lesbian, Gay Bisexual, Transgender, Inter-sex
LPD	Law on Protection from Discrimination
MEST	Ministry of Education, Science and Technology
MESPI	Ministry of Environment, Spatial Planning and Infrastructure
MDSI	Ministry of Diaspora and Strategic Investment
MLGA	Ministry of Local Government Administration
MoF	Ministry of Finance
MoH	Ministry of Health
OGG	Office for Good Governance
UNDP	United Nations Development Programme
YIHR-KS	Youth Initiative for Human Rights Kosovo

## 1. Introduction

The matter of equal treatment on the basis of a range of protected characteristics has continued to be at the forefront of public discourse in Kosovo. This has included various initiatives including public debates through different forums in relation to women rights, rights of minorities, rights of those with disabilities, as well as the treatment of the LGBTI community.

In respect of the LGBTI community there has been some positive developments. Amendments to the Criminal Code enables prosecutors to seek and judges to impose harsher sentences where it is proven that a perpetrator was motivated to commit an offence on the basis of a victim's sexual orientation or because of a perception relating to sexual orientation.

Similarly, the Law on Protection from Discriminations (LPD) has been enacted in 2015, which specifically addresses discrimination on the basis of sexual orientation, as well as gender and gender identity and makes a number of other changes including enabling the Ombudsperson to accept complaints for investigation. A further development consists of delegated legislation (Regulation on Institutional Mechanisms for Protection from Discrimination in Government and Municipalities) to strengthen the framework at both national and municipal level to ensure protection from discrimination.

The Government has also adopted a LGBTI action plan, which is an important action in raising awareness, as well as addressing structural issues affecting the LGBTI community either because of legislative provisions, their application or in cases despite the legal framework resulting in discriminatory treatment.

The media has also been engaging with this topic and more discussions are taking place relating to sexual orientation and gender identity. Whilst not all are positive or well informed, on the whole the engagement displayed has enabled this issue to continue to be discussed more widely. The media's approach, as well as that of institutions and in working together with civil society has enabled the second LGBTI Pride Parade to take place.

Despite these positive developments, there remains room for improvement. LGBTI persons continue to face intolerance, discrimination and hate speech as do other minorities and marginalised groups. Legal gender recognition is not adequately provided for. This affects all spheres of their life from being able to express their gender identity or orientation and exercising their right to a private and family life, to education, employment, access to healthcare etc. In order to seek improvements to the LGBTI community's everyday life, as well as other minorities and marginalised groups now is the time to take stock of all the various changes and amendments that have been introduced in the last few years. This will not only allow an overview to be provided but it can be used as a tool to seek accountability from respective institutions in terms of the status quo and request improvements through specific and implementable recommendations.

## 2. Methodology and target groups

Brief desk research was carried out to set out which pieces of legislation are to be used, besides the Law on Protection from Discrimination, to measure impact together with a consideration of existing statistics. This was followed by field research through questionnaires with key institutions approached to determine what action they have taken since the relevant obligations have been in force. The role of NGOs was identified as important to provide first hand data (whilst respecting confidentiality) enabling to evidence some of the shortcomings, as well and provide case studies in respect of discriminatory treatment experienced. This approach was adopted to enable a good overview of where we are since the legislative

framework was upgraded and relevant action plans were put in place in order to identify key recommendations.

This research has targeted the following stakeholders that are responsible for implementation of the Law on Protection from Discrimination: the Ombudsperson Institution, the OGG within the Office of the Prime Minister, the Unit or Officer for Protection against Discrimination in the Ministries and Municipalities, relevant courts, the Prosecution Service, the Police, human rights professionals in Ministries and Municipalities.

### 3. Legal framework

Kosovo's legal framework provides strong foundations for the protection of human rights. Equality<sup>1</sup> and non-discrimination<sup>2</sup> are the basic principles of the Constitution. These rights are further detailed in the Law on Protection from Discrimination<sup>3</sup> and the Law on Gender Equality<sup>4</sup>.

The LPD provides protection on a number of grounds such as: nationality, or relation to any community, social origin, race, ethnicity, colour, birth, origin, sex, gender, gender identity, sexual orientation, language, citizenship, religion and religious belief, political affiliation, political or other opinion, social or personal status, age, family or marital status, pregnancy, maternity, wealth, health status, disability and genetic inheritance<sup>5</sup>.

It applies to all acts or omissions, of all state institutions, natural and legal persons, public and private sector, who violate, violated or may violate the rights of any person or natural and legal entities in all areas of life<sup>6</sup>. Types of unequal treatment are specified as direct and indirect discrimination, discrimination based on perception, multiple discrimination, harassment, incitement of discrimination, victimisation, segregation, discrimination based on association, and failure to make a reasonable adaptation/accommodation for persons with disabilities<sup>7</sup>.

The Law on Gender Equality protects and promotes equality between genders as a basic value of a democratic society<sup>8</sup>. It applies to men and women and guarantees equal opportunity and treatment in public and private spheres of social life<sup>9</sup>.

The Kosovo Criminal Code<sup>10</sup> provides protection in regard to hate speech and hate crimes. Article 141 on incitement of discord and intolerance has included sexual orientation and gender identity as explicit grounds of protection. The level of punishment for such crimes is up to 5 years of imprisonment.

Similar aggravating circumstances are included in the Criminal Code where a victim is targeted because of sexual orientation or gender identity, among other protected grounds, which are

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<sup>1</sup> Article 3 (Equality before the Law) and Article 7 (Values references equality), of the Constitution of Kosovo

<sup>2</sup> Article 24 of the Constitution of Kosovo

<sup>3</sup> Law No.05/L-021

<sup>4</sup> Law No. 05/L-20

<sup>5</sup> Article 1, LPD

<sup>6</sup> Article 2(1), Ibid

<sup>7</sup> Article 4(1), Ibid

<sup>8</sup> Article 1(1), Law on Gender Equality

<sup>9</sup> Article 2(1), Ibid

<sup>10</sup> Law No. 06/L-074

outlined in a number of articles corresponding to various crimes such as aggravated murder<sup>11</sup>, assault<sup>12</sup>, light bodily injury<sup>13</sup>, grievous bodily injury<sup>14</sup>, destruction or damage of property<sup>15</sup>.

The violation of equal status of citizens and residents has also been criminalised by the current Criminal Code<sup>16</sup>. Denial or restriction of the rights provided by the Constitution or ratified international agreements is punished up to 3 years of imprisonment.

## 4. Institutional framework

The Ombudsperson Institution is mandated to serve as an equality body for promoting, monitoring and supporting equal treatment without discrimination on protected grounds specified in the Law on Gender Equality and the Law on Protection from Discrimination<sup>17</sup>. The basic role and competencies of the institution are defined by the Constitution<sup>18</sup>, while these are further specified by the Law on Ombudsperson<sup>19</sup>.

As an equality body the Ombudsperson Institution has a mandate over public and private sectors. In this capacity the competences of the Ombudsperson Institution include receiving discrimination complaints on which opinions and recommendation can be provided, supporting victims on the preparation of court submissions, acting as a friend of the court (*amicus curia*), initiating *ex-officio* investigation, requesting investigations from the prosecution and other independent institutions, monitoring of the law, cooperation with the civil society organisations, gathering data on discrimination practices, informing the public and reporting to the Assembly of Kosovo<sup>20</sup>.

Submissions of discrimination complaints before the Ombudsperson Institution do not require or prevent victims to file a lawsuit before the courts<sup>21</sup>. Organisations or other legal entities can assist or represent victims with their consent in procedures before the Ombudsperson Institution<sup>22</sup>. The procedures for discrimination complaints are similar to the those of other abuses.

In addition, the Regulation on Institutional Mechanisms on Protection from Discrimination in Government and Municipalities (GRK No. 03/2017) (Regulation) consolidated additional mechanisms for protection against discrimination including:

- the Office for Good Governance (OGG);
- the relevant Unit or Officer for Protection against Discrimination in the Ministry;
- the relevant Unit or Officer for Protection against Discrimination in the Municipalities<sup>23</sup>.

