

Snapshot analysis on the recent
developments related to the Human
Rights sector in Kosovo

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Civil Society for
**HUMAN
RIGHTS**



Policy Analysis

Snapshot analysis on the recent developments related to the Human Rights sector in Kosovo

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I. Introduction

The political prioritization of the protection of human and fundamental rights in Kosovo, ensuring adequate capacity and budgetary resources for implementation of laws and policies and the enforcement and promotion of human rights standards, have been recommendations stated by the Kosovo Country Report of 2019.² Amongst other, the Law on Gender Equality, the Law for Protection from Discrimination and the implementation of the Kosovo Strategy and Action Plan against Domestic Violence (2016-2020) has been indicated as pivotal on addressing fundamental rights in Kosovo related to protection and promotion of rights of women specifically.³ More specifically, the report tackles three main topics such as domestic violence and sexual harassment, hate crimes against LGBTI community and minority rights in Kosovo.

When referring to the equality between women and men, the EC Country Report also in 2018 pointed out the absence of the legal qualification of domestic violence and sexual harassment in Kosovo's Criminal Code.⁴ Other CSO reports have elaborated the inevitable need for a legal definition of domestic violence and sexual harassment in Kosovo's criminal legislation by also adding the necessity of amending the Constitution and recognizing the Council of Europe (CoE) Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) as applicable in Kosovo.⁵ Moreover, when referring to gender based violence, it has been recommended that hate crimes against LGBTI community should be considered hate-crimes *per se*, as they have not been included in Article 147 of the 2012 Criminal Code of Kosovo.⁶ In addition, the 2018 EC country report for Kosovo recognized that

¹ KIPRED, GLPS and ARTPOLIS Consortium "Protecting and Promoting Human Rights in Kosovo through Active Civil Society," contract Nr. IPA/2016/382-772 funded by the EU Office in Kosovo. Brief drafted by GLPS, in cooperation with KIPRED.

² See European Commission, "Kosovo* 2019 Report", Strasbourg, May 2019, at <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-kosovo-report.pdf>.

³ Ibid.

⁴ European Commission, "Kosovo* 2018 Report", Strasbourg, April 2018, at <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20180417-kosovo-report.pdf>

⁵ Ariana Qosaj-Mustafa and Donjeta Morina, "Accessing Justice for Victims of Gender Based Violence in Kosovo: Ending Impunity for Perpetrators", Prishtina, December 2018, at https://eeas.europa.eu/sites/eeas/files/accessing_justice_for_victims_of_gender_based_violence_in_kosovo_eng.pdf

KIPRED, GLPS and ARTPOLIS Consortium "Protecting and Promoting human Rights in Kosovo through Active Civil Society," contract Nr. IPA/2016/382-772 funded by the EU Office in Kosovo.

⁶ Assembly of the Republic of Kosovo, Criminal Code of the Republic of Kosovo No. 04/L-082, Article 147, <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=2834>

Kosovo has an adequate institutional and legal framework for the rights and protection of minorities but implementation remains weak and needs further coordination.⁷

The poor implementation of the 2015 human rights package of laws, the lack of amendment of legislation to address legal loopholes and the wrongful qualification of acts of domestic violence, have been identified as the biggest obstacle in protecting and promoting human rights in Kosovo. Moreover, the protection, promotion and enforcement of human rights in Kosovo stagnate to the point of being considered as the weakest point at an institutional and state level. This conclusion has arisen due to the poor judicial response to domestic violence cases, allowing perpetrators to avoid justice.⁸ Firstly, the Criminal Code of Kosovo which entered into force January 1st, 2013, did not qualify domestic violence as a criminal offense; secondly, the Law on Gender Equality recognizes gender-based violence as a form of discrimination without concrete sanctions allowing perpetrators to avoid justice; and thirdly, the wrongful prosecutorial qualification of acts against domestic violence has led to minimal sentencing for domestic violence cases. Ultimately, it has been argued that until 2019, Kosovo has allowed for an increased social acceptance, tolerance and impunity of perpetrators related to the crimes of domestic violence in particular by Kosovo justice system.⁹

