

HUMAN

RIGHTS

HUMAN

**CIVIL SOCIETY REPORT  
ON HUMAN RIGHTS**  
— IN KOSOVO IN 2019

HUMAN

RIGHTS

JUNE 2020

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# LIST OF ABBREVIATIONS

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|                   |  |
|-------------------|--|
| <b>AJK</b>        | Association of Journalists of Kosovo   |
| <b>AoK</b>        | Assembly of Kosovo   |
| <b>BSPK</b>       | Union of Independent Trade Unions of Kosovo  |
| <b>CAT</b>        | Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment |
| <b>CEDAW</b>      | Convention on the Elimination of All Forms of Discrimination Against Women               |
| <b>CoE</b>        | Council of Europe  |
| <b>CRA</b>        | Civil Registration Agency  |
| <b>CRC</b>        | Convention on the Rights of the Child  |
| <b>CRPD</b>       | Convention on the Rights of Persons with Disabilities                                    |
| <b>CSO(s)</b>     | Civil Society Organization(s)  |
| <b>CSW(s)</b>     | Center(s) for Social Work  |
| <b>ECHR</b>       | European Convention for the Protection of Human Rights and Fundamental Freedoms          |
| <b>EU</b>         | European Union   |
| <b>EULEX</b>      | European Union Rule of Law Mission in Kosovo   |
| <b>GCMP</b>       | Governmental Commission on Missing Persons   |
| <b>GoK</b>        | Government of Kosovo   |
| <b>ICCPR</b>      | International Covenant on Civil and Political Rights                                     |
| <b>ICERD</b>      | Convention on the Elimination of All Forms of Racial Discrimination                      |
| <b>ICESCR</b>     | International Covenant on Economic, Social and Cultural Rights                           |
| <b>ICRC</b>       | International Committee of the Red Cross   |
| <b>ICTY</b>       | International Criminal Tribunal for the former Yugoslavia                                |
| <b>IMC</b>        | Independent Media Commission   |
| <b>KFOR</b>       | Kosovo Force   |
| <b>KJC</b>        | Kosovo Judicial Council  |
| <b>KPC</b>        | Kosovo Prosecutorial Council   |
| <b>KPCVA</b>      | Kosovo Property Comparison and Verification Agency                                       |
| <b>K-Ashkali</b>  | Kosovo Ashkali   |
| <b>K-Egyptian</b> | Kosovo Egyptian  |
| <b>K-Roma</b>     | Kosovo Roma  |
| <b>K-Serb</b>     | Kosovo Serb  |

|               |   |
|---------------|---|
| <b>LGBT+</b>  | Lesbian, Gay, Bisexual and Transsexual  |
| <b>LYACs</b>  | Local Youth Action Councils   |
| <b>NATO</b>   | North Atlantic Treaty Organization  |
| <b>NGO(s)</b> | Non-governmental Organization(s)  |
| <b>NPM</b>    | National Preventive Mechanism   |
| <b>OGG</b>    | The Office of Good Governance, Human Rights, Equal Opportunities and Non-Discrimination                           |
| <b>OHCHR</b>  | Office of the United Nations High Commissioner for Human Rights   |
| <b>OiK</b>    | Ombudsperson Institution Kosovo   |
| <b>OP-CAT</b> | Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment |
| <b>OSCE</b>   | Organization for Security and Co-operation in Europe  |
| <b>RTK</b>    | Radio and Television of Kosovo  |
| <b>SAA</b>    | Stabilization and Association Agreement   |
| <b>SOC</b>    | Serbian Orthodox Church   |
| <b>TRC</b>    | Truth and Reconciliation Commission   |
| <b>UDHR</b>   | Universal Declaration of Human Rights   |
| <b>UN</b>     | United Nations  |
| <b>UNESCO</b> | United Nations Educational, Scientific and Cultural Organization  |
| <b>UNHCR</b>  | United Nations High Commissioner for Refugees   |
| <b>UNICEF</b> | United Nations Children's Fund  |
| <b>UNMIK</b>  | United Nations Interim Administration Mission in Kosovo   |
| <b>UNSC</b>   | United Nations Security Council   |
| <b>VA(s)</b>  | Victim Advocate(s)  |
| <b>VC</b>     | Venice Commission   |
| <b>WGMP</b>   | Working Group on Persons Unaccounted for in Relation to the Events in Kosovo                                      |

# 1. INTRODUCTION

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**1.** The present report<sup>1</sup> provides an overview of the human rights situation in Kosovo in 2019, including of the main problems and challenges to realizing human rights as well as human rights violations. It has been prepared jointly by CSOs focused on protecting and promoting human rights in Kosovo with a view toward filling in an existing gap in joint reporting on human rights in Kosovo at the local and international levels, in addition to enhancing cooperation and coordination between them. It is intended that similar reports will be produced in the future on an annual basis to ensure joint and systemic CSO reporting on the human rights situation in Kosovo.

**2.** The report is structured into four main sections. Section A examines civil and political rights, including the right to humane treatment and the prohibition of torture; the right to liberty and security of the person, fair trial rights and access to justice; the freedom of expression and opinion and the right to information; the freedom of peaceful assembly; the freedom of association; and the freedom of belief, conscience and religion. Section B, in turn, analyses economic, social and cultural rights, in particular labour rights, the right to education, property rights and cultural rights. Section C evaluates the rights of specific persons or groups, including those of women, children; youth; minorities; lesbian, gay, bisexual and transgender (LGBT+) persons; and people on the move. Finally, Section D addresses some specific cross-cutting human rights issues, namely, hate crimes, transitional justice and the right to truth and the environment and human rights.

# 2. METHODOLOGY

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**3.** The present report addresses the most pressing human rights issues and challenges in Kosovo chosen after thorough consideration of the local context and based on a consultative process with human rights CSOs in Kosovo and their inputs to the report. Even though the report is comprehensive, it is acknowledged that there are limitations in what has been covered.

**4.** The drafting process of this report was led by the principle of ensuring the participation of all CSOs that work in protecting and promoting human rights at the local and central levels in Kosovo. The information compiled and presented herein reflects the direct written inputs of several CSOs, desk research and a consultative process between CSOs. Some CSOs provided direct written inputs, while other CSOs provided comments and suggestions to the report during in-person

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<sup>1</sup> This report is delivered at the conclusion of a project called “Engaging with civil society on human rights monitoring and reporting” funded by the Human Rights Component of the United Nations Mission Interim Administration in Kosovo (UNMIK) and the Office of the United Nations High Commissioner for Human Rights (OHCHR) to strengthen the human rights monitoring and reporting capacities of civil society organizations (CSOs) in Kosovo. The views expressed herein are solely those of the contributing CSOs that have authored and produced this report.

and virtual consultation meetings. Desk research consisted of reviewing and gathering data from relevant human rights instruments, Kosovo's Constitution and legislation, official documents and reports by Kosovo institutions such as the Ombudsperson Institution of Kosovo (OiK), reports of international organizations and foreign embassies operating in Kosovo, publications and reports by CSOs and media reports.

**5.** The consultation process consisted of email correspondence and two consultation sessions that convened over 20 Kosovo CSOs working in different fields of human rights. The first consultation session was held in-person in November 2019, while the second one was held virtually in early June 2020 due to the COVID-19 pandemic. Another two-day workshop was planned to take place at the end of March or the beginning of April 2020, but it was cancelled due to the measures to contain COVID-19. In the first consultation session, CSOs discussed and agreed on the goal, objectives and structure of the report. While in the second consultation session, CSOs had the opportunity to review a draft of the report, validate its findings and conclusions and provide their comments and suggestions, which were then incorporated into the report. The drafting process and the editing of the report was facilitated by Marigona Shabiu and Zana Sylja who are representatives of the Youth Initiative for Human Rights - Kosovo (YIHR KS) and the Alternative Dispute Resolution Center (ADRC), respectively.

**6.** The following 21 CSOs contributed to this report: ADRC, Advancing Together (AT), AKTIV, Balkan Sunflowers Kosova, Center for Social Groups Development (CSGD), Centre for Equality and Liberty (CEL), Centre for Peace and Tolerance (CPT), Civil Rights Program Kosovo (CRP/K), FOL Movement, Group for Legal and Political Studies (GLPS), Integra, Kosovo Advocacy Group (KAG), Kosova Rehabilitation Centre for Torture Victims (KRCT), Kosovar Gender Studies Center (KGSC), Kosovo Law Institute (KLI), Kosovo Women's Network (KWN), Kosovo Young Lawyers (KYL), Missing Persons Resource Center (MPRC), Terre des Hommes Kosovo, YIHR KS and Youth Educational Club Synergy North Mitrovica (YEC Synergy).

### 3. KOSOVO'S GENERAL HUMAN RIGHTS FRAMEWORK

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**7.** The Constitution of Kosovo contains numerous provisions concerning the protection and promotion of fundamental freedoms and human rights.<sup>2</sup> Article 3 of the Constitution declares that public authorities in Kosovo shall ensure equality of all individuals before the law and fully respect "internationally recognized fundamental human rights and freedoms". Article 7 establishes that Kosovo's constitutional order is based on, among other things, equality, respect for human rights and freedoms and non-discrimination and enshrines gender equality as a fundamental value.

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2 See generally, [The Constitution of Kosovo](#) (9 April 2008), as amended on 11 March 2016 (hereinafter Constitution of Kosovo).

Chapter II of the Constitution sets forth specific provisions protecting civil and political rights (e.g., fair trial rights, the right to privacy and the freedoms of expression, peaceful assembly, association and movement) as well as some economic, social and cultural rights (e.g., the rights to education and free choice of profession). Importantly, Article 53 requires that any interpretation of the human rights and fundamental freedoms guaranteed by Kosovo's Constitution complies with the jurisprudence of the European Court of Human Rights.

**8.** Although Kosovo cannot formally become a party to international human rights conventions and mechanisms, Article 22 of the Constitution stipulates that eight United Nations (UN)<sup>3</sup> and regional<sup>4</sup> human rights instruments directly apply in Kosovo, providing additional legal sources that protect and promote human rights in Kosovo. Importantly, all of these directly applicable human rights instruments supersede Kosovo's legislation or other acts of public institutions in cases of conflict. The International Covenant on Economic, Social and Cultural Rights (ICESCR), however, is not listed among the international human rights instruments directly applicable in Kosovo. Nevertheless, the Assembly of Kosovo (AoK) adopted the 2030 Agenda and its 17 Sustainable Development Goals in a unanimous resolution on 24 January 2018,<sup>5</sup> providing a meaningful entry point on promoting and protecting economic, social and cultural rights in Kosovo.

**9.** Beyond these constitutional provisions, Kosovo has a wide array of laws and mechanisms for the protection and promotion of human rights. In 2015, Kosovo made further progress in aligning its legal framework with international standards when it adopted a package of basic laws on human rights, namely, the Law No. 05/L-019 on Ombudsperson, Law No. 05/L-020 on Gender Equality and Law No. 05/L-021 on Protection from Discrimination. Their full application is key for the effective implementation of the human rights framework in Kosovo and requires the allocation of necessary resources and serious capacity building efforts. As highlighted throughout this report, Kosovo also has other more specific laws relevant to the protection of certain rights or groups of persons. Despite this legal framework, Kosovo still lacks a comprehensive human rights strategy that would incorporate existing human rights-related policies and laws into one document.

**10.** Kosovo has also established dedicated bodies and mechanisms to promote and protect human rights. The Office of Good Governance, Human Rights, Equal Opportunities and Non-Discrimination (OGG) draws up policies in the areas of good governance, human rights, equal

3 Namely, the [Universal Declaration of Human Rights](#) (10 December 1948) (hereinafter UDHR); the [International Covenant on Civil and Political Rights](#) (16 December 1966) 999 UNTS 171 (hereinafter ICCPR); the [International Convention on the Elimination of All Forms of Racial Discrimination](#) (4 January 1969) 660 UNTS 195 (hereinafter ICERD); the [Convention on the Elimination of All Forms of Discrimination Against Women](#) (3 September 1981) 1249 UNTS 13 (hereinafter CEDAW); the [Convention on the Rights of the Child](#) (2 September 1990) 1577 UNTS 3 (hereinafter CRC); and the [Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment](#) (26 June 1987) 1465 UNTS 85 (hereinafter CAT).

4 Specifically, the [European Convention for the Protection of Human Rights and Fundamental Freedoms](#) (4 November 1950) 213 UNTS 221 (hereinafter ECHR); the Council of Europe, [Framework Convention for the Protection of National Minorities](#) (1 February 1995) ETS 157 (hereinafter CoE Framework Convention).

5 UN Kosovo Team, '[Sustainable Development Goals](#)', last accessed 10 June 2020.

opportunities and anti-discrimination and oversees and provides advice to Ministries in the mentioned areas. The Inter-Ministerial Coordinating Group on Human Rights is a high-level political mechanism established by the former Prime Minister of Kosovo in April 2016 to monitor Kosovo's implementation of human rights policies, although it last met in November 2018. The Committee on Human Rights, Gender Equality, Missing Persons and Petitions is one of the AoK's permanent committees mandated to formulate draft laws and to monitor the implementation of existing ones. Although the Committee was not envisaged as an individual complaint mechanism, it can highlight human rights issues and trends within the AoK and forward any individual or group complaint, as appropriate. The OiK is an independent constitutional body<sup>6</sup> mandated with monitoring, defending and protecting the rights and freedoms of individuals from the wrongdoing of authorities. In fulfilling its five-year non-renewable mandate, the OiK may, among other things, receive complaints, launch investigations, make recommendations and publish reports as well as advocate for changes that advance the implementation of human rights standards.

## 4. CIVIL AND POLITICAL RIGHTS

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### 4.1. The right to humane treatment and the prohibition of torture

**11.** The Constitution of Kosovo expressly prohibits torture as well as cruel, inhuman or degrading treatment or punishment.<sup>7</sup> Several international and regional instruments prohibiting such conduct are also directly applicable and supersede Kosovo's legislation in cases of conflict.<sup>8</sup> Kosovo's Criminal Code fully complies with international human rights standards by criminalizing torture,<sup>9</sup> while the Criminal Procedure Code prohibits forced confessions.<sup>10</sup> Other cruel, inhuman or degrading treatment or punishment, however, has not yet been criminalized in the same terms as torture, despite a recommendation by the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment to do so during his visit to Kosovo in 2017.<sup>11</sup> The Special Rapporteur also recommended that Kosovo expressly exclude the admissibility of evidence obtained through torture or other cruel, inhuman or degrading treatment or punishment.<sup>12</sup>

**12.** The relevant legislation in Kosovo establishes that the Ombudsperson acts as a National Preventive Mechanism (NPM) against torture and other cruel, inhuman and degrading treatment or punishment.<sup>13</sup> The NPM is able to visit places where persons are deprived of liberty in Kosovo without prior notice. This measure is consistent with the Optional Protocol to the Convention

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6 Constitution of Kosovo, note 2, Arts. 132-135.

7 Ibid., Art. 27.

8 Ibid., Art. 22. See also UDHR, Art. 5; ICCPR, Art. 7; CAT, Arts. 1-2, 4; ECHR, Art. 3.

9 Criminal Code No. 06/L-074 of Kosovo (14 January 2019), Art. 196 (hereinafter 2019 Criminal Code).

10 Criminal No. 04/L-123 Procedure Code (28 December 2012), Art. 10 (hereinafter 2012 Criminal Procedure Code).

11 Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, 'Report on the 13 to 24 November 2017 Visit to Serbia and Kosovo' (25 January 2019) UN Doc. A/HCR/40/59/Add.1, para. 109 (hereinafter Report of Special Rapporteur on Torture).

12 Ibid.

13 Law No. 05/L-019 on Ombudsperson (26 June 2015), Art. 17.



against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OP-CAT), Law No. 05/L-019 on Ombudsperson and other laws in relation to monitoring the human rights of persons deprived of liberty.<sup>14</sup> Since its establishment in 2014, the NPM has conducted regular monitoring visits in all places of detention, and it possesses the appropriate capacities to do so. The NPM also cooperates with other local NGOs with similar mandates to monitor human rights in detention settings in Kosovo, such as KRCT and the Council for Defense of Human Rights and Freedoms (CDHRF).

**13.** Based on KRCT's assessment and observations from regular monitoring of places of detention, the situation remains satisfactory to a certain extent, and relevant Kosovo authorities have shown commitment to generally uphold the right to humane treatment and the prohibition of torture. KRCT also reports that some progress has been made in the infrastructure of police holding cells as result of the renovations of police stations, although physical conditions in holding cells have yet to reach desired levels. KRCT informs that detainees in holding cells are satisfied with their treatment by police officials in charge of managing the holding cells, and procedural guarantees and safeguards against ill-treatment were widely respected, such as the rights to a lawyer, to be examined by a doctor and to notify one's family.

**14.** An alleged physical abuse of a detainee by two police officials at the Pristina Detention Center in 2019 and seven similar alleged incidents of physical ill-treatment in 2018 were registered by the KRCT. Although supporting evidence was provided in each case, the Directorate of Internal Investigation<sup>15</sup> did not find sufficient grounds for criminal prosecution.