The Regulation sets out how ministries/municipalities should allocate relevant units or officers, their duties, as well as setting out the criteria for such officers.<sup>24</sup>

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<sup>11</sup> Article 173 (1.10) Criminal Code of Kosovo, Law No. 06/L-074

<sup>12</sup> Article 184 (3), *Ibid*

<sup>13</sup> Article 185 (3), *Ibid*

<sup>14</sup> Article 186 (4), *Ibid*

<sup>15</sup> Article 321 (4), *Ibid*

<sup>16</sup> Article 190, *Ibid*

<sup>17</sup> Article 1(2), Law on Ombudsperson

<sup>18</sup> Article 133, Constitution of the Republic of Kosovo

<sup>19</sup> Law No. 05/L-019

<sup>20</sup> Article 9, Law on Protection from Discrimination

<sup>21</sup> Article 12, *Ibid*

<sup>22</sup> *Ibid*

<sup>23</sup> Article 4 of the Regulation on Institutional Mechanisms on Protection from Discrimination in Government and Municipalities (GRK No. 03/2017) (Regulation)

<sup>24</sup> Article 5 and 6, *Ibid*

The OGG's duties include<sup>25</sup>:

- provide advice to the Government on issues related to protection against discrimination and promotion of equality;
- monitor implementation of the Ombudsperson's recommendations;
- draft policies, strategies and action plans on issues of protection from discrimination;
- give opinions on draft legislation proposed by the Government in accordance with applicable human rights standards;
- collect statistical evidence and other data, create databases of main vulnerable groups, conduct studies, research and trainings on issues of protection against discrimination;
- co-operate with other respective governmental bodies of other states and international organisations in matters of protection against discrimination;
- present every year, a report to the Government on the implementation of the Law and may also draft special reports on the implementation of the Law;
- co-operate and support other institutions in drafting and implementing action plans for equality and non-discrimination and integration of equality and initiatives to promote equality and combat discrimination.

In addition, the OGG is to co-ordinate with, support and provide networking opportunities to units/officers for protection against discrimination in terms of enhancing their knowledge through trainings or otherwise.

The OGG has recently been focused on the following:

- developing a framework and manual for monitoring recommendations made by the Ombudsperson Institution at central and local level of government;
- together with the Council of Europe developing a monitoring framework (indicators) regarding implementation of the LPD;
- carrying out research covering the whole country on "Diversity and Equality in Kosovo" where all marginalized groups have been covered, as well as discrimination during the pandemic;
- adopting a policy against sexual harassment in public institutions in Kosovo;
- assisting with the establishment of the Technical Group for Protection from Discrimination of the Roma, Ashkali and Egyptian Communities;
- organising together with the UNDP and Justice Academy trainings on mechanisms for protection from discrimination.

Officers for Protection against Discrimination in Ministries have the following duties and responsibilities<sup>26</sup>:

- provide support in developing the Ministry's policies and strategies for promotion of human rights and protection against discrimination;
- support and promote best practices to prevent and combat discrimination and promote equality;
- apprise and instruct on the right of protection against discrimination and legal remedies for such protection available for all employees and persons who claim to be discriminated against;
- maintain a regular dialogue on discrimination with non-governmental organisations and vulnerable groups;
- propose affirmative measures aimed at preventing unfavourable compensation for groups or persons in relation to one or more protected grounds;

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<sup>25</sup> Article 8, Ibid

<sup>26</sup> Article 9 of the Regulation



- co-operate with and advise the respective human resources unit on equal opportunity and equal treatment requirements to be observed and implemented in the course of recruitment processes in accordance with the legislation in force;
- monitor implementation of the Ombudsperson's recommendations;
- co-operate with and support the OGG in drafting relevant action plans, submit an annual report to the Office of the Prime Minister on the implementation of legislation at Ministry level and draft special reports on the implementation;
- provide advise and recommendations to the Ministry on issues of protection against discrimination and promotion of equality;
- give opinions on draft legislation prepared by the Ministry in accordance with the applicable human rights standards in co-operation with the Legal Department;
- collect statistical data based on protected characteristics, as well as other data and report to OGG;
- co-operate and support other units of the Ministry in developing and implementing action plans for protection against discrimination as well as initiatives to promote protection and fight against discrimination;
- in close coordination with other organisational structures in the Ministry, promote human rights, integration of equality and protection from discrimination in all programs and practices/functions of the relevant ministry.

Officers for Protection against Discrimination in the Municipality have the following duties and responsibilities<sup>27</sup>:

- provide support in developing and implementing local policies and plans for promotion of human rights and protection against discrimination in the relevant municipality;
- support and promote best practices and assist in building the municipality's capacities to prevent and combat discrimination and promote equality in performing its functions;
- promote in close cooperation with other organisational structures in the municipality, protection against discrimination in all municipality policies and functions;
- co-operate with the Ombudsperson in providing for implementation of every recommendation to the municipality that is derived from the cases of discrimination adjudicated by the institution;
- appraise and instruct, verbally or in writing, on the right to protection against discrimination and legal remedies for such protection available for all employees or persons who claim to be discrimination;
- submit an annual report to OGG on the implementation of the LPD within the municipality and cooperate and support the OGG in drafting relevant action plans related to the legislation on protection against discrimination;
- collect statistical data on cases, as well as other data and report to OGG;
- carry out awareness raising and education activities relating to the LPD and conduct research and surveys on discrimination issues;
- participate in municipal disciplinary and appellate committees as an observer;
- publish reports and make recommendations on any issues related to discrimination.

All officers at central and local level are required co-operate and co-ordinate their activities, as well as with the OGG<sup>28</sup>. In addition, officers are under an obligation to attend all activities aimed at developing capacities, implement what they learn in their daily work, as well as have the ability to propose and attend professional development programs<sup>29</sup>. Whereas ministries

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<sup>27</sup>Article 10 of the Regulation

<sup>28</sup> Article 12, Ibid

<sup>29</sup> Article 14, Ibid

and/or municipalities are required to allocate sufficient funds to institutional mechanisms for protection against discrimination in order to implement specific duties and responsibilities<sup>30</sup>.

## 5. Interviews and findings<sup>31</sup>

The methodology for this research included a questionnaire to carry out structured interviews with relevant institution. The purpose of this was to ensure consistency between stakeholders engaged with a view to obtaining the most pertinent information relevant to a particular institution. However, due to the Covid-19 pandemic, face to face interviews were not possible. Efforts were made to carry out interviews through online meetings. However, this also did not prove successful and instead the questionnaire was sent via email to relevant stakeholders for them to respond and return. Not all stakeholders approached engaged with this process. For those that did engage, the information provided unfortunately tends to be of limited value. This is because many of the respondents did not take the prompts included within the questionnaire to provide the qualitative information that was being sought. Instead, the responses provided tended to be quite generic and without offering the level of insight that was being sought. Nevertheless, the responses did provide some useful information and practices from across Kosovo, which can be useful as sharing of experiences, best practices and enable certain conclusions to be drawn, as well as recommendations to be made.

### Central government

#### ***Ministry of Local Government Administration (MLGA)***

According to the MLGA, it considers that as a ministry it is well informed about the LPD. It considers its mission to be the advancement of local governance in co-operation with the relevant institutions in order to provide efficient services without discrimination at local level. At local level, there are a total of 34 Human Rights Units (HRUs) which operate as mechanisms and are responsible for the promotion and protection of human rights, implementing policies, strategies and action plans of public institutions in compliance with international human rights standards. Further, HRUs co-operate with the Ombudsperson Institution through regular meetings and in addressing complaints. The MLGA noted that it has been involved in the legislative reform resulting in the LPD and the Law on Gender Equality, as well as in raising capacities.

For the purpose of the LPD, the MLGA's focus has been on promotion of human rights, consulting with HRUs at local level and in the context of reporting. Article 11 of the LPD requires all ministries and municipalities to assign the appropriate unit or official co-ordinate and report on the implementation of the law. MLGA itself appointed an officer and wrote to all Mayors of each municipality regarding each municipality's obligation to assign an officer to deal with protection from discrimination. According to its records a total of 26 municipalities assigned such an officer, with 10 failing to do so.<sup>32</sup> In addition, MLGA has organised a number of trainings to inform officers at local level of the changes to legislation either by itself or in co-operation with the OGG or non-governmental organisations (local and international). The MLGA has allocated funding in order to carry out some of the trainings that have taken place. Organising such trainings has meant that there has been promotion of the legislation and increasing of capacities. In MLGA's view this means that complaints will be dealt with whether

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<sup>30</sup> Article 7, Ibid

<sup>31</sup> The interviews or responses were provided during 2020, mostly during the third and fourth quarter of 2020

<sup>32</sup> According to MLGA's records from 2019, the following Municipalities did not appoint an officer as required: Ranillug, Zubin Potok, Mamushë, Novobërdë, Podujevë, Deçan, Rahovec, Glllogoc, Mitrovicë North, Graçanicë

at central or local level. However, there is still a need to increase awareness and further work is needed to ensure implementation of the LPD.

It is noteworthy that in respect to human rights protection, the MLGA has initiated 7 cases in the relevant court against municipalities for non-compliance with human rights.<sup>33</sup> On policy, the MLGA has adopted the Local Self-Government Strategy 2016 – 2026 and the Action Plan for 2020, it identified 5 objectives focusing on human rights including promotion of human rights and increasing capacities. MLGA also participates in the Technical Group for Protection from Discrimination of the Roma, Egyptian and Ashkali Communities. Finally, the MLGA in collaboration with DEMOS published its Municipality Performance Report for 2019 through which 17 municipalities fulfilled the minimum criteria. The criteria used included indicators for human rights. Nevertheless, the MLGA recognises that more can be done to functionalise the structures such as appointing relevant officers where this has not been done, creating a database to record all cases, and for all stakeholders to be active in promoting and protecting human rights including institutions fulfilling their duties and citizens bringing complaints forward.