Only in early 2019, Kosovo has experienced a positive momentum regarding the protection and promotion of human rights. The Criminal Code of Kosovo was amended and the definition of domestic violence as a separate criminal offense was included.¹⁰ Moreover, March 2019 marked the first life sentence handed down for a woman's and a child's murder by her former partner.¹¹ And, only after the Court of Appeal overturned the decision of the Basic Court which sentenced the accused with only 24 years of jail time for the committed crime and increased pressure by Civil Society Organisations (CSO) groups dealing with women's rights.¹² Nevertheless, a court decision condemning an act of murder should be the last state

⁷European Commission, "Kosovo* 2018 Report", Strasbourg, April 2018, <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20180417-kosovo-report.pdf>

⁸Ariana Qosaj-Mustafa and Donjeta Morina, Prishtina, December 2018, "Accessing Justice for Victims of Gender Based Violence in Kosovo: Ending Impunity for Perpetrators", https://eeas.europa.eu/sites/eeas/files/accessing_justice_for_victims_of_gender_based_violence_in_kosovo_eng.pdf

⁹Ibid.

¹⁰Assembly of the Republic of Kosovo, Criminal Code of the Republic of Kosovo No. 06/L-074, Article 248, <https://gzk.rks-gov.net/ActDetail.aspx?ActID=18413>

¹¹Prishtina Insight, "Ex-husband sentenced to life in prison for the murder of Valbona Ndrecaj and daughter", March 2019, at <https://prishtinainsight.com/ex-husband-sentenced-to-life-in-prison-for-murder-of-valbona-ndrecaj-and-daughter/>

¹²Kallxo.com, "Kosovo Women Network reacts and seeks life imprisonment for Pjeter Ndrecaj for the murder

resort to be used on protecting the right to life in Kosovo. The negligence of state institutions reflected in these cases presents the state failure on timely reaction and provide protection for its citizens and their fundamental rights. On the rights of LGBTI community, in October 2018, the second LGBTI Pride Parade was organized in Prishtina and was widely attended compared to 2017.¹³ Moreover, the beginning of 2019 marked yet another victory by amending the Criminal Code of Kosovo and including sexual orientation and gender identity as main elements of a number of criminal offenses in Kosovo.¹⁴ On the other hand by end of May 2019 there were reports on two incidents of violence against a Roma woman. The first incident happened in Lipjan and the second one in Ferizaj.¹⁵ These incidents call for institutional reaction on addressing all acts of hatred. Moreover, Kosovo's institutions must come up with clear messages that acts of violence and hate speech shall not be allowed nor tolerated in any way.

This policy brief aims to provide a general analysis on the current situation of human rights in Kosovo. More specifically, this brief aim to analyze the recent amendments of the legal framework regulating the field of human rights. These adopted amendments are a result of many CSO research reports and awareness campaigns conducted on the needs identified on human rights issues in Kosovo. Second, this brief will present the progress in reporting violations of human rights to state institutions and accordingly present the necessary objectives that should be part of the Kosovo Human Rights Strategy of the Government of Kosovo for 2019-2023. Lastly, this brief aims to present the recent developments on human rights issues in Kosovo during 2016 – 2019 period and the way forward in addressing human rights issues specifically and enhancing their implementation.

Of his wife and child”, Prishtina, November 2018, at <https://kallxo.com/rrjeti-i-grave-kerkon-denim-te-perjetshem-per-pieter-ndrecajn/>.

¹³European Commission, “Kosovo* 2019 Report”, Brussels, May 2018,

<https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-kosovo-report.pdf>

¹⁴Assembly of the Republic of Kosovo, Criminal Code of the Republic of Kosovo No. 06/L-074, Article 70, Article 141, Article 173, Article 184, Article 185, Article, 186, Article 190, Article 321, <https://gzk.rks-gov.net/ActDetail.aspx?ActID=18413>

¹⁵Kosovo Womens Network, “RrGK alarmohet nga sulmi i sërishëm ndaj gruas rome ne Ferizaj/ KWN is alarmed by the second attack on the Roma women in Ferizaj”, Prishtina, May 2019, <https://womensnetwork.org/sq/rrgk-alarmohet-nga-sulmi-i-serishem-ndaj-gruas-rome-ne-ferizaj/?fbclid=IwAR3YRHniBvaMUip4GonsVR9PXPwNy-bAg8407ZRRMv6vSAMHmtJ6v-eyF6M>