**15.** "[P]rison and detention center conditions meet some international standards" in 2019.<sup>16</sup> However, prisoners and pre-trial detainees held at the Dubravë/Dubrava Prison in Istog/Istok and the Lipjan/Lipljan Correctional Center made several complaints to the NPM and KRCT about inappropriate treatment and misconduct by correctional staff, medical staff or management. Complaints were submitted to different relevant authorities (e.g., the Correctional Institutions, Prison Health Units, Kosovo Police and Prosecutor's Offices) depending on the nature of the complaint. Based on its regular monitoring of Kosovo's correctional institutions,<sup>17</sup> KRCT opines that these complaints are persistent phenomena but contends that the general situation is not worrying at this point.

14 [Law No. 04/L-149 on Execution of Penal Sanctions](#) (28 August 2013); [Law No. 05/L-025 on Mental Health](#) (23 November 2015); [Law No. 04/L-076 on Police](#) (19 March 2012).

15 This is a mechanism that investigates cases involving human rights violations or abuse of power by police officials as referred or reported to it by the Police Inspectorate of Kosovo.

16 US Department of State, ['Kosovo 2019 Human Rights Report'](#) (February 2020), p. 5 (hereinafter 2019 US State Dept. Human Rights Report).

17 In 2019, there were 10 correctional centers (CC) and detention centers (DC) in Kosovo: Dubravë/Dubrava CC, Smrekonicë/Smrekovica CC (Mitrovicë/Mitrovica), Lipjan/Lipljan CC, High Security Prison in Gërdoc/Grdovac, Educational Correctional Centre for Juveniles in Lipjan/Lipljan, Pristina DC, Prizren DC, Peć/Peja DC, Mitrovicë/Mitrovica DC, and Gjilani/Gnjilane DC.

**16.** Although the overall situation in prison and detention facilities is stable, KRCT reported in June 2019 that a prisoner was seriously beaten by three other inmates; prison officials intervened and saved the prisoner. This case is subject to an ongoing investigation. In 2019, the Prison Healthcare Department reported 234 instances in which prisoners had self-injured and provided evidence that this trend had significantly increased in the last five years, while noting that such behaviors were particularly pronounced among prisoners addicted to drugs. Although the capacities of medical staff in the health units of the Kosovo correctional institutions have also increased, the KRCT highlighted gaps in the healthcare system at the Dubravë/Dubrava Prison and claimed there were too few mental health professionals.<sup>18</sup>

**17.** The arrangement and treatment of detainees, including pre-trial detainees, with mental health issues have never been addressed by relevant authorities, such as the Ministry of Justice (and its Kosovo Correctional Service agency) and the Ministry of Health (and its Prison Health Unit). Detainees with mental health issues are still being held in detention centers or correctional centers pending a decision by the court or even after the end of trial. However, the infrastructure, services and treatments are not suitably adjusted to their specific needs and requirements, in contradiction of Kosovo's legal framework and the directly applicable human rights instruments outlined above.

**18.** While there are verbal commitments to address the recommendations of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, relevant institutions, such as the Ministry of Justice, Ministry of Health and Kosovo Judicial Council (KJC),<sup>19</sup> have yet to take action and comply with these recommendations. These recommendations included establishing systematic training programs on the Istanbul Protocol<sup>20</sup> for health professionals who examine persons deprived of their liberty as well as for lawyers, prosecutors and judges in order to strengthen their capacities to identify and document torture and other forms of ill-treatment.<sup>21</sup>

**19.** In this area of human rights, ongoing matters of concern include impunity in cases of ill-treatment, the failure to adequately address the specific needs of groups and persons in vulnerable situations in places of detention (e.g., women, children and youth, older persons, persons with chronic diseases and mental disabilities and LGBT+ persons), inefficient investigations and the failure to prioritize the processing of cases on these issues. Police interrogations and investigations also continue to fall beyond the scope of monitoring mechanisms. Complaints of mistreatment during interrogations and investigations further underline the need to establish (where missing) and enforce oversight mechanisms in the Kosovo Police.

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18 2019 US State Dept. Human Rights Report, note 16, p. 6.

19 The KJC oversees the administration of justice and is the competent authority to decide on policies and capacity building and to oversee the implementation of recommendations relating to the judicial system.

20 OHCHR, *Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (UN, 2004).

21 Report of Special Rapporteur on Torture, note 11, p. 19.

## 4.2. The right to liberty and security of the person, fair trial rights and access to justice

**20.** Kosovo's Constitution and legislation<sup>22</sup> as well as directly applicable human rights instruments<sup>23</sup> provide a strong legal framework protecting the right to liberty and security of the person, fair trial rights and access to justice, including the right of any person to challenge the lawfulness of his or her arrest before an independent court. These rights are essential pillars of the rule of law and form a vital component of a just and democratic society. Among other things, they guarantee those charged with a crime or involved in some other legal dispute a timely, fair and public hearing by an independent and impartial court.<sup>24</sup>

**21.** Despite this normative framework upholding the fair, independent, impartial and just administration of justice, Kosovo's justice system continues to be undermined by, among other things, accountability shortcomings and transparency issues, failures to properly punish high-level corruption, a high caseload and backlog, a lack of professionalism, lengthy procedures and political interference.

**22.** The high caseload and backlog, which has been caused by inefficient case management, insufficient resources and human capacities and slow progress in resolving cases over the years, continues to impede the efficient administration of justice and due process. The pace of resolving cases remains slow, contributing to a climate of legal uncertainty for many in Kosovo. In addition to new cases, thousands of unresolved cases have been transferred over every year. 216,899 cases in Kosovo Courts remained unresolved at the end of 2019.<sup>25</sup> Digital and active case-management practices, such as the Case Information Management System, have contributed to some progress in this area by improving the judicial system's efficiency.<sup>26</sup>

**23.** From October 2018 to September 2019, several irregularities and violations were observed when monitoring Kosovo's Basic Courts, in particular in cases concerning corruption and organized crime, such as delayed or postponed court hearings, interruptions of court hearings, inadequately prepared prosecutors, violations of legal provisions related to legal deadlines for case processing<sup>27</sup> and human rights violations.<sup>28</sup>

22 Constitution of Kosovo, note 2, Arts. 29-34; 2012 Criminal Procedure Code, note 10, Arts. 3-5, 9-12, 13-15.

23 Constitution of Kosovo, note 2, Art. 22; see also UDHR, Arts. 3, 9-11; ICCPR Arts. 14-15; ECHR, Art. 6.

24 CoE, 'Right to a fair trial', last accessed 8 May 2020.

25 KJC, 'Annual Statistics Report for 2019 on the Work of the Courts' (2019) p. 3, available in [Albanian](#) and [Serbian](#) only.

26 2019 US State Dept. Human Rights Report, note 16, p. 9.

27 As confirmed also by GLPS and KRCT.

28 Organization for Democracy, Anti-corruption and Dignity, Çohul, 'Access to Justice, Court Monitoring Report October 2018 – September 2019' (2019), p. 10.

**24.** A GLPS report highlighted similar problems in 2019.<sup>29</sup> It provided particular insight into procedural and human right violations that included the failure to read the indictment to the accused, which is a flagrant violation of the law.<sup>30</sup> In addition, GLPS also informed that other violations occurred, such as the failure to respect the right of the accused to communicate in a language he or she understands.

**25.** According to the same report by GLPS, the KJC's appointment in 2019 of six and three judges to the Special Departments of the Basic Court of Pristina and the Court of Appeals, respectively, lacked accountability and transparency, which raises concerns about the competency and professionalism of the appointees and which may have adversely affected public trust in the KJC's work and in the judicial system in general.<sup>31</sup> GLPS also reports that the KJC often fails to act against judges who violate substantive criminal law in the course of their work, further increasing the public's diminished trust in the judicial system.<sup>32</sup> GLPS also claims that there were suspicious and unlawful appointments by the Kosovo Prosecutorial Council (KPC),<sup>33</sup> such as the appointment of the Acting Chief Prosecutor of Basic Prosecution of Pristina.<sup>34</sup> In particular, political interference in the judicial system resulted in "disputed appointments and unclear mandates".<sup>35</sup>

**26.** In 2019, CSOs raised concerns regarding violations of the right to a trial within a reasonable time. According to GLPS, the right of defendants facing criminal charges to a trial within a reasonable timeframe was violated in at least six instances. KRCT also registered numerous cases when the justice system in Kosovo failed to respect the principle of adjudication within a reasonable time in both criminal and civil matters.

**27.** The excessive use and length of pre-trial detention as well as delays in appellate procedures also remained pressing matters of concern in relation to the right to liberty and security of the person. Almost 40 per cent of the prison population is awaiting a final judgement according to KRCT, while a considerable number of persons were held in pre-trial detention for over 5 years. KRCT advocated for the increased use of alternative measures to detention, including through an amicus curiae brief submitted to the Constitutional Court of Kosovo in Case No. KI 10/18 that addressed several aspects of the right to liberty and security of the person and fair trial rights. In that case, the Constitutional Court held that extending a pre-trial detention without a continuous and individualized examination of the circumstances violated the right to liberty and security of the person.<sup>36</sup> In doing so, the Court enshrined a new standard in the case law when deciding on the "detention - pending trial" that requires judges to conduct an individualized assessment of all the relevant circumstances in each case, which represents a positive step on this issue.

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29 See generally, GLPS, 'Fading into Obscurity. A Snapshot Analysis of the Recent Developments in the Justice System of Kosovo' (June to September 2019) (hereinafter Fading into Obscurity).

30 Ibid., p. 19.

31 Ibid., pp. 4-6.

32 Ibid., p. 6.

33 This is the highest body tasked with ensuring the impartiality, independence and professionalism of Kosovo's prosecutorial system.

34 Fading into Obscurity, note 29, pp. 9-11.

35 2019 US State Dept. Human Rights Report, note 16, p. 9.

36 Constitutional Court of Kosovo, *Case No. KI 10/18* (8 October 2019), paras. 104-109.

**28.** Retrials are one of the key factors that contribute to unreasonable delays and lengthy judicial procedures in Kosovo. When the case is returned for retrial, the hearing does not begin for months, and, in certain instances, it takes years to hold the initial session. This partly due to the fact that Kosovo courts tend to calculate the period for deliberation from the referral date of each case, which, according to the Ombudsperson, violates ECHR jurisprudence requiring the period to run from when the case is first filed.<sup>37</sup> In addition to recommending the prioritization of cases on retrial over new claims, the Ombudsperson submitted several letters to courts recalling their obligations to start the retrials without delays, in particular in cases when defendants are in detention.<sup>38</sup>

**29.** In 2014, the KPC adopted the Standard Operating Procedures (SOPs) for the Selection of Serious Crimes Targets and Inter-institutional Cooperation aimed at preventing, detecting, investigating and adjudicating perpetrators of the most serious criminal offences, which also allows for the confiscation of property acquired through criminal activity. In 2015, the KJC “issued a decision obliging court presidents and judges to prioritize all “LV” sign [Visa Liberalization]”.<sup>39</sup> However, engagement with these cases, which is a criterion for visa liberalization of Kosovo and also an indicator of the independence of the justice system, remains low. From December 2014 to June 2019, only 51 such cases were targeted (38 indictments, eight cases under investigation, the investigations terminated in four cases and have been suspended in one case). Of the 51 targeted cases, 36 cases relate to corruption and 15 relate to organized crime.<sup>40</sup>

**30.** The enforcement of court decisions is another area that requires compliance and further attention. The Serbian Orthodox Church (SOC) expressed concern that the municipality of Deçan/Dečani maintains its intention to build a transit road to Montenegro that would pass through the special protected zone near the Visoki Deçan/Dečani Monastery.<sup>41</sup> Municipal officials in Deçan/Dečani continued to refuse to implement the Constitutional Court’s decision in 2016 holding that the 24 hectares of land in the special protected zone should be returned to the monastery<sup>42</sup> and registered as such in the cadasters, while central Kosovo institutions did not take any action to enforce the Court’s decision.<sup>43</sup>

**31.** Positive developments have been clearly evidenced in the publication of judgements by the courts, which has demonstrably contributed to transparency of the justice system. The Basic Courts, Court of Appeals and Supreme Court have increasingly published their judgements. From

37 Oik, ‘Annual Report 2019 No. 19’ (2 April 2020), p. 27 (hereinafter 2019 Oik Report).

38 Ibid., pp. 27, 127-128.

39 KLI, ‘Failures in Targeted Cases: Analytical Report Based on the Systematic Monitoring of All Targeted Cases for Visa Liberalization (January 2015 – May 2019)’ (May 2019), p. 4.

40 Ibid., pp. 4-5.

41 US Department of State, ‘Kosovo 2019 International Religious Freedom Report’ (10 June 2020), pp. 1, 8 (hereinafter 2019 US State Dept. Religious Freedom Report).

42 Ibid., pp. 1, 7-8; see also UNSC, ‘Report of the UN Secretary-General on the United Nations Interim Administration in Kosovo’ (3 June 2019) UN Doc. S/2019/461, para. 19; UNSC, ‘Report of the UN Secretary-General on the United Nations Interim Administration in Kosovo’ (4 October 2019) UN Doc. S/2019/797, para. 21.

43 2019 US State Dept. Religious Freedom Report, note 41, pp. 1, 7-8.

May to November 2019, Kosovo's courts published 6,611 judgements, compared to only 10,091 judgments published from January 2016 to April 2019.<sup>44</sup>

**32.** According to ADRC, access to justice improved in the Mitrovicë/Mitrovica region in particular after the establishment of an integrated justice system following the implementation of the Brussels Agreement on the Integration of Justice,<sup>45</sup> which began in October 2017. Before integration, there were two separate judicial systems in the region: Kosovo's judicial system to the south and a Serbian-run system north of the Ibër/Ibar River. The internal Basic Court and Basic Prosecution in Mitrovicë/Mitrovica have been successfully integrated and have adequate facilities. In both institutions, the number of staff has increased, and services are accessible to all, which was not the case before. After these improvements, local communities found that it is easier to access justice and that the court and prosecution in Mitrovicë/Mitrovica were more accessible, impartial and transparent than before.<sup>46</sup> Nonetheless, there are still challenges that need to be overcome, such as the Kosovo Serb (K-Serb) community's hesitancy to engage with the integrated system and poor or delayed translations and bilingual services that may impede access to justice and the realization of the integrated system's full potential.<sup>47</sup>

**33.** Law No. 03/L-057 on Mediation was adopted in 2008 to support access to justice efforts in Kosovo. Since the law's functionalization and implementation in the Mitrovicë/Mitrovica region in 2013, the region benefited in particular from mediation, with approximately 4,200 parties accessing justice through mediation resulting in the closure of a significant number of cases of Mitrovicë/Mitrovica's Basic Court and Prosecution.

**34.** A new Law No. 06/L-009 on Mediation, which entered into force in 2018, foresaw, among other things, the establishment of a Chamber of Mediators. Although it is not yet functioning at full capacity, the Chamber of Mediators was established at the end of 2019 to gather Kosovo's mediators under one institution with the aim of protecting their interests and rights and developing mediation. The new law also establishes that the Chamber and its acts must be approved by the Ministry of Justice, but this has not yet occurred. The Ministry of Justice has also not yet signed two sub-legal acts relevant to mediation that regulate private (that is, out-of-court) mediation and mediators' fees. As both sub-legal acts are highly important to the implementation of mediation and its general development in Kosovo, their continued absence remains a matter of concern.

**35.** According to ADRC, a key mediation provider and actor in the Mitrovicë/Mitrovica region and beyond, the implementation of the new Law on Mediation and its sub-legal acts needs further clarification, institutional commitment and practical harmonization. Now that mediation services have been integrated into Kosovo's Basic Courts and Basic Prosecution offices as foreseen under the new Law on Mediation, these institutions must provide appropriate and sufficient working spaces for mediation activities, where missing. Court and prosecution clerks engaged with

44 FOL Movement, 'Justice System Strengthening Program: Monitoring the Publication of Judgments' (January 2020), p. 6.

45 Brussels Agreement on Justice (10 February 2015).

46 Input by ADRC based on its upcoming publication 'Justice in Mitrovica Region: A Public Perception Poll', pp. 25-29, 31.

47 Ibid., pp. 3, 23, 28, 52-53.



mediation after its integration within these institutions require mediation-focused training and should be dedicated only to mediation-related activities, which is not the case in many instances at present. In addition, efforts should be made to help judges and prosecutors become more familiar with the new legislation and to identify and build the capacities of mediators, including developing new mediators from minority communities as they are currently underrepresented in mediation in Kosovo. The new law also introduced mandatory mediation for certain court cases, but judges still do not fully respect and comply with this important requirement and engage with mediation. Closer monitoring of the practical implementation of mediation is also needed to assess remaining challenges, develop improvements and provide quality assurance. There is also a necessity to continue to promote and enhance awareness of mediation in the general population.