### ***Ministry of Health (MoH)***

The Ministry of Health responded to the request for access to public documents,<sup>34</sup> as well as the request for an interview and the information provided through both responses is set out below.

MoH's representative responded that they are well informed about the LPD and have referred to it in day-to-day duties. This has included referring to this piece of legislation during roundtables and presenting the changes to the legislation. In addition, the legislation and the obligations it imposes have been promoted and presented among health professionals during roundtables, meetings and discussions. Within the MoH, recommendations have been addressed to relevant officers where officers had concerns that rights of patients to receive health services may be at risk of infringement. Whilst all of these are important examples, unfortunately specific details were not provided.

MoH's representative noted that they were well trained on the subject matter and would be in a position to respond and deal with complaints relating to discrimination.

Through its response to the access for information request, MoH noted that the Ministry did not receive any complaints alleging discrimination. Although, the Ministry does have a complaints hotline for healthcare services through which a number of complaints have been registered and processed regarding various issues relating to provision of healthcare services.

During 2019, the MoH organised trainings focusing on the LPD for 7 regional Main Centres of Family Medicine where 176 healthcare professionals attended from various levels including management, clinical staff and 76 questionnaires were collected.

On whether the Ministry has adopted any policies following the adoption of the LPD, MoH responded that MoH's core legislation (the Law on Health and Health Insurance) contains the principles of equality, non-discrimination, transparency and accountability. In addition, the Ministry has a complaints hotline for citizens, as well as strategies and action plans, taking account of human rights. MoH has not allocated any specific budget in order to raise

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<sup>33</sup> It is unclear whether this relates to discrimination specifically as no further details are provided.

<sup>34</sup> For most targeted stakeholders access to public documents requests were made, in addition to interviews or responses being obtained to the questionnaire. However, in quite a few cases responses were not provided to the access to public documents request.

awareness of the LPD. However, the MoH noted that during its training sessions it held at regional level, it saw that there was much interest from those taking part. MoH also noted that it has co-operated with non-governmental organisations in particular those focusing on the rights of people with disabilities and those working with the Roma, Ashkali and Egyptian communities.<sup>35</sup>

### ***Ministry of Education, Science and Technology (MEST)***

MEST responded to the request for access to public documents, as well as the request for an interview and the information provided through both responses is set out below.

MEST's representative responded that they are well informed regarding the LPD. MEST has referred to the above-mentioned piece of legislation in respect of providing assistance to citizens to direct them where to raise a complaint, as part of establishing the institutional framework, in promoting the legislation including through information sessions held at municipality level for education directorates and schools. Whilst the Ministry has not specifically allocated a budget for implementing the legislation, it has spent funds which have contributed towards its implementation including through holding information sessions on the LPD, supporting projects tackling school abandonment and giving grants to pupils and students without discriminating on the basis of gender, ethnicity or any other protected characteristic. Otherwise, according to MEST implementation of the LPD is based on the actions of all those within the institution, and results will be apparent reflecting equal treatment in a specific field such as education and without discrimination.

MEST's representative has provided assistance in dealing with a number of cases that the Inspectorate of Education has dealt with and is dealing with. MEST has also co-operated with the OGG, the Ombudsperson Institution and civil society partners. In particular, MEST has co-operated with the Ministry of Internal Affairs in respect of developing programs for safety in the community, integrating sensitive topics for our communities and human rights. In addition, the Ministry has co-operated with the OGG and the organisations CSGD and the CEL to address discrimination based on gender and sexual orientation in the pre-university education curriculum. Whereas in respect of recommendations by the Ombudsperson Institution, the MEST representative has fulfilled an advisory role in order to implement the recommendations of the Ombudsperson relating to human rights violations including discrimination.

With regard to challenges in implementing the LPD, MEST identified instances related to employment and advancement, which can be difficult to challenge. However, such challenges can only be overcome if cases are reported. Through reporting and not staying silent, this should also impact on decision makers and their conduct.

In its response to the access for information request, MEST noted that it has dealt with a number of cases but could not elaborate on specific details due to privacy obligations. Following adoption of the LPD, there have been a number of changes including changes to MEST's organogram taking account of the structural changes. MEST has also taken account of the LPD in its draft Law for Education, in the process of drafting textbooks for the curriculum, and in recruitment. In terms of monitoring compliance with LPD, MEST has been reporting to the OGG. However, it is expecting a standardised monitoring framework which should produce qualitative reporting based on measurable indicators. In respect of budgeting, MEST has planned activities for the forthcoming year, which will be covered through the Ministry's budget and support from partners.

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<sup>35</sup> However, it did not state which non-governmental organisations these were or what MH co-operated on.

### ***Ministry of Finance (MoF)***

MoF's representative noted that they are well informed of the LPD and the Office for Human Rights (OHR) within MoF works based on this law. In carrying out daily duties, OHR's duties are based on this law. At the same time the law serves as guide for all employees at all levels to identify forms of discrimination and the protections that the law provides. OHR has attended training provided by the OGG and the Kosovan Institute for Public Administration. OHR falls under the Division for Human Resource Management and so does not have its own budget. However, previously when it was constituted as a unit, it did have its own budget.

OHR has taken part in a range of trainings and it has held trainings for staff within MoF regarding the package of human rights laws and dealing with complaints. OHR co-operates with a range of institutions including the Ombudsperson Institution, the OGG, the AGE, the Office of the National Coordinator for Protection from Domestic Violence, the Office of the National Coordinator Against Trafficking in Human Beings, among others including civil society organisations. According to OHR the following key challenges exist: functionalising the mechanisms for protection from discrimination, raising capacities and sharing of experiences. However, such challenges can be overcome through inter-institutional co-ordination and co-operation for monitoring and implementation of the LPD.

### ***Ministry of Diaspora and Strategic Investment (MDSI)<sup>36</sup>***

MDSI notes that its representatives have some knowledge of the Law on Protection from Discrimination, although they are not required to refer to it in day-to-day duties. At the same time, the representative from MDSI has not attended any training focusing on this legislation, nor did it dedicate any budget to implement this legislation. Nevertheless, MDSI representatives felt able to implement the legislation by ensuring not to discriminate and deal with any complaints. Within MDSI there were a number of high-level meetings, as well as meetings with a range of civil servants in order to raise awareness of the legislation. Within this sphere, MDSI has co-operated with the OGG. At the same time for MDSI there were challenges including lack of training and the need for enhanced co-operation with the Ombudsperson Institution, other public institutions and civil society organisations. Such challenges can be addressed by raising capacities, organising trainings and intensifying co-operation.

### ***Ministry of Environment, Spatial Planning and Infrastructure (MESPI)***

MESPI notes that it is well informed regarding the LPD. On the whole, its officials are able to refer to the law as is necessary. Following internal research on gender, which recommended greater involvement of the Office of Human Rights, this was implemented with a representative being involved in a number of strategies and committees. The Officer for Protection from Discrimination (OPD) has been involved in a number of trainings and is to lead on a concept document for climatic change, where a gender perspective can be incorporated. Similarly, the OPD has participated in public campaigns where an anti-discrimination perspective has been integrated. The OPD has also been involved in different committees where various complaints have been dealt with.

Whilst the office does not have its own budget, activities can be organised using the general Ministry budget. As an example, during 2019, to mark International Women's Day a roundtable was organised where implementation of the LPD and the Law on the Ombudsperson were discussed.

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<sup>36</sup> Please note this is no longer a ministry. However, as a response was received, it was reflected in the report.

The Ministry has co-operated with international partners such as SIDA to carry out research. Research in 2017/2018 found a lack of gender equality in reports and a lack of institutional knowledge in relation to gender equality. During 2018, a group was formed with representatives from different departments to consider how to integrate gender equality at both an organisational and operational level. During 2019, a document was drafted focusing on gender equality, as well as a strategic plan and a number of trainings. In addition, the strategic plan contains an action plan in order to take account of gender equality and its integration in relevant programs.<sup>37</sup> Further a number of training events have been organised including a training on “Differences/Sex and gender, gender discrimination, gender roles, norms, gender stereotypes”, which was attended by 17 Ministry employees. Another training event focused on “Gender Based Violence and the Impact of Gender on the Environment”, which was also attended by Ministry employees. One of the key challenges remains lack of willingness to raise/report instances of discrimination, which can only be eliminated with greater awareness raising.

## Local government (Municipalities)

### ***Dragash Municipality***

The respondent noted that they are somewhat informed about the LPD and they have referred to it in drafting and implementing policies and regulations of committees. In addition, there has been internal co-operation (including with the Mayor) where observations have been passed on following monitoring of committees and representation based on ethnicity and gender. One of the challenges identified by the respondent in Dragash is that it necessary to increase capacities so that officers are better prepared to deal with discrimination cases within an institution or for those to be referred externally. In addition, there should be greater co-operation between the central and local government in order to make improvements.