II. The amended legal framework regulating Human Rights in Kosovo

a) Constitution of the Republic of Kosovo

Kosovo is not a member state of the European Union, Council of Europe and a number of other international organizations that ensure and protect human rights. Moreover, Kosovo is not a signatory country to any of the international conventions protecting and promoting human rights and fundamental freedoms. By not being a member of the above-mentioned international organizations and by not being a signatory country of international conventions on the protection of human rights, this sector is less prioritized by Kosovar state institutions. More precisely, because Kosovo is not a member of the Council of Europe (CoE), its citizens cannot hold the state responsible in front of the European Court for Human Rights (ECtHR). ECtHR as a regional human rights judicial body, created by the CoE to ensure protection and promotion of fundamental rights, is not accessible for Kosovar citizens due to Kosovo not being part of the CoE. Consequently, this marks one of the many reasons why Kosovar institutions ignore their mandate and responsibility on ensuring that human rights are respected in the country.

In order to *de jure* avoid the violation of human rights in Kosovo and ensure international support for Kosovo's state building and speed up the integration of Kosovo into regional international human rights bodies such as the EU bodies and CoE, Kosovo Assembly and other institutions supported by international organizations have directly transposed most of the *EU Acquis* and human rights principles into Kosovo's Constitution and legislation. Through this practice, the Constitution has enumerated the Universal Declaration of Human Rights and seven Conventions on the protection of human rights and fundamental freedoms as directly applicable international agreements and instruments in Kosovo.¹⁶ Moreover, in order to ensure full compliance with the principles and articles of these instruments, Article 22 of the Constitution states that in case of any conflict, these instruments have priority over provisions of laws and other acts of public institutions.¹⁷

When analyzing the international agreements and instruments directly applicable in Kosovo, one can notice that universal human rights are widely covered. While instruments such as the Istanbul Convention, which contribute to the elimination of all forms of discrimination against

¹⁶Assembly of the Republic of Kosovo, "Constitution of the Republic of Kosovo", Prishtina, April 2008, Article 22, <https://gzk.rks-gov.net/ActDetail.aspx?ActID=3702>

¹⁷Ibid.

women and promote substantive equality between women and men, etc., are not part of the directly applicable international agreements and instruments enumerated in the Constitution.

Considering that Kosovo is unable to ratify the Istanbul Convention, it has been recommended that Kosovo must amend its Constitution to recognize the Convention's direct applicability.¹⁸ This has been one of the main recommendations of CSO's and the Kosovo Ombudsperson Institution when referring to constitutional protection of human rights in Kosovo.¹⁹ Responding to an initiative taken by the Women MP's of the Assembly of Kosovo, the Constitutional Court of Kosovo ruled positively on the matter and enabled the Assembly of Kosovo to vote on the adoption of the amendment. The Court found that the proposed amendment would strengthen the commitment of Kosovo towards the protection of human rights.²⁰

On May 4th 2019, the Assembly of Kosovo was invited to vote on the constitutional amendment recognizing the Istanbul Convention's direct applicability in Kosovo. In order to adopt a constitutional amendment a double majority is required. This means that the Srpska Lista, the largest political party representative of Serbian minority must also vote in favor of the amendment. Unfortunately, the proposed amendment aiming to recognize the Istanbul Convention's direct applicability in Kosovo was never voted due to the missing votes of Srpska Lista. The Assembly is still coordinating on this initiative with all relevant political parties to achieve majority of votes needed for constitutional amendments. This failed tentative has once again shown the limited political prioritization and lack of institutional coordination on the protection of human and fundamental rights in line with European standards.

b) Criminal Code of Kosovo No.06/L-074 (Criminal Code of Kosovo), 2019

On the other hand, Kosovo showed some progress on amending the current legislation in addressing domestic violence, sexual integrity and hate crimes against LGBTI community. The inclusion and definition of domestic violence as a separate criminal offense in Kosovo's criminal code, accurately defining all acts of domestic violence in alignment with the

¹⁸Ariana Qosaj-Mustafa and Donjeta Morina, Prishtina, December 2018, "Accessing Justice for Victims of Gender Based Violence in Kosovo: Ending Impunity for Perpetrators",

https://eeas.europa.eu/sites/eeas/files/accessing_justice_for_victims_of_gender_based_violence_in_kosovo_eng.pdf

¹⁹Ibid.