### 4.3. The freedom of expression and opinion and the right to information

**36.** Article 40 of Kosovo's Constitution protects the freedom of expression and opinion and the right to information in Kosovo, subject only to limitations "necessary to prevent a provocation of violence and hostility on grounds of race, nationality, ethnicity or religion." The freedom of expression and opinion and the right to information are also protected by several human rights instruments that are directly applicable in Kosovo.<sup>48</sup> Articles 41 and 42 of the Constitution also guarantee the right to access public documents and the freedom of the media. Kosovo's legislation relating to the freedom of expression is consistent with ECHR jurisprudence<sup>49</sup> as well as with European Union (EU) and international standards. Law No. 06/L-085 on Protection of Whistleblowers, which entered into force in January 2019, establishes rules, procedures and obligations to enable and protect whistleblowers who speak out on violations in the public and private sectors<sup>50</sup> in accordance with a Council of Europe (CoE) recommendation on the protection of whistleblowers.<sup>51</sup> A new Law No. 06/L-081 on Access to Public Documents entered into force in July 2019 that aims to guarantee the right of every person without discrimination of any kind to access public documents produced, received, maintained or controlled by public institutions as well as the right to re-use public sector documents.<sup>52</sup> This new law establishes the Information and Privacy Agency as an independent body responsible for monitoring its implementation.<sup>53</sup> Although there is a sound legal framework in place in Kosovo, the implementation of these rights in practice remains a concern.

**37.** The implementation of the Law on Protection of Whistleblowers will be a challenging task considering the high levels of corruption and nepotism and judicial inefficiency and taking into account cases where people have been "punished" for reporting crimes related to certain

48 Constitution of Kosovo, note 2, Art. 22; see also UDHR, Art. 19; ICCPR, Art. 19; ECHR, Art. 10.

49 European Commission, 'Kosovo 2019 Report' (29 May 2019), p. 26 (hereinafter 2019 EC Report).

50 Law No. 06/L-085 on Protection of Whistleblowers (12 December 2018), Arts. 1-2.

51 CoE, *Recommendation CM/Rec(2014)7 and Explanatory Memorandum on Protection of Whistleblowers* (CoE, October 2014).

52 Law No. 06/L-081 on Access to Public Documents (4 July 2019), Art. 1.

53 Ibid., Art. 27.

personalities.<sup>54</sup> The AoK failed to amend the Law on Radio and Television of Kosovo or approve a new law to provide Radio and Television of Kosovo (RTK) with financial independence from the Government of Kosovo's (GoK) budget. The RTK Workers' Union called for them not to be included in the new Law No. 06/L-111 on Salaries in Public Sector as this would also undermine their independence.<sup>55</sup>

**38.** Regarding the freedom of the media, Freedom House still rates Kosovo as partly free and not independent because of political interference.<sup>56</sup> The Association of Journalists of Kosovo (AJK) and media outlets reported 20 cases of physical assaults or verbal threats targeting journalists, such as comments against "Gazeta Express" by the Democratic Party of Kosovo (PDK)<sup>57</sup> and a physical assault by a minister against a journalist.<sup>58</sup> As for editorial independence, journalists in some cases are threatened with dismissal if they produce, publish or broadcast reports on particular topics or that are critical of the government, political parties or certain officials.<sup>59</sup> Scarcity of financial resources in the media sector, journalists working with low wages and without contracts and the lack of transparency in media ownership remain key challenges to media freedom in Kosovo. As such, these issues make editorial independence vulnerable to corruption and prone to self-censorship and create an atmosphere of professional insecurity, all of which can jeopardize the freedom of expression.

**39.** Law No. 02/L-15 on the Independent Media Commission (IMC) and Broadcasting gives the IMC sufficient powers to regulate broadcast media but more should be done with respect to online media. Online media is neither licensed nor monitored by the IMC, hence making it vulnerable to misuse resulting in possible violations of the right to privacy and the freedom of expression, such as by undermining the privacy of individuals and allowing for possible case of hate speech, libel and defamation.<sup>60</sup> In December 2019, the IMC approved a Draft Ethic Code for Providers of Audio and Audiovisual Media Services in Kosovo,<sup>61</sup> which has been largely criticized by civil society and media services providers for violating constitutional principles.

**40.** There have been some cases involving speech provoking, encouraging or leading to violence, hate speech, discrimination or hostility. Online hate speech against LGBT+ rights activists remains worrisome as they received more than 150 online death threats in 2019, none of which were prosecuted.<sup>62</sup> The revised Criminal Code, which entered into force in April 2019, added sexual orientation and gender identity as a ground for hate acts, strengthening the protection of the LGBT+ community.<sup>63</sup> Nonetheless, as per political views, it turns out that individuals are largely free

54 Liridona Ademaj, 'Rasti ndaj djalit të Shpend Maxhunit, suspendohet polici' (kallxo.com, 27 November 2018).

55 KOHA, 'RTK largohet nga ligji për paga, bën thirrje që të miratojë ligjin e ri' (2 February 2019).

56 Freedom House, 'Nations in Transit 2020: Kosovo' (6 May 2020).

57 AJK, 'Gjuhë linçuese ndaj Gazetës Express nga PDK' (22 August 2019).

58 AJK, 'Sulm fizik I ministrit Endrit Shala ndaj gazetarit Ensar Ramadan' (17 December 2019).

59 2019 US State Dept. Human Rights Report, note 16, p. 13.

60 2019 EC Report, note 49, p. 26.

61 IMC, 'Ftesë Publike për Komente' (9 December 2019), also available in [Serbian](#).

62 Human Rights Watch, 'World Report 2020' (4 January 2020), p. 338.

63 See, e.g., 2019 Criminal Code, note 9, Arts. 70.2.12, 141.1, 321.4.



to express their political opinions without fear, and space has opened for discussion on sensitive issues.<sup>64</sup>

**41.** The right to access to information also remains a concerning issue in Kosovo. In 2019, 106 complaints were filed regarding the denial of the right to access public documents of which 99 were opened for investigation.<sup>65</sup> Most of these complaints were lodged by the media and NGOs against public institutions at the central level. According to the Ombudsperson, the non-implementation of Law No. 03/L-178 on Classification of Information and Security Clearances has resulted in the rejection of requests for access to public documents due to the level of discretion of public authorities to designate documents as classified.<sup>66</sup> The persistent case backlogs in the judicial system has also hindered its ability to adequately respond to complaints concerning denied access to public information.

#### 4.4. The freedom of peaceful assembly

**42.** Article 43 of Kosovo's Constitution specifically guarantees the freedom of peaceful assembly, which is also protected in Kosovo through several directly applicable human rights instruments.<sup>67</sup> The Kosovo Police categorizes assembly into three types: (1) violent or peaceful protests; (2) manifestations and concerts; and (3) gatherings in election campaigns.<sup>68</sup> Law No. 03/L-118 on Public Gatherings stipulates that all persons in Kosovo have the right to participate in public gatherings and defines assembly as gatherings of more than 20 people with the aim of expressing public, social, political or racial concerns. It establishes the right to freedom of assembly, freedom of speech in peaceful assemblies and the responsibilities of organizers,<sup>69</sup> although it allows Kosovo Police to prohibit a gathering if it lacks a permit, is held in a prohibited place, aims to incite hatred or violence or if it is likely to be used for violent purposes.<sup>70</sup>

**43.** A 2018 Concept Document on public gatherings proposed to better regulate the legal framework that governs assembly and to align it with international standards. It raises concerns regarding different interpretations of key terms in the current law, highlighting that clarifications are needed to avoid ambiguities.<sup>71</sup> The concept document was approved by the GoK on 30 October 2018 and was proposed to be added to the 2019 legislative plan.<sup>72</sup>

64 Freedom House, 'Freedom in the World 2020: Kosovo' (4 March 2020) (hereinafter 2020 Freedom House Report).

65 2019 OiK Report, note 37, p. 44.

66 Ibid., p. 144.

67 Constitution of Kosovo, note 2, Art. 22. See also UDHR, Art. 20; ICCPR, Art. 21; ECHR, Art. 11.

68 Jeton Mehmeti, 'Monitoring the Right to Free Assembly' (GAP Institute and European Center for Not-for-Profit Law, January 2019), p. 6 (hereinafter Mehmeti).

69 Ibid., p. 14.

70 Peaceful Assembly Worldwide, 'Kosovo' (last updated November 2019).

71 Mehmeti, note 68, pp. 14-15.

72 Ibid.

**44.** The freedom of assembly was “generally respected” in Kosovo in 2019.<sup>73</sup> In contrast to previous years when demonstrations resulted in large-scale violence and confrontation, large-scale demonstrations in recent years have proceeded peacefully and without violence by either the protestors or security officials. Security-based restrictions are occasionally imposed on gatherings.<sup>74</sup> Kosovo police must be more open to requests for information on assemblies and to specific reporting in this area.<sup>75</sup> The existing framework governing the freedom of assembly needs to be updated.<sup>76</sup>

#### **4.5. The freedom of association**

**45.** Article 44 of the Constitution guarantees the freedom of association, including the right of everyone to establish, join and participate in an organization without permission and to establish trade unions. It further provides that competent courts may prohibit organizations that “infringe on the constitutional order, violate human rights or freedoms or encourage racial, national, ethnic or religious hatred.” Several human rights instruments that directly apply in Kosovo also uphold the freedom of association.<sup>77</sup> A new Law No. 06/L-043 on Freedom of Association in Non-governmental Organizations (NGOs) entered into force in 2019, which recognizes three forms of NGOs (i.e.,) associations, foundations and institutes).<sup>78</sup> It also stipulates that NGOs must provide a public or mutual benefit but also grants them a beneficial tax status.<sup>79</sup> Law No. 04/L-011 for Organizing Trade Union in Kosovo upholds the right to form private and public-sector trade unions,<sup>80</sup> while Law No. 03/L-212 on Labour establishes work-related rights relevant to the freedom of association.<sup>81</sup>

**46.** In 2019, the freedom of association was “generally respected” in Kosovo.<sup>82</sup> Freedom House observed that NGOs generally operate without impediment, although they are occasionally subject to governmental pressure. However, while the right to establish a trade union is formally upheld, there is a clear implementation gap. Workers who seek to establish trade unions often experience intimidation from employers.<sup>83</sup> In addition, the size of the informal labour market and high levels of unemployment in Kosovo make it difficult to uphold worker-related rights, including the freedom of association and collective bargaining rights.

**47.** The second reading of the draft version of the Law No. 06/L-043 on Freedom of Association in NGOs by the AoK in November 2018 saw several problematic amendments that were added that potentially threatened NGOs’ independence and status, including the possibility that the authorities could terminate NGO registrations based on vague provisions. After an intensive

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73 2019 US State Dept. Human Rights Report, note 16, p. 14.

74 2020 Freedom House Report, note 64.

75 Mehmeti, note 68, p. 28.

76 Ibid.

77 Constitution of Kosovo, note 2, Art. 22. See also UDHR, Art. 21; ICCPR, Art. 22; ECHR, Art. 11.

78 International Center for Not-for-Profit Law, ‘Nonprofit Law in Kosovo’ (current as of June 2019).

79 Ibid.

80 [Law No. 04/L-011 for Organizing Trade Unions in Kosovo](#) (26 August 2011) (hereinafter Law on Trade Unions).

81 [Law No. 03/L-212 on Labour](#) (1 December 2010) (hereinafter Law on Labour).

82 2019 US State Dept. Human Rights Report, note 16, p. 14.

83 2020 Freedom House Report, note 64.

advocacy and engagement by civil society in Kosovo, the law based on the initial inputs by NGOs was adopted and entered into force in 2019 without these problematic amendments.<sup>84</sup>

#### 4.6. The freedom of belief, conscience and religion

**48.** Kosovo's Constitution guarantees and upholds the freedom of belief, conscience and religion, including by establishing Kosovo as secular and neutral on religion, ensuring the protection of religious heritage and prohibiting discrimination on religious grounds.<sup>85</sup> Several human rights instruments protecting this freedom directly apply in Kosovo.<sup>86</sup> The Law on Freedom of Religion in Kosovo also guarantees the freedom of belief, conscience and religion to all religious communities in Kosovo, including with regard to equal rights and legal protection and property rights.<sup>87</sup> However, it does not provide religious communities with the right to register and acquire legal personality, which, according to the Venice Commission (VC), violates Articles 9 and 11 of the ECHR on the basis that religious communities lacking legal personality will likely encounter "discriminatory legal obstacles" in relation to acquiring or renting property, financial affairs, contracts and protecting their rights in legal fora.<sup>88</sup>

**49.** A revised draft bill that seeks to amend the Law on Freedom of Religion to allow religious communities in Kosovo to register and obtain legal entity status has been pending since October 2017. Initially prepared based on recommendations by international actors and requests by religious communities in Kosovo,<sup>89</sup> the draft bill was revised in 2017 and eventually placed on the AoK's agenda in May 2019, although it was neither discussed nor adopted by the AoK in 2019.<sup>90</sup> If adopted, the draft bill would provide for the automatic registration and legal status for six recognized religious communities in Kosovo and elective registration for "new" religious communities if certain conditions are satisfied. The VC found that this differentiated system complies with Articles 9 and 14 of the ECHR because there is an "objective and justifiable basis for historical reasons" in Kosovo for treating these religious communities differently.<sup>91</sup> Until the law is amended, religious groups are not allowed to register as legal entities in Kosovo, making them unable to conduct business, monetary partnerships or legal matters with other public and private entities.

84 Civicus, ['Amendments to Law Governing Freedom of Association Are Dropped'](#) (28 June 2019).

85 Constitution of Kosovo, note 2, Arts. 8-9, 24, 38, 39, 57-59.

86 Ibid., Art. 22. See also UDHR Art. 18; ICCPR Arts. 19, 26-27; ECHR Arts. 9, 14; CoE Framework Convention, Arts. 4, 5, 7-8.

87 [Law No. 02/L-31 on Freedom of Religion in Kosovo](#) (1 April 2007), Arts. 3, 12.3.

88 See European Commission for Democracy Through Law (Venice Commission), ['Opinion on the Draft Law on Amendment and Supplementation of Law No. 02/L-31 on Freedom of Religion of Kosovo'](#) (25 March 2014), paras. 12, 45 (hereinafter 2014 VC Opinion); see also Institute on Religion and Public Policy Expert Panel on Religious Legislation and Implementation, ['Analysis of the Law on Freedom of Religion in Kosovo Adopted by the Assembly of Kosovo'](#) (10 October 2006), pp. 2, 6 (hereinafter 2006 Institute on Religion Analysis); see also 2019 US State Dept. Religious Freedom Report, note 41, p. 4.

89 2006 Institute on Religion Analysis, note 88, pp. 2, 6; see also 2014 VC Opinion, note 88, para. 12; see also ['Third Opinion of the Advisory Committee on the implementation of the Framework Convention in Kosovo'](#) (10 June 2013), para. 90.

90 2019 US State Dept. Religious Freedom Report, note 41, pp. 1, 5.

91 2014 VC Opinion, note 88, paras. 50-52, 55-64, 104-105.

**50.** There are 24 Special Protection Zones established based upon religious and cultural significance that are legally protected from activities that may disrupt or damage the historical, cultural or natural environment.<sup>92</sup> A multiethnic police unit provides 24-hour specialized protection to these zones.<sup>93</sup> Although there have not been any reported incidents at these sites in two years, theft and vandalism at SOC sites outside these zones have been reported.

**51.** In 2019, the OiK did not receive or investigate, including ex officio, any complaints regarding violations of the freedom of belief, conscience and religion as guaranteed by Kosovo's Constitution and legal framework.<sup>94</sup> However, some reports emerged in 2019 claiming that municipal governments did not treat religious organizations equally on property issues, including in relation to approvals of building permits and allocations of burial lots in public cemeteries.<sup>95</sup> The SOC claimed, as noted previously, that Kosovo authorities violated its property rights by refusing to implement a 2016 Constitutional Court decision granting it ownership over 24 disputed hectares of land in a special protected zone near the Visoki Deçan/Deçani Monastery.<sup>96</sup>

**52.** The Ministry of Education, Science and Technology's administrative circular prohibiting elementary and secondary schools students from wearing religious attire on school grounds remained in force at the end of 2019, despite a meeting held with the Kosovo Islamic Community on this issue in July 2019.<sup>97</sup> Nevertheless, the OiK did not receive any reports of schools barring students from wearing religious attire in 2019,<sup>98</sup> which was also confirmed by the Kosovo Islamic Community with respect to Muslim students and teachers.<sup>99</sup> However, while the administrative circular technically refers only to secondary school students, leaders from the Muslim community reported that Muslim applicants for positions with the Kosovo Security Forces (KSF) as well as with schools faced discrimination in hiring for wearing religious attire during their interviews.<sup>100</sup>

**53.** According to the Kosovo Police, 61 religiously motivated incidents occurred in the first nine months of 2019.<sup>101</sup> Many of these incidents involved theft and property damage and targeted SOC and Muslim religious sites<sup>102</sup> However, as "religion and ethnicity are often closely linked", there were some challenges in classifying these incidents as having occurred based solely on religious grounds.<sup>103</sup>

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92 2019 US State Dept. Religious Freedom Report, note 41, pp. 4, 7.