### ***Drenas Municipality***

According to the respondent, they are somewhat informed about the LPD and this is because there is a lack of training that has been organised regarding this legislation. Nevertheless, the LPD is referred to in drafting and implementing policies and local plans for monitoring human rights and protection from discrimination within the Municipality, and increasing capacities through sharing best practices in order to prevent discrimination. Whilst the Municipality has not allocated a budget for implementing the LPD, the respondent notes that all staff are obliged to implement the law. Additionally, officials are prepared to deal with complaints or cases of discrimination and continue to be open to co-operation to increase awareness and promote human rights, gender equality and non-discrimination.

### ***Gjilan Municipality***

Similar to other municipalities, the respondent notes that they somewhat informed about the LPD and identifies a need for capacity building. Nevertheless, officials note that they are willing to deal with complaints relating to discrimination based on the LPD. Civil servants within the Municipality have also been informed about the LPD and the opportunity to present complaints regarding different forms of discrimination. Externally, the Municipality has not co-operated with any other institutions and one of the challenges identified relates to lack of training and capacities.

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<sup>37</sup> Strategic Direction and the Gender Equality Action Plan

### ***Kacanik Municipality***

The respondent noted that they have knowledge regarding the LPD and they have been informed by the MLGA and AGE. On a day-to-day basis, the Municipality has referred to the LPD in relation to drafting and planning of the budget, during recruitment in different sectors including healthcare, education and administration and in the implementation of Administrative Instruction 03/2016 as an affirmative measure for registering property in the joint names of spouses.

Officials noted that they have attended trainings organised by AGE and that the Municipality has allocated funding to organise different events relating to gender equality including debates, roundtables and different campaigns. In completing the various tasks noted above, there is co-operation with public officials within the Municipality. Externally, lectures have been held in schools regarding the legislation that deals with gender equality where different issues were dealt with including inheritance, domestic violence and trafficking in human beings. One of the challenges identified is the economic situation, the lack of budgets and lack of implementation of legislation. Such challenges it is recommended can be overcome through co-ordination within institutions at central and local level, implementation of strategic plans and policies in order to improve the current situation.

### ***Mitrovica (South) Municipality***

The Municipality has not dealt with any cases relating to the LPD from civil servants or members of the public. However, officials have taken part in trainings organised externally and following introduction of the law, there have been no changes except for an official being specifically responsible for actions relating to this legislation. The HRU does have its own budget and part of this following a public call is used to finance local non-governmental organisations focusing on human rights, children's rights, community rights, gender equality and persons with disabilities. During 2019, the HRU awarded grants worth a total of 15,500 (Euro). In addition, the HRU has co-operated with the OGG, MLGA and a range of non-governmental organisations.

### ***Prishtina Municipality***

The respondent noted that they have dealt with complaints and there is co-operation internally when dealing with such complaints. However, further details regarding the types of complaints or nature of complaints are not provided.

### ***Prizren Municipality***

The respondent noted that they are well informed regarding the LPD. Whilst the respondent has not dealt with a specific complaint, they have sought to ensure compliance through all actions they took. Some of the actions taken include ensuring compliance with LPD when participating in any committees such as for selecting NGOs to benefit from financial support, offering short term employment and training to disabled applicants at the Municipality, supporting children through different projects, supporting businesses led by women and offering support to families in poverty without discriminating. One of the challenges identified is requiring civil servants to fulfil different functions or cover more than area of policy. It is recommended that such a challenge can be rectified by recruiting additional staff and providing a separate budget.

### ***Vitia Municipality***

The respondent notes that the LPD has been referred to in dealing with complaints and offering advice. There has been close co-operation with the Mayor including by informing the

latter of the Municipality's obligations under the law. The LPD offers a good framework as to how unequal treatment is to be treatment. The real challenge remains lack of awareness and lack of responsibility by public officials to implement the legislation. It is recommended that this can be mitigated through awareness raising, as well as instilling a culture of accountability for actions or inactions.

### ***Skenderaj Municipality***

The Municipality notes that it has not dealt with any complaints relating to discrimination. However, it has organised a roundtable on "Discrimination and Marginalisation" and has shared information with civil servants in order to raise awareness of discrimination. Following adoption of the LPD, a specific position was created for an officer for protection from discrimination, which was filled in 2019. The Officer for Protection from Discrimination carries out monitoring, reports to the Mayor and makes recommendations. Whilst the Municipality does not allocate a specific budget, it has supported an awareness raising campaign.

## **Police**

### ***Gjakova Police***

The respondent notes that the police have some knowledge about the legislation in question and that the police do refer to it on a day-to-day basis. In particular, it is noted that the police need to be aware of it as a public institution as it is to be implemented by all public institutions. However, the police do not have a specific budget to implement it. On the whole, the respondent believes that all police officers including management are prepared to comply with the requirements of the legislation and do so by treating all citizens equally and treat all complaints relating to discrimination with priority. Different departments or teams within the police co-operate with one another in order to ensure compliance. In addition, the police co-operate with external organisations regularly in order to ensure implementation and raise awareness including the Ombudsperson Institution, Offices for Human Rights at municipality level, Centres for Social Work, Victim's Advocates, the prosecution, courts, non-governmental organisations among others. There is willingness among all institutions to fight discrimination.

In respect of challenges, the representatives notes that the police implement this law starting from its employment policies with the police force being diverse in terms of gender and ethnicity etc and all are treated equally. Non-discrimination or equal treatment is also implemented in promotions. Whereas the Law on Police specifically prohibits discrimination and all regulations are harmonised with the LPD. Further discrimination of citizens by police officers may result in disciplinary action. Nevertheless, the challenges that remain relate to lack of awareness among citizens about discrimination and the protection the law offers and lack of implementation of the law by some entities in the public and private sector. In the police's view, such challenges can be eliminated by monitoring implementation by respective institutions, raising awareness among citizens, and fighting nepotism or discrimination in employment, as well as other spheres of life.

### ***Gjilan Police***

The respondent notes that police officers have basic knowledge on discrimination gained through training focused on human rights. In addition, police officers try to implement the obligations in their day-to-day work. Standard Operating Procedures make clear that all citizens are to be treated equally and without discrimination including those with disabilities and members of the LGBT community.



One example of this is dealing with members of minority communities respectfully, professionally and in their preferred language such as in Serbian. The respondent notes that he has dealt with members of the media, as well as members of the public in Serbian as that was their preferred language and he viewed it as his obligation to offer a service in a language which he was able to converse in thus treating them equally and without discrimination. At the same time, the respondent notes that there have also been cases of inciting intolerance (Article 141 of the Criminal Code) relating to damage caused to a mosque and murder (Article 173 (1) (10)).

Whereas domestic violence cases where the majority of the victims are women and girls, these cases are treated with priority and victims are offered specific protection and refuges so that the victim is not in close proximity with the alleged perpetrator and the incident is not repeated.

The respondent notes that there have been a number of trainings organised by international organisations but police officers also obtain basic knowledge through the Police Academy. These trainings have meant that the police are able to deal with these cases professionally and to win the trust of victims so the police can offer the right protection.

With regards to budgetary allocation, there has been an allocation at central level but in co-operation with the police to improve interview rooms so that victims of domestic violence when interviewed feel well and are not re-victimised.

On the whole the respondent feels well prepared to deal with cases based on the wealth of experience, training and dealing with such cases on a day-to-day basis through treating citizens equally and without discrimination. In addition, the respondent notes that there is internal co-operation in relation to awareness raising and dealing with complaints. In particular, community police have run public campaigns regarding non-discrimination of women in employment, dismantling stereotypes that women can't be part of the police force as it is a man's job, campaigns focusing on domestic violence, and discrimination of women and girls in different spheres. In addition, the police have co-operated with a range of non-governmental organisations. As for challenges, it is noted that there are a number of changes including technological developments, which make it more difficult for the police to be able to respond.

### ***Mitrovica (South) Police***

Whilst there is a limited response, it does provide that the regional police in Mitrovica understand that they are required to implement the LPD like all other public institutions. There have been no training sessions organised and there is no budget allocated for implementation of the legislation. However, there is a willingness from the respondent and other officers to fulfil their role in accordance with the law, to treat all citizens equally, and deal with complaints with priority and on a professional basis. The response notes that co-operation within the institution is essential and part of the role to implement all legislation including the Law on Protection from Discrimination, and in particular treating all citizens equally and without discrimination on the basis of nationality, ethnicity, religion, race, colour, political opinion, physical health, health or disability etc. In addition, the police co-operate with external bodies to increase awareness and exchange professional experiences including the Ombudsperson Institution, the Human Rights Unit at municipal level, gender equality officials at municipality level, Victim's Advocate, Centre for Social Work, prosecution, courts and non-governmental organisations.