²⁰ European Parliament Forum for Sexual and Reproductive Rights, "Kosovo to amend its Constitution to recognise the Istanbul Convention", Brussels, May 2019, <https://www.epfweb.org/node/879>

requirements of the Istanbul Convention, has been the latest achievement in the fight against domestic violence.²¹ Moreover, the creation of a national unified database enabling the monitoring and prosecution of domestic violence cases in Kosovo has been one of the many recommendations of CSO reports to the institutions and the Kosovo Strategy and Action Plan against Domestic Violence (2016-2020).²² On 14 March 2019, government institutions dealing with violence against women signed a memorandum of understanding on an integrated and unified database for cases of domestic violence. This database will enable the monitoring and prosecution of domestic violence cases in Kosovo, and ensure accountability, by obliging relevant institutions to feed the database with the necessary information from central and local levels.²³ This mechanism has been recognized as a “crucial step towards the implementation of the standards set forth in the Istanbul Convention.”²⁴

In addition, the new Criminal Code of Kosovo has included sexual orientation and gender identity as main elements of a number of criminal offenses in Kosovo.²⁵ The new code has included hate crimes and discrimination against LGBTI community as specific criminal offenses broadening the legal protection for the LGBTI community in Kosovo.

Reflecting on the new Criminal Code of Kosovo, one should recognize the endless work of CSO’s on advocating on behalf of the inclusion of the definition of domestic violence as a separate criminal offense in Kosovo’s Criminal Code and the sexual orientation and gender identity as main elements of a number of criminal offenses in Kosovo as well as adequate indictments and prosecutions of the crimes of violence against women specifically.²⁶ Due to the lack of a proper legal definition on the Criminal Code so far, domestic violence cases have been very common in Kosovo. With the new amendment, public institutions must ensure the implementation of the law and lead to tangible results on ensuring protection against domestic

²¹Assembly of the Republic of Kosovo, Criminal Code of the Republic of Kosovo No. 06/L-074, Article 248, <https://gzk.rks-gov.net/ActDetail.aspx?ActID=18413>

²²See Strategy at <https://abgj.rks-gov.net/publikimet/105/publikimet-abgj>.

²³UN Women Europe and Central Asia, “Kosovo to start using an integrated data base for cases of domestic violence”, April 2019, <http://eca.unwomen.org/en/news/stories/2019/04/kosovo-to-start-using-an-integrated-database-for-cases-of-domestic-violence>

²⁴Ibid.

²⁵Assembly of the Republic of Kosovo, Criminal Code of the Republic of Kosovo No. 06/L-074, Article 70, Article 141, Article 173, Article 184, Article 185, Article 186, Article 190, Article 321, <https://gzk.rks-gov.net/ActDetail.aspx?ActID=18413>

²⁶See Op-Ed by Charge d’Affaires Collen Hyland of the US Embassy in Kosovo, “Kosovo’s Women raised their Voices on Gender-Based Violence: Let’s Make Sure the Victims See Results,” published in Koha Ditore 29/11/2018 available at https://xk.usembassy.gov/oped_gbv/

violence in Kosovo. In addition to that issue, Kosovo's public institutions should bear in mind that, as stated by the 2019 EC country report, besides the inclusion of the protection against discrimination based on gender and sexual orientation and enhanced consciousness of the population and public figures regarding the LGBTI rights, there is still to be done towards assuring awareness and acceptance of such rights by general public.²⁷

III. The increased institutional awareness on the violation of human rights and the progress achieved so far

This section aims to present the progress in reporting violations of human rights in state institutions from 2015 (after the adoption of the human rights package) until 2018. When analyzing these data, one should recognize the effect of many research reports and awareness campaigns on raising institutional awareness on the violation of human rights in Kosovo.²⁸ Through this tracking mechanism, institutions were also able to track targeted cases that have been reported to the police, those that have been forwarded to the prosecutor's office, cases sent to the courts and data on cases of human rights violations that have been reported and investigated by the Ombudsperson.