93 Ibid., p. 7.

94 2019 OiK Report, note 37, p. 174.

95 2019 US State Dept. Religious Freedom Report, note 41, p. 1.

96 KOHA, 'Vazhdojnë mospjatimet për tokën rreth Manastirit të Decanit' (12 August 2019); 2019 US State Dept. Religious Freedom Report, note 41, pp. 1, 7-8.

97 2019 US State Dept. Religious Freedom Report, note 41, pp. 5-6.

98 2019 OiK Report, note 37, p. 174.

99 2019 US State Dept. Religious Freedom Report, note 41, p. 5.

100 2019 US State Dept. Religious Freedom Report, note 41, p. 5-6.

101 Ibid., pp. 1, 9.

102 Ibid., p. 9.

103 Ibid.

## 5. ECONOMIC, SOCIAL AND CULTURAL RIGHTS

### 5.1. Labour rights

**54.** Kosovo has a basic legal framework regulating labour affairs.<sup>104</sup> The Constitution of Kosovo guarantees equal legal protection and non-discrimination, the right to work and freely choose an occupation and the freedom of association, including the freedom to form trade unions.<sup>105</sup> It also stipulates that children shall have the right to be protected from, among other things, exploitation.<sup>106</sup> Adopted in 2010, Law No. 03/L-212 on Labour provides protection for employees in the private and public sectors.<sup>107</sup> Kosovo's legal framework also specifically prohibits discrimination in the workplace,<sup>108</sup> including in the areas of free choice of employment, promotions, access to vocational training and rehabilitation, equal pay for equal work, fair and just conditions of work and the right to leave and the freedom of association.<sup>109</sup> Any distinction, exclusion or prioritization in this regard is only permitted based on objective criteria concerning an individual's knowledge and capacities.<sup>110</sup> Law No. 2002/9 on Labour Inspectorate was amended in 2008 to mandate the Labour Inspectorate to oversee the implementation of provisions on labour rights and occupational safety and health, while Law No. 04/L-161 on Safety and Health at Work was adopted in 2013. Law No. 04/L-011 on the Organization of Trade Unions regulates and determines the rights and freedom of the employees to establish trade union organizations in the public and private sectors.<sup>111</sup> Law No. 06/L-084 on Child Protection, adopted in June 2019, establishes a minimum age for employment and prohibits child labour.<sup>112</sup>

**55.** According to the Union of Independent Trade Unions of Kosovo (BSPK), however, Kosovo's legal framework was not adequately enforced in 2019 due to inadequate resources, inspections and remediation as well as insufficient penalties.<sup>113</sup> Judicial enforcement of Kosovo's legal framework protecting labour rights remained inadequate due to lengthy proceedings of labour cases and the

104 Law on Labour, note 81; [Law No. 04/L-161 on Safety and Health at Work](#) (14 June 2013); [Law No. 04/L-219 on Foreigners](#) (5 September 2013); [Law No. 05/L-023 on Protection of Breastfeeding](#) (23 November 2015); Law on Trade Unions, note 80; [Law No. 03/L-200 on Strikes](#) (24 August 2010); [Law No. 04/L-008 on Social Economic Council](#) (10 August 2011); [Law No. 06/L-084 on Child Protection](#) (17 July 2019); [Law No. 2002/9 on Labour Inspectorate](#) (19 December 2002), as amended by [Law No. 03/L-017](#) (10 September 2008).

105 Constitution of Kosovo, note 2, Arts. 24, 44, 49.

106 Ibid., Art. 50.

107 Law on Labour, note 81.

108 Constitution of Kosovo, note 2, Arts. 24, 49; Law on Labour, note 81; [Law No. 05/L-21 on the Protection from Discrimination](#) (26 June 2015) (hereinafter Law on Protection from Discrimination); [Law No. 05/L-020 on Gender Equality](#) (26 June 2015) (hereinafter Law on Gender Equality).

109 2019 OiK Report, note 37, pp. 64-65.

110 Ibid., pp. 64.

111 Law on Trade Unions, note 80.

112 2019 OiK Report, note 37, p. 48; 2019 US State Dept. Human Rights Report, note 16, p. 31.

113 2019 US State Dept. Human Rights Report, note 16, p. 30.

lack of a court specialized in labour rights.<sup>114</sup> Moreover, Kosovo's legal and policy framework on labour issues needs to be further aligned with the rights and obligations under the Stabilization and Association Agreement (SAA) between the EU and Kosovo, particularly on working conditions for women and the promotion of anti-discrimination policies. While both the public and private sectors generally respected the freedom of association, including the right to form trade unions, some employers used intimidation to prevent the establishment of trade unions, while other employers, especially in the private sector, did not respect workers' right to collectively bargain.<sup>115</sup>

**56.** According to the 2019 Labour Force Survey, Kosovo continued to have a high unemployment rate of 25.7 per cent, which disproportionately impacted women and youth. Unemployment was highest among females at 34.4 per cent, compared to males at 22.6 per cent. Youth between ages 15 and 24 faced the highest unemployment rate of any group at 49.4 per cent. Women also faced significant challenges accessing the formal labour market, including the inability to obtain employment, especially in more senior positions, even if they had the same qualifications as men.<sup>116</sup> Kosovo Roma (K-Roma), Ashkali (K-Ashkali) and Egyptian (K-Egyptian) and other minority communities also experienced barriers to their inclusion in the labour market, such as the lack of employment opportunities, adequate transport, vocational training and flexible working hours as well as systemic discrimination and insufficient social and cultural inclusion. Furthermore, language, gender stereotypes and prejudice between communities are affecting their social interaction.

**57.** The large number of unemployed youths, who constitute the largest share of Kosovo's population, continues to remain a concern. According to the Strategy for Youth for 2019 – 2023, around 54 per cent of young people are not working in their chosen professions. The high unemployment rate and general lack of opportunities are key reasons why young people migrate from Kosovo.<sup>117</sup> The Action Plan on Increasing Youth Employment 2018 – 2020 underlines the importance of ensuring the quality of vocational training and the harmonization of education requirements with the labour market to increase employability and self-employment. To reflect labour market needs, it identifies the need to review of programs of study and then aims to orientate students in studying deficit areas as one of the strategies for employability growth and Kosovo's development.

**58.** Despite being prohibited by law, employment-related discrimination also occurred on the basis of sex, gender identity, disability, religion, political affiliation, minority status, union membership and age.<sup>118</sup> According to the Ombudsperson, the level of discrimination at work remained the same as in previous years, with no "visible results and progress in this regard."<sup>119</sup> In particular, gender-based discrimination remained widespread in hiring, promotion, pay, contract

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114 2019 OiK Report, note 37, p. 65.

115 2019 US State Dept. Human Rights Report, note 16, p. 30.

116 2019 OiK Report, note 37, p. 76.

117 Blerta Begisholli, 'Leaving Kosovo: Legal Migration Upsurge Causes Depopulation Fears' (balkaninsight.com, 25 April 2019).

118 2019 US State Dept. Human Rights Report, note 16, p. 32.

119 2019 OiK Report, note 37, p. 65.



length, maternity leave and sexual harassment at work. For example, the BSPK reported that some employers discriminated against women during interviews and illegally fired women who were pregnant or had requested maternity leave.<sup>120</sup>

**59.** The current legal framework on maternity leave contributed to discrimination against women during hiring,<sup>121</sup> which is reflected by their low employment rates. It is also fragmented as various laws address and treat gender-based discrimination differently (e.g., Law on Gender Equality, Law on the Protection from Discrimination and Labour Law). Due to this lack of harmonization, only a few cases of gender-based discrimination in the workplace have been reported. Research shows that the level of awareness in reporting such discrimination is very low. Kosovo's high unemployment rate and fear of employer retaliation also hindered reporting discrimination cases in the workplace to the available protection mechanisms.<sup>122</sup> Even when reported, the responsible institutions lack the necessary practical experience to properly process and investigate cases of discrimination.

**60.** Regarding maternity and paternity leave, the current legal framework discriminates against men by failing to provide them with sufficient paternal leave, which reinforces existing socialized gender roles. The current draft Labour Law excludes maternity and paternity leave, which have been placed into a separate law. The discussions regarding the new legislation that will engage labour rights and maternity and paternity rights are still underway, and a final decision on these issues has not yet been made.

**61.** Addressing the informal economy could contribute to increasing registered work, improving labour protections for women and men presently working in the informal economy, adding to their pensions later in life towards minimizing old-age poverty (affecting women more than men) and improving revenues for government programs. Although addressing the informal economy has been a priority of the GoK and the EU, including within the European Reform Agenda, this has not been based on a proper gender impact analysis in accordance with the Law on Gender Equality. Any planned intervention to address the informal economy must consider how such interventions may affect women and men differently and ensure a "do no harm" approach.

**62.** Several violations of workers' right to just and favorable conditions of work occurred in 2019, such as standards relating to wages, working hours and occupational safety and health, due to insufficient fines as well as resource and capacity limitations.<sup>123</sup> A number of employed individuals

120 2019 US State Dept. Human Rights Report, note 16, p. 32.

121 Iliriana Banjska, David JJ Ryan, Nicole Farnsworth, et al., *Gender-based Discrimination and Labour in Kosovo* (Kosovo Women's Network, 22 May 2019).

122 2019 OiK Report, note 37, p. 65.

123 2019 US State Dept. Human Rights Report, note 16, pp. 33-34.

lacked employment contracts, regular pay or pension contributions.<sup>124</sup> Some employers reportedly fired workers without cause or failed to provide them with holidays.<sup>125</sup> Construction workers suffered from the highest number of occupational injuries and deaths in 2019 due to a failure to comply with essential occupational safety rules.<sup>126</sup> Kosovo still lacks a “structured register” to report and register work-related accidents.

**63.** Despite being prohibited by law, child labour occurred in Kosovo in 2019.<sup>127</sup> As of May 2019, 116 children were reportedly subjected to hazardous conditions while engaged in begging, street work and mining.<sup>128</sup> Children working in the agricultural sector also faced hazards in the operation of farm equipment, although they were not prevented from attending school.<sup>129</sup> Other children, in particular those from minority communities, engaged in physical labour, including collecting items to sell from garbage bins.<sup>130</sup> Financial and human resource constraints continued to hinder the Labour Inspectorate and Centers for Social Welfare from adequately addressing the issue of child labour.

## 5.2. The right to education

**64.** Article 47 of the Constitution grants everyone the right to a free basic education and requires that public institutions provide them with equal educational opportunities “in accordance with their specific abilities and needs”. However, over the past few years there has been limited but insufficient progress in achieving the 2017 – 2021 Kosovo Education Strategic Plan as the GoK has only allocated half of the financial resources required for its implementation. A draft Law on Higher Education, which would ensure mechanisms for quality assurance and the independent operation and autonomy of higher education institutions, has not been adopted yet. Kosovo’s qualification framework in the field of education is based on the European Qualifications Framework. Law No. 05/L-066 on the Regulated Professions, which regulates the mutual recognition of professional qualifications between EU member states, is aligned to a certain degree with the EU’s legal framework but further harmonization is still needed. The Kosovo Accreditation Agency, which accredits both public and private institutions for higher education, was excluded from the European Quality Assurance Register for Higher Education in September 2019.

**65.** Kosovo’s education system is still not sufficiently responding to labour market needs. Although the number of students enrolled in secondary education is high at 88.1 per cent, low Programme for International Student Assessment<sup>131</sup> results and unemployment of graduates of

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124 Ibid., p. 33.

125 Ibid.

126 2019 OiK Report, note 37, p. 65.

127 2019 US State Dept. Human Rights Report, note 16, p. 31.

128 Ibid., p. 32.

129 Ibid.

130 Ibid.

131 Ada Huibregtse, *Perspectives of Roma, Ashkali and Egyptian Youth on Decent Work Opportunities and Challenges in Kosovo* (International Labour Organization, 5 November 2018), p. 7.



tertiary education, as compared to the EU, demonstrate the poor quality and relevance of higher education in Kosovo. While half of the students in upper secondary education choose vocational education, these programs lack applied and practical courses. In addition, according to the Strategy for Youth for 2019 – 2023, around 54 per cent of young people often are not working in their chosen professions. This strategy highlights non-formal education as a way to broaden the skills of young people and engage them to impact their surroundings.

### 5.3. Property rights

**66.** Kosovo's Constitution, laws and regulations protect and guarantee property rights in Kosovo. Article 7 of the Constitution stipulates that "the constitutional order of...Kosovo is based on", among other things, the right to property. Article 46 guarantees "the right to own property" and stipulates that "no one shall be arbitrarily deprived of property." Article 121 provides that "foreign natural persons and foreign organizations may acquire ownership rights over immovable property" as well as concession rights and other rights to use publicly owned resources. Article 156 obliges Kosovo to assist refugees and internally displaced persons "in recovering their property and possession." Article 122 regulates the use of property of special interest and natural resources, while Article 159 addresses socially owned enterprises and property interests. Other laws and regulations relevant to the protection of property rights include the Law No. 03/L-154 on Property and other Real Rights, the Law No. 05/L-010 on Kosovo Property Comparison and Verification Agency (KPCVA), the Law No. 2002/5 on Establishment of the Immovable Property Rights Register, the Law No. 03/L-007 on Non-Contentious Procedure, the Law No. 2006/26 on Inheritance, the Law No. 05/L-20 on Gender Equality, the Law No. 2004/32 on Family and the Regulation No. 01/2018 on the Return of Displaced Persons and Durable Solutions. The Kosovo National Strategy on Property Rights, launched in February 2017, established five key policy objectives, including strengthening the legal framework, addressing informality in the immovable property sector and enforcing the property rights of displaced persons and minority communities.<sup>132</sup>

**67.** Although mandated to adjudicate property claims and resolve discrepancies between property deeds, the KPCVA continued to face challenges in enforcing its eviction orders and compensating those who lost their property in the 1990s.<sup>133</sup> Indeed, as of August 2019, the KPCVA had 74 pending eviction orders, 38 of which related to property located in Mitrovicë/Mitrovica.<sup>134</sup> The KPCVA was also unable to remove illegal structures on land that it confirmed rightfully belonged to claimants.<sup>135</sup> Kosovo courts also failed to respect the principle that property cases already adjudicated should not be relitigated (i.e.,) the *res judicata* principle, which prevented

132 See generally, Ministry of Justice, 'Kosovo National Strategy on Property Rights' (December 2016).

133 2019 US State Dept. Human Rights Report, note 16, pp. 11-12.

134 Ibid., p. 12.

135 Ibid.

property owners from freely accessing their property.<sup>136</sup> According to CSOs, Kosovo still needs to establish a system that allows displaced K-Serbs living outside of Kosovo to effectively file and obtain decisions regarding their property claims.<sup>137</sup> The KPCVA is still expected to receive over 4 million scanned cadastral documents from Serbia as per the Brussels Agreement, but the process has not started yet.<sup>138</sup>

**68.** Partly due to a “confusing mix of laws, regulations, administrative instructions, and court practices”<sup>139</sup> and other factors, several groups in vulnerable situations in Kosovo continued to face challenges to enjoy their property rights. The continuous violation of women’s rights to property and inheritance in Kosovo is at worrying levels. Although the relevant legal framework guarantees equal rights to property and inheritance for both women and men,<sup>140</sup> most property is registered with men<sup>141</sup> as roughly only 17 per cent of women have property registered in their name.<sup>142</sup> In particular, women faced several social, legal and institutional obstacles to realizing their right to inherit property. Traditional social practices and local customary norms contributed to the ineffective implementation of the Law on Inheritance in violation of their constitutional right to property, while also worsening their situation that has been compounded by unemployment, discrimination and exclusion from decision-making processes. In addition, various challenges also impeded the application of the relevant legal framework in practice. For example, men often do not declare women as their family members during the transfer of property from a deceased property holder, while women “voluntarily” relinquish their inheritance rights (in particular in rural areas).<sup>143</sup> Other obstacles include the intentional hiding of movable property and an unwillingness to register joint immovable property to prevent a spouse, particularly women, from exercising property rights. Women also face institutional hurdles to realizing their property rights, such as lengthy legal battles and court procedures to enforce those rights. In a case filed in 2006, the Basic Court in Pristina finally granted the female claimant her right to property based on inheritance only 13 years later in 2019.<sup>144</sup>

**69.** Kosovo institutions and authorities bear the primary responsibility of guaranteeing women their rights to property and inheritance. In this regard, they need to support the development of incentives encouraging women-headed households to formalize their property rights; provide free legal aid to women who cannot afford legal services to protect their right to property and inheritance; support improvements to inheritance processes, including by ensuring women receive equal shares of inheritance; support social and behavioral change processes to improve

136 2019 OiK Report, note 37, p. 86.

137 2019 US State Dept. Human Rights Report, note 16, p. 12.