Within the police, the respondent believes that the LPD is implemented well starting from employment policies which has resulted in diversity within the police in terms of gender and ethnicity. This inclusive approach also applies to career advancements and training. In addition, the Law on Police prohibits discrimination, secondary legislation is harmonised with

the LPD and discriminatory treatment within the organisation or towards members of the public is a disciplinary offence. The key challenge remains lack of information or knowledge among the general population and the lack of implementation by certain institutions. Such challenges it is recommended can be overcome by greater monitoring in public and private institutions, running public information campaigns, integrating information about the right not to be discriminated in the school curriculum and to deal with discrimination and nepotism in workplaces.

### ***Peja Police***

The respondent noted that they are well informed about the LPD and they have referred to the legislation in dealing with cases. In addition, they have attended trainings including on how police officers should approach members of the LGBT community.

### ***Other***

The Police in Prishtina responded noting they are somewhat informed about the LPD but the remainder of responses were incredibly limited by focusing on one-word answers and so do not provide any benefit in being outlined here. Similarly, the Police in Prizren noted that they did not deal with any cases, they organised trainings regarding this legislation and that the police respects and acts in accordance with the law.

## **Court**

### ***Prizren Basic Court***

The response from the Court is limited. However, it notes that there had been training organised by the Justice Academy focusing on LPD. In addition, it refers to two cases which the court is dealing with where each perpetrator (male) is accused of murdering their female spouse.

### ***Peja Basic Court***

The respondent noted that the LPD came into force in 2015 and so it is impossible for the Court to know whether it dealt with any cases based on this legislation. The Court had not made any changes to its processes following adoption of the law. In addition, the Court noted that it is likely that it has dealt with cases relating to incitement of hatred, murder etc where the perpetrator's motivation may have been based on gender, ethnicity, sexual orientation etc. However, the Court does not keep statistics and in order to provide the information being sought, it would be necessary to check case registers over a number of years and take cases outside of the archive.

## **NGOs**

A total of three non-governmental organisations were contacted to be interviewed as part of this research. These were selected based on their experiences of working with marginalised communities and/or experiences in this sphere of working with the LPD.

The CEL representative noted that they are well informed about the LPD due to the work they carry out in supporting the LGBTI community. Whilst the law covers sexual orientation as a protected characteristic, unfortunately information is still lacking about the law, which hinders implementation. CEL focuses in supporting members of the LGBTI community who have been discriminated against based on sexual orientation or gender identity. To this end, internally it has worked on developing policies for accepting complaints and dealing with complaints. In addition, CEL has co-operated with the police, prosecution and judges and through such co-

operation they have noted willingness among these institutions to be informed and implement the law.

Youth Initiative for Human Rights – Kosovo (YIRH KS) noted that it has referred to the LPD during workshops for implementation of the law/cases of discrimination. In addition, it has co-operated with the Legal Aid Agency in the context of discrimination suffered by women in employment due to pregnancy and/or maternity leave, as well as instances of women being dismissed, or their employment terms being unilaterally changed. YHR KS has also co-operated with NGOs in order to collectively respond regarding human rights and those who have suffered from discrimination. At municipal level, it has worked with municipality officials to carry out an awareness raising campaign on various laws including the LPD. With regards to challenges, other pieces of legislation are not harmonised with the LPD such as the Law on Family in relation to marriage and the Civil Code. The latter is in the process of being amended and this challenge will remain if amendments to it proposed by human rights organisations are not taken into account. It is noted that such challenges can be addressed through trainings and conditionality so that even if officials don't agree or don't act in accordance with the law, necessary measures are taken.

According to the Kosovo Women's Network (KWN), they are well informed about the LPD and they refer to it on a daily basis in relation to discrimination of women in employment, recruitment, maternity leave and generally in spheres where unequal treatment of stigmatised groups exists. In particular KWN has used the LPD in cases where women's employment has been terminated due to pregnancy, particularly in the private sector where the right to maternity leave is not respected. KWN has participated and organised training. It also has ongoing projects and has allocated funding to grass root organisations. This has included organisations which advocate for reporting discrimination cases in the context of employment and organisations which offer legal aid to victims who are willing to report cases but are unsure of processes and procedures.

KWN has carried out research on discrimination in employment, implementation of the LPD and on complaints procedures. It has also launched an awareness raising campaign regarding reporting discrimination cases, which has resulted in a number of cases being reported to it. At the same time, KWN is also co-operating with other organisations including KGSC through which it offers legal aid and offers advice on reporting cases. In addition, KWN has co-operated with the Ombudsperson Institution in order to increase awareness and discuss specific cases. KWN identifies as a challenge the context of women being treated equally and without discrimination in employment. In order to address this, a number of actions are required including increasing awareness among public institutions regarding the LPD in particular, the Work Inspectorate, increasing the number of inspectors, promoting cases where discrimination is successfully challenged, promoting internal regulations by employers to prohibit discrimination, sanctioning public officials who do not deal with discrimination cases, among others.

## **6. Requests for access to public documents and responses**

As part of this research, CSGD and KGSC sent a number of requests for access to public documents. The content of those requests (depending on the type of institution) is detailed in annexes 2 – 7. The requests were comprehensive in order to draw out the relevant data and information to assess the implementation of the Law on Protection from Discrimination. However, the majority of the institutions either did not have meaningful data to report, in some cases did not meaningfully engage with the process or did not respond at all. Based on the

limited responses received, it has not been possible to carry out further analysis based on those requests.

## 7. Notable cases

### Ombudsperson Institution

Since the Ombudsperson became the equality body, it has dealt with a range of cases relating to discriminatory treatment. Some of the most notable cases are noted below.

#### ***A.No. 899/2018 – Access to public transport by disabled persons***

During 2020, the Ombudsperson published a report with recommendations directed at the Ministry of Infrastructure regarding the lack of inter-urban transport for blind persons in accordance with Law for Blind Persons<sup>38</sup>. The Ombudsperson found that disabled persons were discriminated against because buses did not provide equal access to persons who were blind. The Ombudsperson recommended to the Ministry to amend Administrative Instruction 07/2015 for Licensing of Operators for Road Transport in order to:

- reduce tickets on buses to 50% of the market rate in accordance with the Law for Blind Persons;
- amend the licencing criteria for buses so that 2 front seats should be reserved for disabled persons, as well as signs to be included;
- for the Ministry to determine the number of times per month buses should be inspected.

Further, the Ombudsperson recommended that until these amendments are made, the Ministry should arrange more frequent inspections.

Cases such as this and the recommendations that followed are very important. However, it would have been useful for additional factual background to be shared, rather than referring to specific legal provisions to set out how based on the facts there is a breach of those provisions and finally for the case to be determined within the context of the LPD (in addition to the Constitutional and legislative provisions cited).

#### ***KI45/20 and KI46/20 – Constitutionality of Decisions of the Supreme Court relating to the gender quota in elections***

The two applicants both female challenged that the Kosovo Electoral Commissions at first instance and on appeal and the Supreme Court has violated a number of their constitutional rights including Articles 7 [Values], 24 [Equality before the Law], 45 [Electoral and Participation Rights], 53 [Interpretation of the Provisions on Human Rights] and 55 [Restriction of Fundamental Rights and Freedoms] of the Constitution of the Republic of Kosovo, in conjunction with Article 14 (Prohibition of Discrimination) and Article 3(Right to Free Elections) of Protocol no. 1 of the European Convention on Human Rights.

The applicants' argument relates to the application of Article 112.2(a) of the Law on General Elections which provides:

*“112.2 A member of the Kosovo Assembly the term of which ceases pursuant to article 112.1 shall*

*be replaced as follows:*

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<sup>38</sup> Law No. 04/L-092

1. a) by the next eligible candidate of the same gender who won the greatest number of votes of the reordered candidate list of the Political Entity on whose behalf the member contested the last election; [...]"

The applicants had received more votes than a number of male deputies but were not called up as replacements because they were not “of the same gender”, which they argued was discriminatory.

The Supreme Court and instances before it found that replacements were to be carried based on gender and irrespective of the result achieved by deputies at election even once the minimum quota of 30% was fulfilled. Further that the approach defined in law could not be avoided as it was presumed that such a legislation provision was constitutional. The applicants’ argued that their argument was not that the provision was unconstitutional but rather that its application was.