²⁷European Commission, "Kosovo* 2019 Report", Brussels, May 2019, <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-kosovo-report.pdf>

²⁸KIPRED, GLPS and Artpolis, Civil Society for Human Rights, <http://www.cshr-ks.org/en/>. On this note, through a joint project supported by the European Union Office in Kosovo, namely the "Protecting and Promoting Civil Society through Active Civil Society' for Human Rights", KIPRED, Group for Legal and Political Studies (GLPS) and Artpolis have created a tracking mechanism to present statistical data on cases of human rights violations.

b) Cases of human rights violations that have been reported to the police and those that have been forwarded to the prosecutor's office between 2015 - 2018

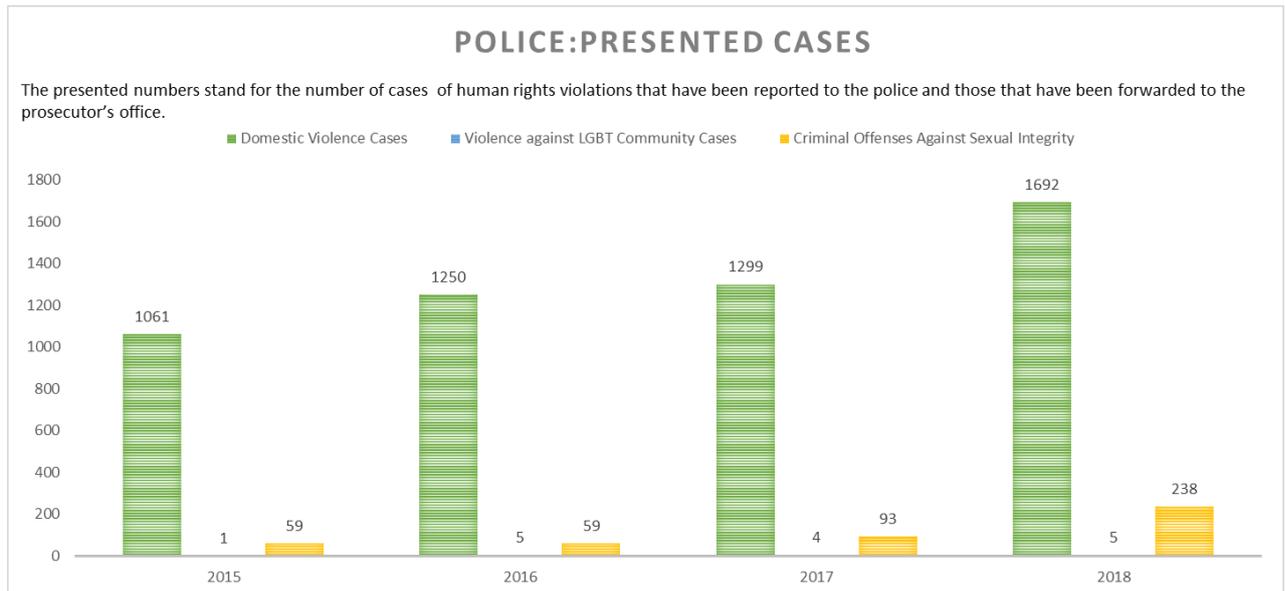


Diagram 1

When analyzing Diagram 1, it can be noted that the number of domestic violence cases reported to the Police, in between 2015 to 2018 was slightly different. The highest number of domestic violence cases reported to the Police was in 2018, with 1692 cases in total a significant increase when compared to 2017 of 23.22% reported cases. On the other hand, 2015 marked the lowest number of cases reported with 1061 cases in total. It can be noted that there was a positive trend on the number of cases reported to the Police which mostly can be attributed to many awareness raising campaigns, open public protests led by CSO's related to human rights violations against victims of domestic violence and gender-based violence²⁹ as well as other developments through the years.

When comparing the number of violence cases against LGBTI community reported to the police, in 2016 and 2018, 10 cases were reported in total, 5 per each year. This number marks the highest number of cases reported for the period monitored 2015 up to 2018. Contrary to 2016 and 2018, in 2015 there was only one case reported to the police. Taking into consideration the violations against the LGBTI community in Kosovo,³⁰ the cases reported to the Police do not necessarily serve to measure the trend of all cases of violence against this community.

²⁹Ibid at 26.

³⁰ Supra Note at 18.