138 KPCVA, ‘Business Plan 2019’ (2019), p. 6.

139 2019 US State Dept. Human Rights Report, note 16, p. 11.

140 See [Law No. 2004/06 on Inheritance in Kosovo](#) (1 August 2008), Art. 3, as amended by [Law No. 06/L-008](#) (18 December 2018); [Law No. 2004/32 Family Law of Kosovo](#) (1 September 2006), Arts. 45, 47, as amended by [Law No. 06/L-077](#) (17 January 2019); Law on Gender Equality, note 108; Law on Protection from Discrimination, note 108; [Administrative Instruction \(GRK\) No. 03/2016 on Special Measures for Registration of Joint Immovable Property on Behalf of Both Spouses](#) (5 May 2016), Art. 4.

141 2019 US State Dept. Human Rights Report, note 16, p. 24; 2019 OiK Report, note 37, p. 78.

142 Alben Reshitaj and Aanchal Anand, ‘[Standing for Women’s Land and Property Rights in Kosovo](#)’ (World Bank Blogs, 17 April 2019).

143 EULEX, ‘[Women and Inheritance Rights to Real Estate in Kosovo](#)’ (2016), p. 19.

144 Lavdim Bajraktari, ‘[Pas 13 vjetësh përballje nëpër gjykata, paditëses i njihet e drejta në pronë në bazë të trashëgimisë](#)’ (Betimi për Drejtësi, 11 December 2019).

social acceptance of women's property ownership; and support civil society's monitoring of the implementation of the Law on Family provision that foresees evaluations by courts regarding each spouse's contribution when dividing joint property.<sup>145</sup>

**70.** Displaced persons and returnees also continued to experience several challenges to the enjoyment of their property rights. In particular, their properties continued to be occupied illegally, while the non-enforcement of eviction and demolition orders and the inability of the KPCVA to provide adequate compensation also affected their rights.<sup>146</sup> The issue of illegal occupation of property also hinders the right to property of minority communities more generally, in particular, K-Serbs and K-Roma as well as Kosovo Albanians in northern Kosovo.<sup>147</sup> Displaced persons who wish to return to Kosovo also faced delays in the verification of property ownership as well as limited access to durable social housing and land allocation opportunities, hindering their ability to return.<sup>148</sup> Even if displaced persons managed to return and regain their property rights, thefts and property damage impeded their full enjoyment of those rights. While relevant authorities have condemned such acts, investigations and prosecutions of those who committed property-related crimes remained inadequate. Some displaced persons and returnees, in particular members of K-Roma, K-Ashkali and K-Egyptian communities in Kosovo, also faced difficulties in obtaining the necessary civil registration and identity documents to register property in their names and exercise their rights with regard to inherited or transferred property.<sup>149</sup>

**71.** Religious communities also experienced impediments to the full realization of their property rights. Partly due to the inability to obtain legal personality under the Law on Freedom of Religion in Kosovo,<sup>150</sup> different religious organizations reported having some difficulties to register their property and obtain building permits. The SOC, in particular, stated that Kosovo authorities violated its property rights by failing to implement favorable court decisions on property matters and by conducting construction activities in its Special Protective Zones.<sup>151</sup> For example, a Constitutional Court decision from 2016, which found that the SOC had ownership rights to land near the Visoki Deçan/Deçani Monastery, was still not enforced by local authorities in 2019, none of whom have been sanctioned yet for failing to enforce the Court's decision.<sup>152</sup>

145 Nicole Farnsworth, Donjeta Morina, David JJ Ryan, et al., *Kosovo Gender Analysis* (Kosovo Women's Network, 7 November 2018), pp. 16-17 (hereinafter *Kosovo Gender Analysis*).

146 OSCE Mission in Kosovo, '*Assessment of Voluntary Returns in Kosovo*' (2 December 2019), p. 20 (hereinafter 2019 OSCE Assessment of Voluntary Returns).

147 2019 OiK Report, note 37, p. 85.

148 2019 OSCE Assessment of Voluntary Returns, note 146, p. 20.

149 2019 US State Dept. Human Rights Report, note 16, pp. 17-18.

150 For further information on this issue, please see Section 4.6 of this report, paras. 48-49.

151 2019 US State Dept. Religious Freedom Report, note 41, pp. 1, 7-8.

152 2019 US State Dept. Human Rights Report, note 16, p. 10; 2019 US State Dept. Religious Freedom Report, note 41, pp. 1, 7-8.

## 5.4. Cultural rights

**72.** Kosovo's constitution<sup>153</sup> and legislation<sup>154</sup> establish a responsibility to protect, promote and advance cultural rights, which are also protected by certain directly applicable human rights instruments.<sup>155</sup> Although Article 15 of the ICESCR also upholds cultural rights, Kosovo cannot ratify it, and it is not listed in the Constitution as one of the human rights instruments that directly apply in Kosovo. There is accordingly an ongoing need for Kosovo authorities to provide a clear commitment to implement the rights and obligations contained in the ICESCR.<sup>156</sup> In 2016, the Ministry of Culture, Youth and Sports issued a National Strategy for Cultural Heritage for 2017 – 2027 aimed at enhancing the protection and preservation of cultural heritage in accordance with the legal framework and principles, international standards and sustainable cultural, economic and social development.<sup>157</sup>

**73.** Although Kosovo's legislation and declarative commitments prioritize cultural rights, several issues persisted in 2019, including the inadequate administration and protection of cultural heritage, uncontrolled and unregulated construction and limited cultural activity outside of larger cities in particular, such as the capital Pristina. The low budgets and financial instability of Kosovo's cultural institutions are also sources of concern, and it is also difficult to obtain information about culture and cultural rights. The Ministry of Culture, Youth and Sports does not currently provide sufficient information, including through its website. Only a few of the institutions currently active in the field of culture meet this requirement.

**74.** There are 23 cultural heritage assets in Kosovo and close to 1600 assets that are respectively under the permanent<sup>158</sup> and temporary protection<sup>159</sup> of the Ministry of Culture, Youth and Sports. Four cultural sites in Kosovo – the Deçan/Deçani Monastery, the Patriarchate of Peć/Peja Monastery, the Church of Holy Apostles and the Holy Virgin of Ljevis – are recognized as being of universal value to humanity and protected by the UN Educational, Scientific and Cultural Organization (UNESCO).<sup>160</sup> Kosovo is not currently a member of this organization.

**75.** In 2019, there was insufficient institutional activity focused on administering and protecting cultural heritage assets. For example, none of the assets currently have a fire protection system.<sup>161</sup> The Kosovo Council for the Cultural Heritage<sup>162</sup> cited the poor maintenance and condition of

153 Constitution of Kosovo, note 2, Arts. 9, 58-59.

154 See, e.g., [Law No. 02/L-88 on Cultural Heritage](#) (1 July 2008); [Law No. 02/L-57 on Institutions of Culture](#) (1 April 2007); [Law No. 03/L-039 on Special Protective Zones](#) (4 June 2008); [Law No. 04/L-065 on Copyright and Related Rights](#) (30 November 2011), as amended by [Law No. 05/L-047](#) (3 November 2016) and [Law No. 06/L-120](#) (4 July 2019).

155 Constitution of Kosovo, note 2, Art. 22. See also UDHR, Art. 27; ICCPR, Art. 27.

156 Special Rapporteur in the field of cultural rights, 'Report on the Visit to Serbia and Kosovo from 3 to 14 October 2016' (19 January 2018) [UN Doc. A/HRC/37/55/Add.1](#), para. 47.

157 Ministry of Culture, Youth and Sports, '[National Strategy for Cultural Heritage 2017-2027](#)' (2016).

158 Ministry of Culture, Youth and Sports, [Decision No. 69/2016](#) (10 October 2016).

159 Ministry of Culture, Youth and Sports, [Decision No. 110/2018](#) (3 October 2018).

160 UNESCO World Heritage Centre, '[Medieval Monuments in Kosovo](#)', last accessed 10 May 2020.

161 KultPlus, '[Monumentet kulturore në Kosovë pa mbrojtje nga zjarri](#)' ([kultplus.com](#), 22 April 2019).

162 The Council is an independent agency mandated to monitor and protect cultural heritage in Kosovo.

the Fortress of Novobërdë/Novo Brdo as a reflection of a wider institutional neglect of cultural heritage.<sup>163</sup> On 6 June and 2 August, the SOC Eparchy of Raško-Prizrenska issued two public statements expressing concerns about the Archeological Institute of Kosovo's construction and restoration work on the St. Nikolas Orthodox Church in Novobërdë/Novo Brdo.<sup>164</sup>

**76.** A number of Kosovo's main cities did not have active cinemas in 2019,<sup>165</sup> including Ferizaj/Uroševac, Gjakovë/Đakovica, Gjilani/Gnjilane and Mitrovicë/Mitrovica. This is due to several factors, including financial difficulties, infrastructure problems, a lack of comprehensive institutional support and outdated equipment and appliances. The theaters faced similar difficulties. In 2019, members of Kosovo's theatrical community complained on various occasions in public appearances about financial instability, general technical difficulties, technical staff deficits and the low incentives for performers. There are no comprehensive public statistics on the number of museums in Kosovo.<sup>166</sup> Kosovo also lacks a specific law on museums.<sup>167</sup> According to media reports, institutional support to the functioning of libraries and book-related activities and reading in general remains low.<sup>168</sup> In the last decade, 53 libraries in Kosovo closed due to lack of institutional maintenance and support.<sup>169</sup> Public libraries are "almost dysfunctional, except for libraries in large cities."<sup>170</sup>

**77.** Intellectual property and authorial rights are still considered to be at an early stage of development in Kosovo.<sup>171</sup> Institutions have not yet established practical and effective mechanisms to monitor and address piracy, falsifications and other interferences with intellectual and authorship rights. In responding to the claims that these rights lack proper protection, the institutions defended themselves by pointing to important improvements and said that authors of scientific and artistic works need to draw on legal remedies more proactively to protect the moral and material benefits of their work.<sup>172</sup>

163 RTV21, 'Kalaja e Novobërdës në gjendje të rëndë' (rtv21.tv, 18 March 2019).

164 Raška-Prizren Diocese, 'Communique of the Raška-Prizren Diocese concerning the unauthorized construction work at the Cathedral Church of St. Nicholas in Novo Brdo' (6 June 2019); Raška-Prizren Diocese, 'Roman Catholic Mass served on the grounds of the Orthodox Church of St. Nicholas in Novo Brdo - Diocese of Raska-Prizren expresses serious disappointment and protest' (2 August 2019).

165 KultPlus, 'Qytetet kosovare pa kinema' (kultplus.com, 3 July 2019).

166 Enes Toska, 'Prizreni: "Qytet muze" pa muze?' (EC Ma Ndryshe, May 2018), p. 11.

167 Ibid.

168 Agon Sinanaj/BIRN, 'Kur shteti i mbyll bibliotekat' (kallxo.com, 25 June 2019).

169 Ibid.

170 Ibid.

171 This also applies to their implementation.

172 Isa Vatovci, 'Piratëria mbetet kërcënuesi kryesor i të drejtave të autorit në Kosovë' (kallxo.com, 26 April 2019).

## 6. RIGHTS OF SPECIFIC PERSONS OR GROUPS

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### 6.1. Women's rights and gender equality

**78.** Article 7 of the Constitution enshrines gender equality “as a fundamental value for the democratic development of the society, providing equal opportunities for both female and male participation in the political, social, cultural and other areas of societal life.” In addition to prohibiting discrimination on the grounds of gender, the Constitution also requires due consideration of “internationally recognized principles of gender equality” during appointments to several institutions,<sup>173</sup> including to the AoK and the Constitutional Court. Several human rights instruments that uphold women's rights and gender equality apply directly in Kosovo.<sup>174</sup> Beyond this constitutional framework, Kosovo has a number of laws currently in force that promote and protect women's rights and gender equality, including the Law No. 05/L-20 on Gender Equality, the Law No. 05/L-21 on Protection from Discrimination, the Law No. 05/-19 on Ombudsperson, the Law No. 03/L-182 on Protection against Domestic Violence and the revised Criminal Code. Revisions to the Criminal Code, which entered into force in 2019, establish domestic violence as a specific criminal offence, making progress in efforts to address and prevent gender-based violence by aligning Kosovo's legal framework with the CoE Convention on preventing and combating violence against women and domestic violence (commonly referred to as the “Istanbul Convention”). In 2016, Kosovo also adopted a National Strategy for Protection against Domestic Violence and Action Plan for 2016 – 2020 to increase institutional accountability and to implement concrete measures to raise awareness and improve the situation on this ongoing issue.

**79.** The Law on Gender Equality requires special measures to ensure the equal representation of women and men at all decision-making levels, defined as 50 per cent of each gender. UN Security Council Resolution 1325 on Women, Peace and Security (Resolution 1325) also encourages representation of women in decision-making processes.<sup>175</sup> Women, however, remain underrepresented in public and political life,<sup>176</sup> including in political parties and institutions. Most central and municipal level institutions have not satisfied the 50 per cent representation requirement set by the Law on Gender Equality. Women comprise 40 per cent of all employees and 27 per cent of decision-makers in central level institutions<sup>177</sup> and are also underrepresented in municipal assemblies and institutions. Women also continued to be underrepresented in the dialogue between Kosovo and Serbia. Moreover, women and women's rights groups have not

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173 Constitution of Kosovo, note 2, Arts. 24(2), 71(2), 101(1), 104(2), 108(2) and (4), 109(4), 110(1), 114(1).

174 Ibid., Art. 22. See also generally, UDHR; CEDAW; ICERD; UNCAT; CRC; ECHR; CoE Framework Convention.

175 UNSC, Resolution 1325 on Women, Peace and Security (31 October 2000) [UN Doc. S/RES/1325](#), para. 1.

176 Kosovo Gender Analysis, note 145, p. 1.

177 This data is from the Statistical Department of the Ministry for Public Administration. The “leadership level” includes permanent secretaries, executive chiefs, executive directors, general directors, directors of departments, deputy directors of departments, heads of divisions, heads of sectors, heads of units and managers. The data does not include political positions but only civil servants.



been consulted, even though this is foreseen in Resolution 1325 and the EU's Strategic Approach to Women, Peace and Security.<sup>178</sup>

**80.** No political party put forward significantly more women candidates ahead of the snap parliamentary elections in October 2019 than the 30 per cent legally required under the Law on General Elections. Prior to the snap elections, the Ombudsperson filed a lawsuit against the Kosovo Central Election Commission with the Basic Court in Pristina, arguing that political party lists did not ensure the equal representation of women and men in central and municipal level institutions as required by the Law on Gender Equality. The Basic Court ruled against this lawsuit, stating that the elections were in harmony with the quota of 30 per cent of women legally required by the Law on General Elections. 39 women were elected (32.5 per cent) to the AoK, which represents a slight increase in female representation vis-à-vis the previous legislature.

**81.** Although the aforementioned revisions to the Criminal Code are a positive development, several challenges to effectively prevent and address domestic and gender-based violence persisted in 2019, including the inadequate implementation of the legal framework, problems with compensating survivors, procedural difficulties in reporting such cases and insufficient resources. The Law on Crime Victim Compensation is not being implemented properly. According to the Ombudsperson and Victim Advocates (VAs), victims of domestic violence are not being compensated by Kosovo courts. Judges and prosecutors continue to stigmatize women who seek compensation, underestimate damages caused by the perpetrator and heavily scrutinize requests for material compensation.

**82.** Despite having a legislative and policy framework in place, women continued to face procedural difficulties in reporting violence, victim-blaming and neglect of their cases. Courts in Kosovo still lack sufficient security precautions for victims and other measures to prevent their re-victimization and re-traumatization. Courts continued providing low sentences in cases of gender-based violence, while some judges still encouraged family reconciliation and blamed victims for crimes perpetrated against them.<sup>179</sup> Attempts to reconcile cases may create an enabling environment for recidivism, placing victims at risk of further violence. There is still a need for gender equality training of judges, prosecutors and the police, specifically regarding the new provisions in the revised Criminal Code on sexual harassment and domestic violence.

**83.** Domestic and gender-based violence shelters also continued to face several challenges in their efforts to support survivors and their families, including in relation to securing sustainable funding and building the capacities of those working at shelters. The lack of sustainable funding

178 European External Action Service, 'EU Action Plan on Women, Peace and Security (WPS) 2019-2024' (5 July 2019).

179 Adelina Berisha, Nicole Farnsworth and Dardan Hoti, *From Words to Action? Monitoring the Institutional Response to Gender-Based Violence in Kosovo* (Kosovo Women's Network, 7 November 2018), p. 20.

has contributed to periodic closures, rendering women and children homeless and placing them at great risk of repeat violence. A permanent budget line is therefore needed to provide sustainable funding for shelters. The failure of municipalities to allocate sufficient funding for temporary social housing, particularly for those survivors of domestic violence, has only compounded the problem. Insufficient municipal funding also continued to undermine the work of Centers for Social Work (CSWs) and VAs, who lack the resources and training necessary for them to carry out their mandates related to victim protection. Some social workers also remained inadequately trained, including on the National Strategy for Protection against Domestic Violence, highlighting a need for additional capacity building efforts.