The Constitutional Court found that:

- the interpretative approach adopted by the Supreme Court was rigid and textual and set apart from relevant legal norms including those in the Law on General Elections and the Law on Gender Equality, as well as the principles, values and the spirit of the Constitution. This in turn has removed the context, purpose and reason for adopting the 30% quota as a special measure to assist with achieving equitable representation between genders in the Assembly;
- the purpose of the Law on General Elections in the context of gender equality and representation of 30% is a minimum of the unrepresented gender (whichever that may be) but not the highest limit of representation of one gender. As a result, the Court considered that once a minimum representation of 30% is achieved, all future replacements must be made on the basis of ranking of candidates which is determined by the election result. Therefore, the quota is applied only until the purpose for which it has been set is achieved;
- the interpretation of the Supreme Court and the earlier instances could only make sense in a situation where non-replacement on a gender basis could risk compliance with the legal quota of 30% representation of the unrepresented gender. However, where the unrepresented gender has achieved that quota and to seek to limit exceeding it that would be erroneous. Once the quota is achieved if women candidates obtain more votes in their own right and by achieving more votes than male candidates, they should not be denied the right to represent.

Therefore, the Court found that there was discrimination in this case because of the approach taken by the Supreme Court to apply the legislation. For future reference, the Constitutional Court directed as to how this provision should be applied i.e. where the quota has been met, replacements should be based on results and not based on gender.

***Ex officio No. 468/2019 - regarding the State’s positive obligations in respect of Z. S.***<sup>39</sup>

The Ombudsperson initiated this ex-officio investigation following an article published on a portal entitled ‘Police talk about the ‘mysterious’ woman seen across Kosovo’. It was also reported through social media and other online portals that Z.S. had kidnapped several

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<sup>39</sup> Ex Officio Case by the Ombudsperson Institution, 9 December 2019 available at <https://docs.google.com/viewerng/viewer?url=https://www.oik-rks.org/wp-content/uploads/2019/12/Raport-me-Rekomandime-ENG.pdf&hl=en>

children in different municipalities. There was also a post on Facebook with a woman at a bus stop with a caption 'beware of this woman, she is kidnapping children'. Information quickly spread through social media and online portals including that the person identified may be a male dressed as a female and suspicion that the person may be transgender. Z.S was repatriated from Belgium on more than one occasion. She did not speak any of the official languages of Kosovo.

Further media reports continued including the Police making a public statement that Z.S had not committed any criminal offences but her photo was shared on social media by some young people to laugh at her. She was then attacked by youth in Lipjan and a few days later in Ferizaj as well. The individual who was suspected of attacking her in Ferizaj was arrested and held on remand. During a court hearing an educational measure was imposed requiring him to spend 1 year in a correctional facility.

CSOs and the Association of Journalists reacted about Z.S. treatment by the media, as well as the attacks that she suffered. The Ombudsperson met with various parties including the police, prosecution, social workers, the Independent Media Commission and the victim.

The Ombudsperson found that there had been a violation of a number of human rights and freedoms and the respective authorities did not meet their constitutional and legal obligations or international standards in protecting Z.S from the attacks she suffered. In particular, the Ombudsperson found:

- the Office of the State Prosecutor - by failing to open an investigation ex officio against the persons who first published the images of the victim on social media, as well as the publication of various messages by some media constitutes a failure to meet constitutional and legal obligations;
- the publication of photographs and recording of the victim without her consent by some online portals and television seriously undermines her dignity, victimises her and is contrary to international standards;
- certain institutions failed to fulfil their positive obligations - for example the police in Lipjan failed to take action despite reports of the victim being in the town before she became a target of the attack. Whereas the police in Ferizaj were delayed in inviting a representative from the OPAV;
- a failure by the police in Ferizaj to provide an interpreter to the victim who did not speak any of the official languages of Kosovo was a violation of the Law on Use of Languages, the Law on Police and the Criminal Procedure Code;
- the information given to Z.S as a victim was not adequate - this is important because her status at the police station was that of a victim throughout and not as a suspect;
- the Centres for Social Work in Ferizaj, Lipjan and Podujeva failed to provide the necessary social services and protection or counselling services;

Having conducted an investigation of this matter, the Ombudsperson directed its report to a number of institutions including the State Prosecutor, the Chairman of the Independent Media Commission, the General Director of Kosovo Police, the Minister of Labour and Social Welfare and the Mayor of Podujeva Municipality.

The report also contained a number of recommendations including:

- the State Prosecutor to take all actions necessary against all those who directly or indirectly incite hatred on social media networks by publishing images and/or messages, which incited violence against Z.C. and exposed prejudice and motivated the attack;

- the Independent Media Commission - should impose stricter controls towards media service providers so that media outlets pay sufficient attention to the protection of identity and integrity of victims;
- the Kosovo Police - in addition to only publishing initials of suspects, protecting other personal data including ethnicity to safeguard the identity of those involved. In addition, they should issue a protocol to standardise procedures on victims' language rights;
- Centre for Social Work should increase cooperation and coordination so the relevant action can be taken at the time that it is required; and
- the Municipality of Podujeva - should provide sustainable housing and other social support.

The Ombudsperson's report highlights the dangers of social media and the impact of inaction by institutions can have on victims. None of the institutions were prevented from acting because the content being shared, which misinformed the public was being shared online. The existing legal framework could have and should have been applied to the situation in question. However, that inaction together with the information being shared through social media as well as television quickly escalated the situation resulting in a physical attack as well as public humiliation of the victim. The Ombudsperson's recommendations are well placed and require serious consideration from each institution to ensure that each is prepared to react swiftly, provide the protection required and fulfil their legal obligations.

## Courts

Courts can publish their judgements through the official gazette. However, this does not regularly happen. By doing so this not only increases transparency but brings many other benefits including informing public and private bodies of the latest decisions and how the law is being applied, deterring bodies from committing offences or wrongs such as discriminating against individuals, as well as offering an insight and learning opportunity for professionals dealing with such cases under what remains relatively 'new' legislation.

The case that follows is one where the motives of the perpetrator (being discriminatory) are relevant. However, it also provides particular useful insight as to how the case was pleaded by the prosecution and dealt with by the court.

### ***P. No. 620/16 - Basic Court of Ferizaj - 26 September 2016***<sup>40</sup>

This case relates to an attack on an employee (RN) of an NGO representing the LGBT community whilst working in the community dispensing condoms and other items. RN alleged that he was verbally abused for the work he was doing and his actual or perceived sexual orientation and was physically attacked by two persons FL and AQ. The prosecution brought a case against FL and AQ for incitement (Article 147(1) of the Criminal Code) and acting as co-perpetrators (Article 31 of the Criminal Code) and assault (Article 187 of the Criminal Code) and acting as co-perpetrators (Article 31 of the Criminal Code).

During the proceedings both defendants denied the charges. The victim was separately represented in the proceedings. The Court accepted based on the evidence presented that:

- FL asked FQ to join him to attack RN and another colleague who he said were "fagots". There was a brief discussion between the two but they proceeded to where RN was;
- FL approached RN and said "fagot have you come to distribute condoms" and then proceeded to punch him in his face. AQ was in the vicinity;

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<sup>40</sup> What follows is a summary of the Judgement issued by the Court, which is not currently available online.

- RN managed to walk away and told his colleague BZ about what happened. RN and BZ proceeded to a local restaurant where FL and FQ followed and where FL continued to verbally abuse RN and BZ at which point the matter was reported to the police;
- FL denied attacking RN, whereas AQ confirmed that FL talked about attacking RN and proceeded to do so;
- medical evidence showed RN was physically attacked and sustained injuries;
- video recordings from security cameras were submitted showing the attack;
- testimony from the victim that he was physically attacked and verbally abused because of his actual or perceived sexual orientation;
- testimony from BZ that FL continued to verbally abuse them at the restaurant.

Based on the evidence, the Court rejected FL's and AQ's defence as the evidence was to the contrary. However, the Court decided *ex officio* to try the defendants for light bodily injury (Article 188 of the Criminal Code) and acting as co-perpetrators (Article 31) rather than assault. In addition, the Court stated that it took into account Article 73 (general rules on calculating punishments) and 74 (general rules on mitigation or aggravation of punishments). The Court held that FL was guilty of incitement and light bodily harm and was sentenced to 4 months and 2 months in prison respectively. Whereas FL was guilty of light bodily harm only and sentenced to 4 months in prison with the sentence suspended for 1 year.

This is an interesting case in that it evidences homophobic attitudes and how those attitudes can result in a hate crime, as well as the challenges of the justice system to grapple with those issues. The rationale of the Court for changing the offences for which the defendants were tried for is not entirely clear. At first glance it can also be difficult to appreciate that Article 147 (1) (inciting national, racial, religious or ethnic hatred or discord or tolerance) is engaged in this case because the hatred by the perpetrators relates to sexual orientation rather than race, ethnicity or religion. However, Article 147 (1) extends to incitement of hatred towards "other groups", which could be one rationale here. Although this is not expanded upon by the Court and that would be the preferred approach. The other aspect to note is that whilst the Court recognises that the offence was motivated by hate for the victim's actual or perceived sexual orientation, the Court's analysis in imposing the punishment could be better substantiated.

## 8. Conclusion

In conclusion and despite the pandemic, for those institutions that did engage in this research, it evident that since the LPD was adopted huge efforts have been made in order to push forward. The pandemic appears to have stifled plans. However, there are a number important aspects, which suggest that there has been real progress and will continue to be. Now that the legislative and institutional framework has been in place for a number of years, the key for duty bearers and rights holders is to test those frameworks but in terms of the legislation and the institutional framework. Whilst it is appreciated that different institutions are at different levels, even during a pandemic a lot can be done to share experiences among public authorities in order to learn from their experiences. The existing situation should also be used to develop capacities (where that is an issue), as well as to build coalitions in order to make further progress.

## 9. Recommendations

Based on the findings noted above, there are a number of recommendations targeted at specific institution as follows:

**Ombudsperson**



- the Ombudsperson has an incredible role under the LPD, which it should promote more widely through information campaigns;
- where the Ombudsperson deals with a discrimination case, it should particularly focus on bringing it to the public's attention and may persuade them to bring their case forward;
- for any cases whether it is reported in the annual report or a special report is produced, greater time should be spent on setting out the facts, applying those facts to the law within the context of LPD and explaining in detail why certain actions may be discriminatory and some may not;
- continue to co-operate with different institutions and NGOs;
- bring failures to the attention of institutions and the public – an example of this is Ex officio No. 468/20, although in such cases where irreparable harm can be caused, there should be a greater willingness to build networks and intervene in order to prevent harm;
- continuously monitor implementation of its recommendations in the context of LPD in the public and private sector and where there are failures to comply, draw attention to them; and
- continue working with civil society organisations.

## OGG

- operationalise as soon as possible the framework to monitor Ombudsperson recommendations;
- operationalise as soon as possible the indicators to monitor the LPD;
- provide training to HRUs and officers on both issues;
- provide training opportunities and increase capacities cover all staff;
- co-operate and listen to the HRUs;
- co-operate with non-governmental organisations especially those especially those with a focus on fighting discrimination;
- draw attention to the functions that it carries out through being more transparent.

## HRU at Ministry and Municipality

- HRUs should co-operate and collaborate at all times. Whilst certain Ministries such as MLGA have greater responsibilities, for the remainder HRUs should regularly find opportunities to collaborate;
- Reviewing the Regulation as there is a vast array of actions that an officer may be required to take so that such actions can be integrated in straggles and action plans;
- Identifying opportunities to enhance capacities – whilst there may be a number of operators the focus should be on improvement and through remote working, many such events are free of charge;
- Co-operate more closely with the OGG;
- Use reports such as this to be informed about the activities of other stakeholders and replicating those best practices within your Ministry or Municipality;
- Use the opportunity of remote or online working to attend capacity building events, which you may not otherwise be able to attend;
- Identify public bodies that you can co-operate with locally.

## 10. References

Constitution of the Republic of Kosovo

### Primary Legislation

Criminal Code of Kosovo, Law No. 06/L-074

Law on Gender Equality - Law No. 05/L-20

Law on Ombudsperson - Law No. 05/L -019

Law on Protection from Discrimination - Law No.05/L-021

### Secondary Legislation

Regulation on Institutional Mechanisms on Protection from Discrimination in Government and Municipalities (GRK No. 03/2017)

### Case Law

#### *Constitutional Court*

KI45/20 and KI46/20 – Constitutionality of Decisions of the Supreme Court relating to the gender quota in elections

#### *Regular Courts*

P. No. 620/16 - Basic Court of Ferizaj - 26 September 2016

#### *Ombudsperson*

A.No. 899/2018 – Access to public transport by disabled persons

Ex officio No. 468/2019 - regarding the State's positive obligations in respect of Z. S

### Interviews

#### *Central government*

Interview with the Ministry of Diaspora and Strategic Investment

Interview with the Ministry of Education, Science and Technology

Interview with the Ministry of Environment, Spatial Planning and Infrastructure

Interview with the Ministry of Finance

Interview with the Ministry of Health

Interview with the Ministry of Local Government Administration

#### *Local government*

Interview with Dragash Municipality

Interview with Drenas Municipality

Interview with Gjilan Municipality

Interview with Kaçanik Municipality

Interview with Mitrovica (South) Municipality

Interview with Prishtina Municipality

Interview with Prizren Municipality

Interview with Skenderaj Municipality

Interview with Vitia Municipality

*Police*

Interview with Gjakova Police

Interview with Gjilan Police

Interview with Mitrovica (South) Police

Interview with Peja Police

Interview with Prishtina Police

Interview with Prizren Police

*Courts*

Interview with Peja Basic Court

Interview with Prizren Basic Court

*NGOs*

Interview with YIHR KS

Interview with KWN

Responses to Requests for Access to Public Documents

Response by the Ministry of Education, Science and Technology to the Request for Access to Public Documents

Response by the Ministry of Health to the Request for Access to Public Documents

Response by the Office for Good Governance to the Request for Access to Public Documents

## **Annex 1 Questionnaire - General Questions for all target groups for structured interviews**

1. What is your awareness of the LPD (Law No. 05/L-021) and how have you gained that awareness?
2. Have you had to consult the Law in your day to day work? If yes, what for and what was the outcome?
3. If you have had to consult the law was that in the context of:
  - a. designing policy/implementing policy,
  - b. responding to consultation on any acts or decisions;
  - c. dealing with a particular case;
  - d. any other reason – please provide details.

Please provide details in respect of each example given.

4. Have you attended any training on the existing law or previous law? If yes, who provided that training, what was the focus/content and how would you rate it?
5. Has your institution allocated any funding to implement the law? If yes, what was that used for and what was the outcome?
6. Do you feel prepared to ensure that you complete your role in accordance with the obligations of the law i.e. you don't discriminate and deal with any complaints regarding discrimination?
7. Have you co-operated within your institution in respect of awareness raising, general compliance and/or dealing with complaints? If yes, please explain the context of the co-operation, the action taken and the result of that co-operation?
8. Have you co-operated externally with other institutions to raise awareness, general compliance and/or dealing with complaints? If yes, please explain the context of the co-operation, the action taken and the result of that co-operation?
9. What do you think the challenges are in implementing this law within your institution?
10. How could those challenges be addressed?

**Annex 2 Request for Access to Public Documents – Central government (all Ministries and Office of the Prime Minister) and Municipal government (all Municipalities)**

To Whom It May Concern

In accordance with Article 10 of the Law on Access to Public Documents (Law No. 06/L-081), we are writing to you to make the following request:

Since the LPD(Law No. 05/L-021) entered into force (11 July 2015) until the date of this request please can you respond and provide relevant information/documents in respect of the following:

1. Have you dealt with any cases relating to this legislation within your institution either from civil servants/employees or members of the public? If yes, please provide details and copies of related documents.
2. Has any training been organised to improve the knowledge of civil servants/employees of this law? If yes, please provide details of the training and departments/units who attended. We are not seeking personal details, such as names of employees or positions if that results in their identity being disclosed.
3. Has your institution changed any processes or policies in order to ensure compliance with this law? If yes, please explain the action the institution took and provide copies of processes or policies.
4. Do you monitor compliance with this law within your institution? If yes, how is that done and what does the monitoring to date show? Please provide details and copies of documents/information.
5. Has your institution allocated any funding to ensure awareness raising/compliance with this law? If yes, how much was allocated for each financial year 2015 - 2020? What was it allocated for? What was the outcome of that allocation? Please provide details and copies of any documents/information available.
6. Has your institution made any referrals to another institution regarding compliance with this law following a compliant or on an ex-officio basis? If yes, please provide details and any documents available.
7. Has your institution co-operated with any other institution, private entity or civil society regarding this law? If yes, what did that involve and what were the results? Please provide details and any documents/information available.

We would be grateful if you would respond to each of the questions raised. We are happy to receive all information electronically.

If you have any questions, please let us know.

Kind regards

### **Annex 3 Request for Access to Public Documents – OGG**

To Whom It May Concern

In accordance with Article 10 of the Law on Access to Public Documents (Law No. 06/L-081), we are writing to you to make the following request:

Since the LPD(Law No. 05/L-021) entered into force (11 July 2015) until the date of this request please can you respond and provide relevant information/documents in respect of the following:

1. Has your office:
  - a. provided advice to the Government on issues related to protection against discrimination and promotion of equality? If yes, please provide details including related documentation.
  - b. drafted policies, strategies and action plans regarding protection against discrimination? If yes, please provide details including related documents.
  - c. monitored implementation of Ombudsperson's recommendations? If yes, please provide details of which recommendations and what was the outcome in respect of each and provide relevant documentation.
  - d. given opinions on legislation to the Office of the Prime Minister on compliance with human rights including non-discrimination? If yes, please provide details including related documentation.
  - e. collected statistical and other data regarding discrimination? If yes, please provide details including related documentation
  - f. organised/conducted training on protection against discrimination for civil servants at central government and local government? If yes, please provide details including related documentation.
  - g. presented to the Government an annual report on implementation of this law? If yes, please provide a copy of the annual report for each year 2015 – 2020;
  - h. provided support to other public institutions to develop action plans for equality and non-discrimination and integrate initiatives to promote equality and combat discrimination? if yes, please provide details including related documentation.