**84.** Although there are shelters established specifically for victims of human trafficking, Kosovo Police and other responsible institutions still assign such cases to domestic violence shelters. This creates confusion among staff members who lack the necessary expertise and capacity to properly handle trafficking cases. There are also no existing shelters dedicated to LGBT+ persons. Inter-institutional case management also remains weak, undermining the rehabilitation and reintegration of persons who have suffered violence.

**85.** While sexual harassment has been discussed more in public fora in recent years, other forms of gender-based violence, particularly sexual violence, remain largely invisible and under-researched.<sup>180</sup> In this regard, the database established by the National Coordinator for Domestic Violence should be expanded to include all forms of gender-based violence, not only domestic violence.

**86.** The lack of gender disaggregated data makes it difficult to ensure women's rights and gender equality are being respected, such as in relation to access to justice. Kosovo institutions need to improve their collection, maintenance and transparent reporting of data disaggregated by, among other things, gender.

## 6.2. Children's rights

**87.** Article 50 of the Constitution explicitly protects the rights of children, including their "right to protection and care necessary for their wellbeing" and protection from violence, mistreatment and exploitation. The Convention on the Rights of the Child (CRC), which defines children as under the age of 18, is also directly applicable in Kosovo per Article 22 of the Constitution. The Law on Child Protection, which was adopted in June 2019 and which will enter into force in 2020, represents a significant achievement and milestone in the protection of children's rights in Kosovo. In addition to prioritizing the best interests of the child, it guarantees the protection of all children against all forms of physical and mental violence, abuse, exploitation, neglect or any other actions that endanger their life, safety, health, education and development. This new law closes an important gap by protecting internally displaced, stateless, asylum-seeker and refugee children as well as

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180 Ibid., p. 3.



those in street situations, all of whom were not specifically protected by any prior legislation in Kosovo. The GoK has also approved a National Strategy on the Rights of the Child for 2019 – 2023, which identifies issues that need immediate intervention to provide children with necessary protection and care for their welfare and development. A child and maternal indicators framework was also recently developed to monitor the situation of children's rights.

**88.** However, there is a significant gap between Kosovo's legal framework protecting children and their rights and its implementation,<sup>181</sup> particularly due to insufficient financial and human resources. For example, the GoK reduced funding for NGO-run shelters providing services to children for the fourth consecutive year, forcing NGOs to rely on funding from foreign donors. Despite some progress, the rights of the child are frequently infringed, while gaps between the legal protection of children and their protection in practice persist.<sup>182</sup>

**89.** Children account for 30 per cent of Kosovo's total population, with 20.7 per cent of them living in poverty according to the latest data.<sup>183</sup> 61.4 per cent of children up to the age of 14 have suffered from psychological and physical violence.<sup>184</sup> 10.7 per cent of children in Kosovo are involved in work, while 6.8 per cent of children work in hazardous conditions.<sup>185</sup> Children involved in hazardous labour are completely visible but the system does not provide them with services and protection. There are also no specific services to address children working in the street. Additionally, there is no comprehensive disaggregated data (e.g., by gender, ethnicity and economic status) on the number of children living in the street, impacting the development of policies and interventions to address this problem.<sup>186</sup> In particular, first responders lacked guidance and did not undertake proactive identification efforts for victims of forced begging, especially children.

**90.** The rape and murder of an 11-year-old child in Fushë Kosovë/Kosovo Polje in July 2019 sparked protests in the town against the negligence of public institutions to prevent the child's murder and investigate prior allegations of rape. The Ombudsperson determined that this incident violated the child's rights, in particular Kosovo's positive due diligence obligations in relation to his right to life.<sup>187</sup> Kosovo institutions must investigate and address cases of sexual acts against children as matter of high priority and urgency, while ensuring that best interests of the child concerned are consistently respected and protected given the dual-sensitivity of cases involving children and sexual offences.

181 KOMF, Child Pact, and World Vision International, [Child Protection Index 2.0](#) (December 2017), p. 44 (hereinafter Child Protection Index 2.0).

182 *Ibid.*, p. 2.

183 *Ibid.*

184 *Ibid.*, p. 14.

185 *Ibid.*, p. 17.

186 2019 OiK Report, note 37, p. 52.

187 *Ibid.*, pp. 47, 59.

**91.** In 2019, the amended Juvenile Justice Code entered into force, improving the protection of the rights of children in contact with the law in line with the recommendations of the UN Committee on the Rights of the Child and provisions of the CRC. The revised Code now ensures that the best interests of juveniles are upheld during criminal proceedings and promotes a child-sensitive approach, including by upholding their right to freely express their views.<sup>188</sup> In addition to prohibiting discrimination of any kind, it also prioritizes alternative measures to detention in cases involving juveniles as required by relevant human rights standards, such as educational measures in lieu of prison sentences to prioritize children’s education and re-socialization.<sup>189</sup> However, limited capacity and a lack of coordination between correctional services, probation service and the CSWs are still hindering the ability of the system to effectively reintegrate children and prevent recidivism.

**92.** Indeed, juvenile delinquency continues to represent a complex phenomenon. A central database is needed to enable the systematic collection of data on juvenile delinquency from Kosovo institutions (e.g., police, courts, probation service and CSWs) and NGOs that work with children in conflict with law. Designed and approved child protection programs for children in emergency situations, including children in conflict with the law, are lacking. Community-based prevention programs through which NGOs provide child protection services, including to children under 14 years old in conflict with law, are still very limited. There is also incomplete collaboration between social services, schools and the community for the identification of children at risk and who are more likely to engage in antisocial or criminal behavior. School psychologists should play a crucial role in designing these programs by considering their impact on the cognitive, emotional, psychological and social development of the children concerned.

**93.** Accountability for decision making in child protection remains limited. There is a lack of transparent and accessible tools to effectively engage people’s views (especially children’s views) in the budgeting process, increase transparency and raise funds to allocate to children’s programs. Children’s opinions are rarely taken into consideration as there are no effective and sustainable mechanisms to incorporate their views beyond discussions.<sup>190</sup>

**94.** Early childhood development in Kosovo remains at the lowest priority level where investments are at minimal level. Services for the early childhood development are not integrated and coordinated between the education, health and social welfare institutions, resulting in a lack of harmonization and difficulties in accessing needed services at both the central and local levels.<sup>191</sup> Social and health services, in particular, are not being prioritized and provided in early childhood. Only 4.8 per cent of preschool-aged children attend preschool education – the lowest rate in Europe.<sup>192</sup> There is a lack of alternative programs for early childhood development. Programs

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188 Ibid., p. 57.

189 Ibid.

190 KOMF, ‘Recommendations for the EU Progress Report’ (Internal Document, 2019).

191 Remzije Krasniqi, Hana Z. Haziri, Mevlude Arifi, et al., ‘[Recommendation Policy on Early Childhood Development](#)’ (KOMF and Kosovo Roma, Ashkali and Egyptian Early Years Network – KRAEEYN, 5 March 2020), p. 2.

192 Ibid.

to support parents, families and guardians in children's family settings outside the institutional premises should be developed and implemented.

**95.** Kosovo does not provide specific physical and psychological rehabilitation or social reintegration services to support children suffering from drug addiction. The Psychiatric Clinic of the University Clinical Centre of Kosovo created a special inpatient ward to treat addiction for adult patients, although it also treats children as there is no special ward for them. Drug treatment centers are therefore not adapted to children's specific needs and are not child-friendly or safe for them. Medical treatment is based mainly on detoxification programs using medicines from the Essential Drug List funded by the Ministry of Health.<sup>193</sup>

### 6.3. Youth rights

**96.** Young people (15 to 24 years of age)<sup>194</sup> are one of the social groups in Kosovo in the most vulnerable situation as they are particularly affected by high unemployment rates, domestic violence, corruption and nepotism as noted in the reports of many NGOs and international or regional organizations, such as the European Commission, the CoE and the World Bank. The Law on Empowerment and Participation of Youth seeks to promote the participation of youth in decision-making processes and improve their quality of life and social status.<sup>195</sup> It addresses the right of youth to self-organize and volunteer with organizations and their responsibilities, the obligations of central and municipal institutions, the establishment and responsibilities of Local Youth Action Councils (LYACs) in charge of improving the status of youth and the participation of youth in sectoral policies relating to education, employment, public health, social issues and other issues relating to them.<sup>196</sup>

**97.** Despite this legal framework, youth involvement in decision-making processes at the local level remains a challenge for many reasons. The functionalization of LYACs that represent the interests of youth at the central and local levels has been sorely lacking. Additionally, young people are not being informed about their role in decision-making and politics and lack a voice in decision-making institutions due to current practices, resulting in their low interest in politics and exclusion from discussions on issues concerning them.

**98.** In 2019, school infrastructure and curricula still did not fulfill the needs of young people.<sup>197</sup> The lack of a unified school system and a uniform curriculum continues to affect the educational

193 Child Protection Index 2.0, note 181, p. 37.

194 [Law No. 03/L-145 on Empowerment and Participation of Youth](#) (5 November 2009), Art. 3.

195 *Ibid.*, Art. 1.

196 *Ibid.*, Arts. 4-10.

197 YEC Sinergy and Peer Educators Network, 'Practical Educational Manual/Guidelines for Teachers, Educators, and Human Rights Defenders: Teaching Human Rights in a Challenging Situation' (2019), p. 12, available in English, Serbian and Albanian [here](#).

experiences of young people from different communities, while opportunities for them to cooperate and cohabitate are minimal.

**99.** Young people across all communities persistently face a lack of mobility because Kosovo's passports and those issued by Serbia's Coordination Directorate for Serbian residents in Kosovo have not been subject to visa liberalization. Therefore, youth have developed a sense of isolation and continue to struggle with studying abroad and moving freely throughout the Schengen area and in other countries.

#### **6.4. Persons with disabilities**

**100.** Article 24 of the Constitution explicitly prohibits discrimination based upon "disability", while Article 51 states that "basic social insurance related to... disability shall be regulated by law". In addition, several human rights instruments that protect the rights of persons with disabilities are directly applicable in Kosovo.<sup>198</sup> Although Kosovo has several laws concerning persons with disabilities, it still lacks a harmonized law addressing all persons with disabilities. Law No. 2003/23 on Disability Pensions provides social protection for persons unable to provide for themselves due to disability. Law No. 03/L-022 on Material Support for Families of Children with Permanent Disabilities provides monetary support to families caring for children with permanent disabilities. However, it uses outdated terminology to define children with permanent disabilities, such as "immobile children" and "totally blind children". It also does not provide material support to families caring for children with non-permanent disabilities, even though they too need this support. Law No. 03/L-019 on Vocational Ability, Rehabilitation and Employment of People with Disabilities specifically prohibits employer discrimination and emphasizes need for equal opportunity and treatment of persons with disabilities in employment hiring, training and re-training and guarantees their legal protection. Although Kosovo is not a signatory to the Convention on the Rights of Persons with Disabilities (CRPD), it adopted the CRPD's definition of disability in its National Disability Action Plan for 2009 – 2011,<sup>199</sup> which aims to align Kosovo's legislation with the CRPD and other international instruments required for EU accession.

**101.** The total number of persons with disabilities in Kosovo is unknown due to multiple definitions of disability operationalized by separate institutions and stakeholders.<sup>200</sup> Persons with disabilities continue to face discrimination and numerous difficulties in employment, access to public spaces and institutions, equal access to education, public transport and other services.<sup>201</sup> Health and rehabilitative services, social assistance and assistive devices for persons with disabilities continued to be insufficient.<sup>202</sup> In particular, Kosovo still lacks a suitable system for the placement and treatment of detainees with mental disabilities, and its mental health facilities are

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198 Constitution of Kosovo, note 2, Art. 22. See also UDHR, Art. 25; CRC, Arts. 2, 23.

199 Office of the Prime Minister, 'National Disability Action Plan for Kosovo 2009-2011' (May 2009), p. 10.

200 UNICEF Kosovo Programme, 'Child Protection and Social Inclusion' (2019).

201 2019 OiK Report, note 37, p. 73.

202 2019 US State Dept. Human Rights Report, note 16, pp. 26-27.

“substandard and generally overcrowded”.<sup>203</sup> Health services for children with disabilities are also not of an acceptable quality, and the health system still struggled to provide essential medicines and medical supplies to them.

**102.** The specific needs of children with disabilities are not being adequately addressed as they require tailored services different from those provided to adults, which cannot be delivered through legislation alone. According to the UN Children’s Fund (UNICEF) Programme in Kosovo, an estimated 38,000 children with disabilities in Kosovo are not attending school, mostly because of the stigmatization of these children and the lack of disability-friendly educational facilities.<sup>204</sup> Teachers also do not yet have the requisite training and resources to consistently include children with disabilities.

**103.** Persons with disabilities continued to face barriers in realizing their right to information in 2019. Kosovo institutions often did not publish announcements and decisions in Braille to ensure access to relevant information for persons with vision impairments.<sup>205</sup> Similarly, people with hearing disabilities lacked access to information during the televised debates relating to the October 2019 elections due to the failure to provide certified sign language interpreters.<sup>206</sup>

## 6.5. Minority rights

**104.** Kosovo has a robust legal, institutional and strategic framework on the rights and protection of minority communities<sup>207</sup> that is aligned with international human rights standards. Article 3 of the Constitution underlines that Kosovo is a “multi-ethnic society” and guarantees to all equal protection before the law, including the “protection of the rights and participation” of all communities in Kosovo. Article 24 specifically prohibits discrimination on the basis of a person’s “relation to any community”. Chapter III of the Constitution sets out the rights of communities and their members and the obligations of Kosovo in this regard. It provides members of all communities in Kosovo with the “right to freely express, foster and develop their identity and community attributes.”<sup>208</sup> Minority communities are also constitutionally assured, among other things, the right to use of their native language(s) on a private and public level, the ability to foster links with States with which they share “cultural, linguistic and religious” heritage and representation in the AoK, public institutions and bodies and public broadcast media.<sup>209</sup> The CoE’s Framework Convention

203 Ibid., p. 27.

204 UNICEF Kosovo Programme, ‘Estimated 38,000 Children with Disabilities in Kosovo Are Not Attending School’ (25 July 2019).

205 2019 OIK Report, note 37, p. 73.

206 Ibid., p. 74.

207 The main minority groups in Kosovo are Serbs, Bosniaks, Turks, Ashkali, Egyptians, Gorani and Roma. See Minority Rights Group International, ‘Kosovo’ (updated March 2018).

208 Constitution of Kosovo, note 2, Art. 57(3).

209 Ibid., Arts. 59, 61-62.

for the Protection of National Minorities, which is directly applicable in Kosovo,<sup>210</sup> also protects and promotes the rights and freedoms of minorities in Kosovo. Among other relevant laws, Law No. 03/L-047 on the Protection and Promotion of the Rights of Communities and their Members in Kosovo covers the rights of communities in relation to equality, language, culture, religion, education, economic and social opportunities, health and political participation. Implementation of this robust framework remains an issue and is complicated by capacity weaknesses within Kosovo's institutions that undermine the comprehensive upholding of the rights of minorities. This section places particular emphasis on the language rights and freedom of movement of the K-Serb community as per the inputs of the relevant CSOs working in these areas.

**105.** Language is key to the culture and identity of each community in Kosovo. Kosovo's Constitution, which defines Albanian and Serbian as Kosovo's official languages, and other laws recognize and protect language rights in Kosovo,<sup>211</sup> in particular for minority communities. The Law on the Use of Languages provides the right to use one's language in central and local government institutions, educational institutions, judicial proceedings and public service companies. It also covers the receipt of information in the individual's own language and establishes that personal names in databases, public documents and registers should be recorded in the original language. Several directly applicable human rights instruments also affirm and uphold language rights in Kosovo.<sup>212</sup> Despite this legal framework, the implementation of language rights in Kosovo continued to face several challenges in practice, which has impacted minority communities' access to information. In particular, "[b]ilingualism in Kosovo is still not implemented and progress in this regard is slow-paced".<sup>213</sup>

**106.** In 2019, only four out of 19 official websites of ministries and other public institutions contained equal quantities of information in the Albanian and Serbian.<sup>214</sup> When bilingual information was available, however, the quality of translations themselves were often poor, rendering the information confusing or even incomprehensible to readers. Four<sup>215</sup> out of 38 municipalities lacked an interpreter or a proofreader, while the other 34 municipalities did not have more than two interpreters.<sup>216</sup> Although Cyrillic is the official and traditional alphabet of the Serbian language, almost all official websites and information shared by Kosovo's institutions, including laws and sub-legal acts, are still in the Latin alphabet. The Ministry for Communities and Returns is the only government institution whose official webpage is also in Cyrillic.

**107.** Persons who speak Serbian encounter poor quality or no translations of official documents and other language-related difficulties when accessing public services. Poor or non-existent translations may have a particularly severe impact on the judicial system by changing the genuine

210 Ibid., Art. 22.

211 Ibid., Arts. 5, 59; [Law No. 02/L-37 on the Use of Languages](#) (1 March 2007) (hereinafter Law on the Use of Languages); [Law No. 03/L-047 on the Protection and Promotion of the Rights of Communities and their Members in Kosovo](#) (4 June 2008), Art. 4.

212 Constitution of Kosovo, note 2, Art. 22. See also ICCPR, Art. 27; ECHR, Art. 14; CoE Framework, Arts. 5, 9-12, 14.

213 2019 OiK Report, note 37, p. 90.

214 AKTIV, 'A General Overview of Languages Rights in Kosovo' (30 September 2019).

215 Specifically, the municipalities of Hani i Elezit/Ellez Han, Zvečan/Zvečan, Drenas/Glogovac, Malishevë/Mališevo.

216 Input by CPT based on its 'Report and Recommendations on Languages Use in Municipalities' (2019), pp. 10-11.



meaning of legal definitions and legal provisions, potentially threatening equal administration and access to justice. In addition, Serbian-speaking journalists stated that they do not receive translation services regarding AoK sessions if K-Serb members are not present.<sup>217</sup> Although some ambiguity exists in the AoK Rulebook when it comes to providing translations during the above-mentioned sessions, it is clear that the current practice of providing translation only when an Assembly Member is present or requests it makes it difficult for journalists and Serbian language speakers to receive and impart information and to participate in public affairs.<sup>218</sup> According to some CSOs that contributed to this report, Serbian speakers also encountered issues when attempting to access services and information of large-scale private sector enterprises in their own language, even though the Law on the Use of Languages is widely understood to apply to such activities.<sup>219</sup>

**108.** In 2011, Kosovo and Serbia signed the Agreement on Freedom of Movement that presupposes unhindered movement of persons and motor vehicles between Kosovo and Serbia. It was reported that the Kosovo Police began implementing this agreement in August 2019 by permitting the entry of citizens of Serbia into Kosovo with “just ID cards” without the required passports.<sup>220</sup> This was allegedly based on administrative instructions received from the Kosovo’s Ministry of Internal Affairs.<sup>221</sup> The question of the validity of the Serbian passports issued by the Koordinaciona Uprava (Coordination Directorate) for international travel to and from Kosovo remains largely unresolved with little indication that a long-term solution is on the horizon. Reports throughout 2019 indicated that K-Serbs faced ongoing difficulties at border crossings (both land and at Pristina International Airport) when using passports issued by the Coordination Directorate.<sup>222</sup> There are currently no legal provisions or administrative instructions that state that the referred Serbian passports are not valid for travel, so it would therefore appear that this practice lacks a legal basis. This unusual phenomenon hinders the free passage of persons between Kosovo and neighboring countries, as well as the ability of Kosovo residents in possession of the passport mentioned above to travel internationally.

## 6.6. LGBT+ rights

**109.** Article 24 of the Constitution expressly prohibits discrimination on the grounds of gender and sexual orientation. Several directly applicable human rights instruments also prohibit discrimination on the basis of sex and other status in Kosovo.<sup>223</sup> Law No. 05/L-021 on Protection from Discrimination establishes a general framework for preventing and combating discrimination based on sex, gender, gender identity and sexual orientation, among other statuses, and designates

217 Anđelka Čup, ‘Nema srpskih poslanika, nema prevoda za novinare koji izveštavaju na srpskom jeziku’ (uns.org.rs, 23 January 2019).

218 Voice of America, ‘U kosovskoj skupštini prevod na srpski samo za poslanike’ (kossev.info, 18 April 2019).

219 Law on the Use of Languages, note 211, Arts. 29-30.

220 Beta/N1, ‘Kosovo police implementing freedom of movement agreement’ (rs.n1info.com, 9 August 2019).

221 Ibid.

222 Based on research and interviews conducted by AKTIV from June to October 2019.

223 Constitution of Kosovo, note 2, Art. 22. See also, UDHR, Art. 2; ICCPR, Arts. 2, 26; ECHR, Art. 14, and its Protocol No. 12, Art. 1.

the OI as the authorized body to accept and investigate complaints of discrimination. It protects LGBT+ persons from direct and indirect discriminatory acts or omissions by central and local institutions as well as by natural and legal persons in the public and private sectors. Furthermore, Law No. 05/L-020 on Gender Equality guarantees equal opportunities and treatment to men, women and persons who have a protected “gender identity or sex determination” in the “public and private spheres of social life, including political and public life, employment, education, health, economy, social benefits, sports, culture, and other areas” in Kosovo’s laws. Although the Advisory and Coordination Group for the LGBT+ community in Kosovo developed a National Action Plan for 2019 – 2022, none of its measures were implemented as of November 2019. The OGG continues to neglect the implementation of this plan, relying instead on LGBT+ organizations in Kosovo to implement it, which should not be the case.

**110.** 10 cases of violence targeting LGBT+ people have been reported to Kosovo’s rule of law institutions in 2019. Three cases resulted in positive court verdicts for the survivors of this violence. One case involved domestic violence that the victim reported to the Kosovo Police with the support of the NGO CEL in which the mother was found guilty and sentenced to 180 days probation. For the first time in 2019, the Prosecutor’s Office in Kosovo initiated an ex officio case against a Ministry of Justice official on the grounds of hate speech against LGBT+ persons, who was held in custody for 48 hours.<sup>224</sup> 13 other cases were reported to LGBT+ organizations in Kosovo, but the persons concerned did not agree to submit their cases to the competent authorities.

**111.** In August 2019, the Court of Appeal upheld the Basic Court in Pristina’s decision in December 2018 to grant a transgender person from Suharekë/Suva Reka the right to change the name and sex marker on official documents.<sup>225</sup> While the Court of Appeal’s decision is more precise and instructive on changing names, it is vague and does not provide clear instructions for the Ministry of Internal Affairs and Civil Registration Agency (CRA) on how to recognize gender reassignments in personal documents. In another case, a transgendered man asked the Gjakovë/Đakovica Civil Status Office in 2018 to change his name and gender marker to male in his official documents, which the Civil Status Office and the CRA refused. Following this refusal, the transgendered man filed a lawsuit with the Basic Court in Pristina seeking the legal recognition of his gender identity, which ruled in favor of his request in December 2019. The case eventually made its way to the Court of Appeal, which upheld the decision of the Basic Court.

**112.** These cases, however, cannot be used as a legal precedent for other similar cases in Kosovo, which still lacks a legal framework for legal gender recognition allowing transgender persons to change their sex marker and names in official documents. The Ministry of Internal Affairs will therefore need to amend the legal framework, in particular the Law on Civil Registry, to enable legal gender recognition, but it has not yet taken any action in this regard. In particular, the relevant laws and sub-legal acts should be amended to clarify the necessary procedures and to resolve any legal gaps for certain procedures, such as those witnessed in two cases above.

224 Almakos, ‘Ndalohe për 48 orë zyrtari i Ministrisë së Drejtësisë që kërcënoi komunitetin LGBT’ (almakos.com, 14 February 2019).

225 Valona Fana, ‘Gjykata e Apelit: Lejohet ndërrimi i emrit dhe gjinisë në regjistrin civil’ (kallxo.com, 22 August 2019).



**113.** Following a campaign by two main LGBT+ NGOs in Kosovo, CEL and CSGD, sexual orientation and gender identity were included as protected grounds in eight articles of the revised 2019 Criminal Code, advancing the protection of LGBT+ persons in Kosovo. These new grounds included in articles addressing, among other things, hate crimes, discrimination, murder and other acts of violence and destruction or damage to property.

**114.** LGBT+ organizations and other human rights organizations have also submitted recommendations to the Ministry of Justice on addressing same-sex partnerships in the draft Civil Code. Their recommendations provided two options on how same-sex partnerships should be regulated in the Civil Code. The first option recommended having a gender-neutral provision under the chapter on marriage, while the second option would entail adding new provisions covering civil unions between same-sex partners.

**115.** In contrast to prior years, LGBT+ issues were discussed during the 2019 electoral campaign, and some political parties publicly declared that they support LGBT+ rights. For the third time in a row, LGBT+ organizations in Kosovo successfully organized the LGBT+ Pride Week in October 2019. As in the previous years, it was a peaceful event without any incidents that attracted a large number of LGBT+ activists from Kosovo and the region as well as local and international leaders. Unlike other years, there were notably no threats made through social media against the organizations or activists involved.

## 6.7. People on the move

**116.** Article 156 of the Kosovo Constitution stipulates that Kosovo “shall promote and facilitate the safe and dignified return of refugees and internally displaced persons and assist them in recovering their property and possession.” The SAA between the EU and Kosovo also reaffirms their right of return and the protection of their property rights and related human rights.<sup>226</sup> It provides for cooperation between the EU and Kosovo in asylum matters with a view toward assisting Kosovo to satisfy the standards contained in the 1951 Geneva Convention Relating to the Status of Refugees and its 1967 Protocol, including to ensure respect for the non-refoulement principle and the human rights of asylum seekers and refugees. More specifically, the Law on Asylum sets forth the conditions and procedures for granting refugee, subsidiary protection or temporary protection status and regulates the rights and obligations of persons granted such status as well as those of asylum seekers.<sup>227</sup> Other laws relevant to the protection and rights of people on the move include Law No. 04/L-219 on Foreigners, which defines refugees in compliance with international standards,<sup>228</sup> and the Law No. 04/L-218 on Preventing and Combating Trafficking in Human Beings

226 [Stabilization and Association Agreement Between the European Union and the European Atomic Energy Community and Kosovo](#) (2 October 2015).

227 [Law No. 06/L-026 on Asylum](#) (15 May 2018), Art. 1.

228 [Law No. 04/L-219 on Foreigners](#) (3 September 2013), Arts. 2-3.

and Protecting Victims of Trafficking.<sup>229</sup> Importantly, the Law on Foreigners prioritizes alternative measures to detention for foreigners when feasible.

**117.** In 2018, the GoK also adopted Regulation No. 01/2018183 on the Return of Displaced Persons and Durable Solutions, which identifies the Ministry of Communities and Returns as the central coordinating institution and provides it with a binding legal framework for the first time on the process of returns.<sup>230</sup> According to the Ombudsperson, however, this regulation was “not fully and consistently implemented in 2019”.<sup>231</sup>

**118.** Despite this legal framework, the right of displaced persons to safely return remained a key issue in Kosovo in 2019, which witnessed only 190 returns of persons belonging to minority communities compared to 284 returns in 2018.<sup>232</sup> According to the UN High Commissioner for Refugees (UNHCR), 90,000 persons in the region who were displaced during the 1998 – 1999 conflict in Kosovo continued to have displacement-related needs in 2019, of which 2,104 families consisting of 8,367 displaced persons residing outside of Kosovo, mostly K-Serbs, expressed interest in receiving UNHCR assistance to return to Kosovo.<sup>233</sup> The ability of displaced persons to return in a safe and dignified manner rests on the existence of conducive conditions for return, such as access to essential services, sufficient infrastructure, opportunities to earn an income, respect for their rights to property and adequate housing, as well as their freedom of movement and trust building to improve inter-ethnic community relations.<sup>234</sup> In this regard, the GoK has promoted EU-compliant policies and cooperated with both international and local organizations to provide sustainable return assistance to displaced persons, including assistance with property repossessions, land grants, better socioeconomic opportunities and the deployment of Kosovo Police where returnees live to allay security concerns.<sup>235</sup>

**119.** Some progress was made in 2019, including in relation to issuing personal documents to displaced persons and returnees and the issuance of permits allowing for the construction of homes for returnees.<sup>236</sup> However, several members of the K-Roma, K-Ashkali and K-Egyptian communities in Kosovo, in particular returnees from those communities, still lacked personal documents in 2019.<sup>237</sup> This highlights the need for additional awareness raising efforts in those communities on the importance of civil status registration, the absence of which prevents them from exercising their rights such as to social benefits, pensions and assistance programs. In addition, UNHCR reported that displaced persons were excluded from human rights protection

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229 [Law No. 04/L-218 on Preventing and Combating Trafficking in Human Beings and Protecting Victims of Trafficking](#) (4 September 2013), Art. 1.

230 2019 OiK Report, note 37, p. 82.

231 Ibid.

232 Ibid., pp. 81-82.

233 2019 US State Dept. Human Rights Report, note 16, p. 15.

234 UNHCR Regional Office in Southeastern Europe, ‘[Displaced Persons from Kosovo in the Region – A Re-assessment of Interest to Return](#)’ (14 September 2017); see also 2019 US State Dept. Human Rights Report, note 16, p. 15.

235 2019 US State Dept. Human Rights Report, note 16, p. 16.

236 2019 OiK Report, note 37, pp. 82, 84-85; 2019 US State Dept. Human Rights Report, note 16, p. 15.

237 2019 OiK Report, note 37, p. 85; 2019 US State Dept. Human Rights Report, note 16, p. 18.

and sustainable development plans due to the lack of a detailed census and sufficient disaggregated data.<sup>238</sup>

**120.** Issues regarding the right to adequate housing for displaced persons living in collective centers in Kosovo also remained unresolved in 2019.<sup>239</sup> In addition, while the security situation remained relatively stable, several incidents impacted the process of returning displaced persons, such as thefts, arson, protests and petitions against the returns by receiving communities.<sup>240</sup> The lack of opportunities to earn an income also impacted returns.<sup>241</sup> Social prejudice and discrimination also reportedly continued to be an obstacle to returns.<sup>242</sup> Other challenges included the illegal occupation of property belonging to displaced persons and delays in the verification of their property rights.

**121.** Regarding asylum seekers and refugees, Kosovo's legal framework provides for granting refugee status, subsidiary protection in other cases and temporary admission for asylum seekers awaiting the adjudication of their cases.<sup>243</sup> Although Kosovo is still mostly a transit zone for Europe, the number of asylum applications increased to 2,081 in 2019 from 594 in 2018.<sup>244</sup> According to UNHCR, asylum seekers were provided with accommodation, food and clothing, although health care, including mental health services, were reportedly still inadequate and there is a need for improved interpretation services at the central and local levels.<sup>245</sup> While asylum centers can accommodate children, it still needs to develop a standard operating procedure on the treatment of unaccompanied children and assessing their eligibility for asylum.<sup>246</sup> In this regard, efforts should be made to strengthen Kosovo's capacity to identify and address the needs of migrants in vulnerable situations, including, in particular, unaccompanied migrant children. To adequately address mixed migration flows, Kosovo should also finalize and operationalize a protection-sensitive entry system to identify the specific protection needs of refugees and asylum seekers. Finally, Kosovo authorities should also establish a mechanism allowing for alternatives to detention in cases involving people on the move.

**122.** In June 2019, the AoK approved an inquiry commission's report concerning potential illegalities relating to the deportation of six Turkish nationals in March 2018 for their alleged links to a terrorist organization.<sup>247</sup> According to the report, the deportation violated the international

238 2019 US State Dept. Human Rights Report, note 16, p. 15.

239 2019 OiK Report, note 37, p. 82.

240 2019 OiK Report, note 37, p. 83; 2019 US State Dept. Human Rights Report, note 16, p. 16.

241 2019 OiK Report, note 37, p. 83; 2019 US State Dept. Human Rights Report, note 16, p. 15.

242 2019 US State Dept. Human Rights Report, note 16, p. 15.

243 Ibid., p. 16.

244 Telegrafi, 'Shënon rritje numri i azilkërkuesve në Kosovë – mbi dy mijë kërkuan azil në 2019-ën' (telegrafi.com, 5 January 2020).

245 2019 US State Dept. Human Rights Report, note 16, p. 17.

246 Ibid.

247 Ibid., p. 16.

human rights obligation of non-refoulement on the basis that there were substantial grounds for believing that the six returnees would face a real danger of being subjected to torture, cruel, inhuman or degrading treatment or punishment if deported back to Turkey. The report also found that Kosovo authorities allegedly violated international and regional human rights instruments, the Constitution and other relevant legislation by not respecting the procedure for revoking their residence permits and failing to provide them with fair trial rights. Subsequently, in September 2019, the Appellate Court affirmed the ruling of the Basic Court of Pristina finding that the rationale used to rescind their residency permits was baseless.<sup>248</sup>

## 7. CROSS CUTTING ISSUES/SPECIFIC HUMAN RIGHTS ISSUES

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### 7.1. Hate crimes (potentially ethnically motivated incidents) and human rights

**123.** Hate crimes, including potentially ethnically motivated incidents, continued to impact the human rights of persons in Kosovo in 2019. Hate crimes, which are very complex, specific and simultaneously legal and political, differ in their content and nature, extending from political violence to the violation of private property to the deliberate targeting of a community's cultural and religious heritage. Kosovo's Criminal Code recognizes that hate crimes impede the enjoyment of human rights and fundamental freedoms guaranteed by Kosovo's Constitution and laws, threatening, in particular, the realization of equality for all persons in Kosovo.<sup>249</sup>

**124.** According to CPT, hate crimes and similar offences in Kosovo tend to target minority communities' schools, private properties and places of cultural and religious significance, contributing to a climate where basic rights and freedoms are violated. All members of society, in particular those from groups and minority communities in vulnerable situations, fear that they could experience ethnically motivated attacks and share concerns about their own safety and the safety of their family.<sup>250</sup>

**125.** In the first seven months of 2019, approximately 100 incidents against K-Serbs and the SOC occurred involving thefts, break-ins, verbal harassment and property damage.<sup>251</sup> At least four incidents showed explicit ethnic motivations, while the other incidents appeared to be guided by some similar motivation but it was not possible to prove this.<sup>252</sup> In general, some of the acts

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248 Ibid.