We would be grateful if you would respond to each of the questions raised. We are happy to receive all information electronically. If any of information we have requested is readily available online, please provide a link to the information.

If you have any questions, please let us know.

Kind regards

## **Annex 4 Request for Access to Public Documents – Independent Institutions**

To Whom It May Concern

In accordance with Article 10 of the Law on Access to Public Documents (Law No. 06/L-081), we are writing to you to make the following request:

Since the LPD(Law No. 05/L-021) entered into force (11 July 2015) until the date of this request please can you respond and provide relevant information/documents in respect of the following:

1. Have you dealt with any cases relating to this legislation within your institution either from civil servants/employees or members of the public? If yes, please provide details and copies of related documents.
2. Has any training been organised to improve the knowledge of civil servants/employees of this law? If yes, please provide details of the training and departments/units who attended. We are not seeking personal details, such as names of employees or positions if that results in their identity being disclosed.
3. Has your institution changed any processes or policies in order to ensure compliance with this law? If yes, please explain the action the institution took and provide copies of processes or policies.
4. Do you monitor compliance with this law within your institution? If yes, how is that done and what does the monitoring to date show? Please provide details and copies of documents/information.
5. Has your institution allocated any funding to ensure awareness raising/compliance with this law? If yes, how much was allocated for each financial year 2015 - 2020? What was it allocated for? What was the outcome of that allocation? Please provide details and copies of any documents/information available.
6. Has your institution made any referrals to another institution regarding compliance with this law following a compliant or on an ex-officio basis? If yes, please provide details and any documents available.
7. Has your institution co-operated with any other institution, private entity or civil society regarding this law? If yes, what did that involve and what were the results? Please provide details and any documents/information available.

We would be grateful if you would respond to each of the questions raised. We are happy to receive all information electronically.

If you have any questions, please let us know.

Kind regards

## **Annex 5 Request for Access to Public Documents – Regular courts**

To Whom It May Concern

In accordance with Article 10 of the Law on Access to Public Documents (Law No. 06/L-081), we are writing to you to make the following request:

### **LPD**

Since the LPD(Law No. 05/L-021) entered into force (11 July 2015) until the date of this request please can you respond and provide relevant information/documents in respect of the following:

1. Has your court dealt with any cases relating to this legislation? If yes, please provide details and copies of related documents.
2. Has any training been organised to improve the knowledge of judges, civil servants/employees of this law? If yes, please provide details of the training and who attended. We are not seeking personal details, such as names of employees or positions if that results in their identity being disclosed.
3. Has your institution changed any processes or policies in order to ensure compliance with this law? If yes, please explain the action the institution took and provide copies of processes or policies.
4. Has your institution allocated any funding to ensure awareness raising/compliance with this law? If yes, how much was allocated for each financial year 2015 - 2020? What was it allocated for? What was the outcome of that allocation? Please provide details and copies of any documents/information available.

### **Criminal Code**

The Criminal Code has a number of offences where the perpetrators motivation can be taken into account. Since the last amendments entered into force (from 15 April 2019) to the date of this request, please provide information in the relation to the following:

1. Has your court dealt with any cases in respect of the following offences as set out in the Criminal Code:
  - a. Article 141 – inciting discord and intolerance
  - b. Article 173 (1.10) – aggravated murder
  - c. Article 184 (3) – assault
  - d. Article 185 (3) – light bodily injury
  - e. Article 186 (4) – grievous bodily injury
  - f. Article 190 – violating equal status of citizens and residents of the Republic of Kosovo
  - g. Article 321 (4) – destruction or damage to property

Please note the paragraphs. We are only seeking information relating to cases where the perpetrators' motivations related to a protected characteristic such as gender, religion, ethnicity, sexual orientation etc were relevant.

2. If you have dealt with any cases based on the offences noted above, please provide details of each case including the ruling that you court made in each case. If decisions are already publicly available please provide information as to where that can be accessed.
3. Has your court dealt with any cases where it has relied on Article 70 (2.12) – general rules on mitigation or aggravation of punishment? If yes, please provide details of each case including the ruling issued.



We would be grateful if you would respond to each of the questions raised. We are happy to receive all information electronically.

If you have any questions, please let us know.

Kind regards

## **Annex 6 Request for Access to Public Documents – Prosecution**

To Whom It May Concern

In accordance with Article 10 of the Law on Access to Public Documents (Law No. 06/L-081), we are writing to you to make the following request:

### **LPD**

Since the LPD(Law No. 05/L-021) entered into force (11 July 2015) until the date of this request please can you respond and provide relevant information/documents in respect of the following:

1. Has your institution dealt with any cases relating to this legislation? If yes, please provide details and copies of related documents.
2. Has any training been organised to improve the knowledge of professionals, civil servants/employees of this law? If yes, please provide details of the training and who attended. We are not seeking personal details, such as names of employees or positions if that results in their identity being disclosed.
3. Has your institution changed any processes or policies in order to ensure compliance with this law? If yes, please explain the action the institution took and provide copies of processes or policies.
4. Has your institution allocated any funding to ensure awareness raising/compliance with this law? If yes, how much was allocated for each financial year 2015 - 2020? What was it allocated for? What was the outcome of that allocation? Please provide details and copies of any documents/information available.

### **Criminal Code**

The Criminal Code has a number of offences where the perpetrators motivation can be taken into account. Since the last amendments entered into force (from 15 April 2019) to the date of this request, please provide information in the relation to the following:

4. Has your institution dealt with any cases in respect of the following offences as set out in the Criminal Code:
  - a. Article 141 – inciting discord and intolerance
  - b. Article 173 (1.10) – aggravated murder
  - c. Article 184 (3) – assault
  - d. Article 185 (3) – light bodily injury
  - e. Article 186 (4) – grievous bodily injury
  - f. Article 190 – violating equal status of citizens and residents of the Republic of Kosovo
  - g. Article 321 (4) – destruction or damage to property

Please note the paragraphs. We are only seeking information relating to cases where the perpetrators' motivations related to a protected characteristic such as gender, religion, ethnicity, sexual orientation etc were relevant.

5. If you have dealt with any cases based on the offences noted above, please provide details of each case. If decisions are already publicly available please provide information as to where that can be accessed.
6. Has your institution dealt with any cases where it has relied on Article 70 (2.12) – general rules on mitigation or aggravation of punishment? If yes, please provide details of each case including the ruling issued.

We would be grateful if you would respond to each of the questions raised. We are happy to receive all information electronically.

If you have any questions, please let us know.

Kind regards

## **Annex 7 Request for Access to Public Documents – Police**

To Whom It May Concern

In accordance with Article 10 of the Law on Access to Public Documents (Law No. 06/L-081), we are writing to you to make the following request:

### **LPD**

Since the LPD (Law No. 05/L-021) entered into force (11 July 2015) until the date of this request please can you respond and provide relevant information/documents in respect of the following:

1. Has your institution dealt with any cases relating to this legislation? If yes, please provide details and copies of related documents.
2. Has any training been organised to improve the knowledge of professionals, civil servants/employees of this law? If yes, please provide details of the training and who attended. We are not seeking personal details, such as names of employees or positions if that results in their identity being disclosed.
3. Has your institution changed any processes or policies in order to ensure compliance with this law? If yes, please explain the action the institution took and provide copies of processes or policies.
4. Has your institution allocated any funding to ensure awareness raising/compliance with this law? If yes, how much was allocated for each financial year 2015 - 2020? What was it allocated for? What was the outcome of that allocation? Please provide details and copies of any documents/information available.

### **Criminal Code**

The Criminal Code has a number of offences where the perpetrators motivation can be taken into account. Since the last amendments entered into force (from 15 April 2019) to the date of this request, please provide information in the relation to the following:

7. Has your institution dealt with any cases in respect of the following offences as set out in the Criminal Code:
  - a. Article 141 – inciting discord and intolerance
  - b. Article 173 (1.10) – aggravated murder
  - c. Article 184 (3) – assault
  - d. Article 185 (3) – light bodily injury
  - e. Article 186 (4) – grievous bodily injury
  - f. Article 190 – violating equal status of citizens and residents of the Republic of Kosovo
  - g. Article 321 (4) – destruction or damage to property

Please note the paragraphs. We are only seeking information relating to cases where the perpetrators' motivations related to a protected characteristic such as gender, religion, ethnicity, sexual orientation etc were relevant.

8. If you have dealt with any cases based on the offences noted above, please provide details of each case. If decisions are already publicly available please provide information as to where that can be accessed.

We would be grateful if you would respond to each of the questions raised. We are happy to receive all information electronically.

If you have any questions, please let us know.

Kind regards