249 2019 Criminal Code, note 9, Arts. 141, 190.

250 CPT, 'Potentially Ethnically Motivated Incidents in Kosovo: An Ugly Story that Has Never Been Told' (2016).

251 2019 US State Dept. Human Rights Report, note 16, p. 27.

252 Ibid.

with elements of hate crimes in 2019 were: (1) the vandalization of Prizren's SOC on May 28; (2) the vandalization of the Ferizaj/Uroševac Mosque on June 18; (3) the shattering of 19 tombstones in the Serbian Orthodox Cemetery in Lipjan/Lipljan on July 13; and (4) the shattering of 15 Albanian Muslim gravestones in Pristina on 4 August.

**126.** A lack of cooperation between the Kosovo Police, prosecutors and courts continued to impede efforts to address hate crimes in Kosovo. There is no special task force or investigation unit within the Kosovo Police that specifically focuses on this problem. An EU Rule of Law Mission in Kosovo (EULEX) training document underlines that “the major problems for effectively addressing hate crimes in Kosovo is the will to recognize that inter-ethnic crimes still occur, and that neglecting them does not help.”<sup>253</sup>

## 7.2. Transitional justice and the right to truth

**127.** Although some efforts have been made to establish transitional justice mechanisms in Kosovo to deal with the past and fulfill the “right to truth”,<sup>254</sup> especially in relation to those who are still missing as a consequence of the 1998 – 1999 armed conflict in Kosovo, ongoing efforts are still needed in this regard. Indeed, more than 1600 persons out of the 6,057 people reported to the International Committee of the Red Cross (ICRC) as missing due to the conflict remained unaccounted for at the end of 2019, violating, among other things, their family members’ “right to truth”.

**128.** The “right to truth” is one of the key principles of processes to deal with the past and an elementary right that is particularly important to the families of the missing.<sup>255</sup> A 2016 article published on the ICRC’s website explains the different human rights violations that occur in cases of missing persons:

“A wide array of human rights may be violated when someone goes missing, including: the right to security and liberty, the right to life, the protection from torture and other inhumane treatment, including solitary confinement. Violations may in certain cases extend to the families of victims: for example, human rights monitoring bodies have established that forced disappearance also constitutes inhumane treatment of the families themselves.”<sup>256</sup>

**129.** While the 1977 Additional Protocols to the 1949 Geneva Conventions and the International Convention for the Protection of All Persons from Enforced Disappearance firmly establish that families have a “right to truth” about the fact of their missing relatives, Kosovo is unable to ratify these instruments at present. Nevertheless, the “right to truth” in the context of the missing is

253 CPT, ‘Potentially Ethnically Motivated Incidents in Kosovo: An Ugly Story that Has Never Been Told’ (2016).

254 Human Rights Council, Resolution 21/7 on the Right to Truth (10 October 2012) [UN Doc. A/HRC/RES/21/7](#).

255 Swisspeace, ‘A Conceptual Framework for Dealing with the Past: Holism in Principle and Practice’ (October 2012), p. 3.

256 Raphaël Dallaire Ferland, ‘Clarifying the Fate of Missing Persons’ (ICRC Humanitarian Law and Policy Blog, 15 September 2016).

promoted in Kosovo by Law No. 04/L-023 on Missing Persons, which aims to protect the rights and interests of missing persons and their family members.<sup>257</sup> The law places particular emphasis on the right of family members to know about the fate of those reported missing from 1 January 1998 to 31 December 2000 as a consequence of the 1998 –1999 conflict. This law, in conjunction with Regulation No. 15/2012 on the Work of the Government Commission on Missing Persons, also establishes the Governmental Commission on Missing Persons (GCMP) as the entity responsible for leading and coordinating efforts involving various actors that seek to resolve the fate of missing persons in Kosovo.

**130.** Since March 2004, the ICRC has been chairing the Working Group on Persons Unaccounted for in Relation to the Events in Kosovo (WGMP), which is a humanitarian mechanism that supports the process of clarifying the fate of persons unaccounted for as a result of the conflict. It covers the period from 1 January 1998 to 31 December 2000. The WGMP is composed of two delegations, one from Belgrade and one from Pristina, which operate under the same humanitarian mandate and have committed to enforce the families of missing persons right to know the fate of their loved ones. In addition to informing the families of missing persons of any developments, the WGMP provides a platform for cooperation and exchange of information between the relevant institutions from Pristina and Belgrade. By the end of 2019, it had held about 50 meetings.

**131.** At the fifth Western Balkans Summit in London in July 2018, political representatives signed a joint declaration that, among other things, committed them to “provide an impartial and effective investigation into missing persons’ cases in accordance with international human rights standards and to resolve as many missing persons’ cases as possible over the next five years”.<sup>258</sup> In November 2018, representatives of Bosnia and Herzegovina, Croatia, Kosovo, Montenegro and Serbia signed commitments under a Framework Plan in the Hague, Netherlands to work together and pursue regional cooperation in addressing the issue of those who went missing during the conflicts in the former Yugoslavia.

**132.** In February 2017, Kosovo’s President Hashim Thaçi organized the first consultative meeting on the establishment of a Truth and Reconciliation Commission (TRC) in Kosovo that would more broadly deal with the past conflict in Kosovo, including in relation to missing persons. In 2018, President Thaçi issued a presidential decision creating the Preparatory Team for the Establishment of the TRC (Preparatory Team), which consists 9 nine members who have been mandated to draft a normative act on the establishment of a TRC in Kosovo and other related legal aspects.<sup>259</sup> In August 2019, the Preparatory Team completed its first round of public consultations with members of civil society, academia and local communities across Kosovo and agreed on a draft normative act for the TRC’s establishment, which is expected to cover a period of time preceding the start

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257 [Law No. 04/L-023 on Missing Persons](#) (14 September 2011), Art. 1.

258 Western Balkans Summit (London 2018), ‘[Joint Declaration on Missing Persons in the Framework of the Berlin Process](#)’ (adopted 10 July 2018).

259 [Decision No. 61/2018 on the Appointment of the Preparatory Team for the Establishment of the Truth and Reconciliation Commission](#) (27 April 2018).



of the conflict and a few years after it ended.<sup>260</sup> According to the current draft normative act, the TRC would operate for three years, which could then be extended for an additional six months at most. Families of missing persons from all ethnic backgrounds supported and contributed to the process actively attending consultation meetings and sharing their views on the role and mandate of the possible future TRC.

**133.** In June 2019, the GoK approved a concept document on missing persons that aims to regulate the status of missing persons and their families by supplementing and amending relevant legislation,<sup>261</sup> which is a step that families of missing persons and the international community had been advocating for years. The process aims to harmonize different, overlapping legislation and mandates in line with relevant international human rights law to address and resolve potential conflicts. It is expected that the amendments will also cover other issues, such as the definition and status of a missing person and the rights of families of the missing, including the rights to a legal remedy and information.

**134.** Notwithstanding the current legal framework and commitments, the rights of missing persons and their families, in particular their “right to truth”, will continuously be violated until the fate of those missing as a result of the conflict is finally clarified. In particular, there are continuous violations of the rights to know the whereabouts of missing persons, an effective remedy and a dignified burial. More efforts are therefore needed to prevent delays that have persisted for more than three years in addressing the requests of family members of missing persons and in adopting an amended, more robust Law on Missing Persons, which are actions, among others, that would slightly alleviate the situation of the families of missing persons.

**135.** Many municipalities in Kosovo lack any initiative or plan to address the needs of the families of missing persons. There are ongoing cases where bodies have been identified but are being withheld from families. For example, the Institute of Forensic Medicine’s promise to release verified bodies kept in the Morgue of Pristina has yet to be fulfilled.

**136.** In the first nine months of 2019, the GCMP, in cooperation with Serbia’s Missing Persons Commission and the ICRC, resolved seven missing persons cases and returned the remains of those individuals to their families.<sup>262</sup> In general, however, the process of enlightening the fate of missing persons has stagnated over the past few years and is an ongoing issue of concern. Successful site assessments are rare, while the process of identifying human remains is slow and largely ineffective. The issue is highly politicized, which further hinders the process. In order to enlighten the fate of missing persons, families of missing persons consider that it is equally important to

260 [Draft Normative Act No. XX/2020 on the Truth and Reconciliation Commission \(2020\)](#).

261 Office of the Prime Minister, ‘[The government approved the Concept Document for Missing Persons and the Draft Law on Ratification of the Financial Agreement for IPA 2018 between Kosovo and the European Union 107th meeting of the Government of Kosovo](#)’ (18 June 2019).

262 2019 US State Dept. Human Rights Report, note 16, p. 3.

collect new information from all relevant stakeholders. This includes opening the archives in Pristina and Belgrade as well as the archives of the Organization for Security and Co-operation in Europe (OSCE), UNMIK, EULEX, International Criminal Tribunal for the former Yugoslavia (ICTY), ICRC, former North Atlantic Treaty Organization (NATO) or Kosovo Force (KFOR) State members, intelligence services and others believed to possess important information that could aid this process, such as aerial and satellite imagery.

**137.** The issue of misidentification human remains also needs to be addressed. According to data presented in various platforms, the ICTY autopsied more than 3000 body remains from 1999 to 2002 without DNA testing and most of the times families were not asked to identify the remains. As a consequence, it is estimated that families buried approximately 2,000 bodies without proceeding to any autopsy, which could result in possible misidentifications. According to experts and based on a sample done on 80 remains in Mitrovicë/Mitrovica in 2013, the rate of errors of the bodies buried between 1999 and 2002 could be as high as 20 per cent.

**138.** Families called upon the institutions to draft a strategy that would address the misidentification of human remains by allowing experts to work based on an elimination system to solve the misidentification problem in general. Although EULEX transferred some of its competencies in this area to local authorities, Kosovo still lacks the necessary experts to address this issue. The strategy would therefore also seek to strengthen the professional capacities of the competent institutions addressing this issue. Obtaining new and reliable information on the possible locations of human remains is also a major challenge as witnesses unintentionally provide misleading information because they cannot correctly remember facts due the passage of time or information is based on rumors.

### **7.3. The environment and human rights**

**139.** The protection of the environment and human rights are inextricably linked. The UN and international community has increasingly acknowledged the existence of a right to a safe, clean, healthy and sustainable environment and that it is a prerequisite for the overall enjoyment of human rights, such as the rights to life, an adequate standard of living and health. Article 7 of the Constitution states that Kosovo's constitutional order is based on, among other things, the protection of the environment, while Article 52 enshrines that environmental protection is everyone's responsibility and requires public institutions to consider environmental impacts in their decisions. Kosovo's legislative acts also incorporate international instruments and standards to safeguard its air, environment, land and water,<sup>263</sup> while Chapter 27 of Kosovo's Criminal Code establishes criminal offences and sanctions for harming the environment. In 2018, the AoK adopted the 2030 Agenda and its 17 Sustainable Development Goals, many of which are aimed at ensuring healthy lives, protecting the environment and promoting a greener planet.

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263 For a list of the relevant primary and secondary legislation regarding the environmental protection and climate change, please refer to <http://kepweb.org/legislation/>.

**140.** Although Kosovo has adopted environmental legislation that aligns with wider strategies, the issue of practical compliance and implementation remains. Efforts to engage within this area of human rights have been undermined by the weak capacity of Kosovo's institutions and an insufficient political commitment to monitor and protect the right to a safe, clean, healthy and sustainable environment. Poorly planned or unplanned infrastructure development, unsustainable resource use and urbanization all present clear and ongoing challenges to efforts to protect the environment in Kosovo. Enforcement of environmental legislation, environmental protection, remediation policies and efforts to improve the environment in Kosovo have not yet been given sufficient attention and priority.<sup>264</sup>

**141.** Reporting and the provision of information on the environment by Kosovo's institutions has also been deficient. The Kosovo Environmental Protection Agency<sup>265</sup> last official report on Kosovo's environment was published in 2018, while "no reports on drinking water quality have been published since 2015."<sup>266</sup> People in Kosovo also remain to a considerable extent unaware of the importance of the environment and environmental rights.<sup>267</sup> As Kosovo's engagement on environmental and climate challenges is still at an early stage, negative impacts on livelihoods and health due to environmental problems continue to be evidenced.<sup>268</sup>

**142.** In 2019, Kosovo ranked 31 out of 98 of the world's most polluted countries.<sup>269</sup> Kosovo's poor air quality, in particular, impacts human health,<sup>270</sup> threatening the rights to health, life and a safe, clean, healthy and sustainable environment. In 2019, it was reported that Pristina's air quality was "unhealthy" 50 per cent of the time, "very unhealthy" for 20 per cent of the time and "hazardous" for 5 per cent of the time.<sup>271</sup> Although air quality has become an established public concern in recent years, there were no significant and direct efforts to improve the situation in 2019.<sup>272</sup> Even though it presents a clear and ongoing threat to health and well-being, uncontrolled pollution in Kosovo from various sources, including from the energy sector, industrial complexes, household heating systems, road traffic, waste and other toxic materials, has not been addressed.<sup>273</sup>

264 2019 OiK Report, note 37, p. 33.

265 This is a government institution that engages, through integrated environmental monitoring, efficient system of environmental information and continuous reporting on the environmental situation.

266 2019 EC Report, note 49, p. 79.

267 USAID and UN Development Programme, 'Public Pulse XV 2019' (February 2019), pp. 19-22.

268 2019 EC Report, note 49, p. 78.

269 IQAir, 'World's Most Polluted Countries 2019' (2019).

270 2019 EC Report, note 49, p. 78.

271 Mathilde Tchounikine, 'Air Quality in Kosovo: Towards European Standards' (Institute for Development Policy, June 2019), p. 2.

272 2019 OiK Report, note 37, p. 33.

273 2019 EC Report, note 49, p. 78.

**143.** In particular, “Kosovo has the lowest amount of available water resources in the region”<sup>274</sup> which continues to be threatened by misuse, overuse and pollution caused by agricultural practices, waste, operator discharge and uncontrolled urbanization.<sup>275</sup> The location of hydropower plants within or near areas of special natural importance is a further problem.<sup>276</sup> Far from addressing it, relevant Kosovo authorities have planned future construction in special natural and protected zones<sup>277</sup> that will, among other things, adversely impact the environment, in particular Kosovo’s flora, fauna and rivers. The increase of hydropower plants may also pose a threat to the “the sustainability of the water supply for drinking, irrigation or other needs.”<sup>278</sup>

**144.** The construction of hydropower plants on the Lepenac River<sup>279</sup> was strongly opposed by the local community of Shtërpca/Štrpce and civil society. They demanded that it be halted and claimed that, if it went ahead, more than 100 hectares of land, including fields of wheat and raspberries, would be left without water<sup>280</sup> and local agriculture would be damaged. Popular protests against the construction of hydropower plants in Kosovo have also raised concerns about rights to access information and participation in decision-making processes with possible environmental impacts. This issue has also led to concerns over the responsiveness of local authorities and existing accountability and participation mechanisms.

**145.** Other concerns registered in 2019 include the lack of specific policies and measures that protect land by preventing degradation and ensuring that the transformation of agricultural land into construction land is controlled and monitored.<sup>281</sup> Additional issues included also the lack of effective actions and infrastructure to address and improve waste management and landfills,<sup>282</sup> insufficient protection of natural resources, amiss to adopt the draft law on noise<sup>283</sup> and overall inaction on climate change.<sup>284</sup> In each of these respects and others, there is an ongoing concern that Kosovo is lagging behind on these issues and other problems relating to the environment.

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274 Balkan Green Foundation, ‘Hydropower Plants in Kosovo: The Problems and Their Real Potential’ (March 2019), p. 5 (hereinafter Hydropower Plants in Kosovo).

275 2019 OiK Report, note 37, p. 37.

276 Hydropower Plants in Kosovo, note 274, pp. 5, 15.

277 Ibid., p. 6.

278 Ibid., pp. 6, 12.

279 This is a river in southern Kosovo that passes by Shtërpca/Štrpce, among other municipalities.

280 Drenushe Ramadani, ‘Protest against hydropower plant continues’ (prishtinainsight.com, 11 October 2019).

281 2019 OiK Report, note 37, pp. 38-39.

282 Ibid., p. 39.

283 2019 EC Report, note 49, p. 79

284 Ibid., p. 80.