Regarding the number of cases reported to the Police against sexual integrity, the variable changes amongst years. In 2018, there were 238 cases against sexual integrity reported to the Police marking the highest number of cases reported among 2015 – 2018. On the contrary, in 2015 there were only 59 cases reported. Once again one can notice a positive trend on the number of cases reported to the Police mostly due to raising the awareness of the victims through public protests of women's groups,³¹ amendments of legal framework and other developments in the field.

Analyzing the data gathered amongst the years (2015 – 2018) according to the cases reported to the Police on domestic violence, on violence against the LGBTI community and criminal offenses against sexual integrity, one can come to the same conclusion for each case. As analyzed, the number of cases reported against domestic violence cases, cases on violence against the LGBTI community and criminal offenses against sexual integrity have been slightly increasing over the period monitored. Moreover, even though the number of cases reported has slightly increased, reporting remains low generally followed by slow response by the justice system allowing for the perpetrators to go often unpunished or punished with low sentences.³²

³¹ Supra Note at 26.

³²Supra note at 18.

c) Criminal offenses related to Domestic Violence 2016-2018

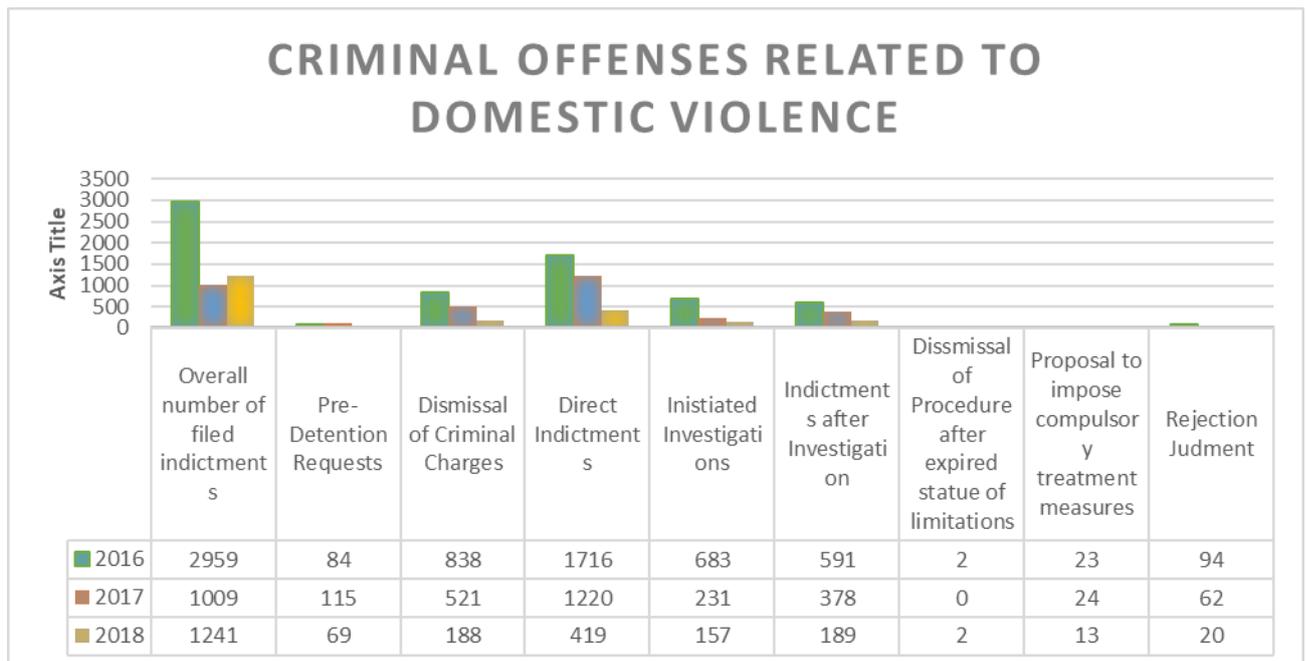


Diagram 2: Source³³

Regarding domestic violence cases, the diagram above presents a more detailed picture of cases analyzed throughout various years.³⁴ Diagram 2 illustrates the number of the overall filed indictments related to domestic violence received by the courts from 2016 to 2018. One can notice that there was a decrease on the overall number of cases reported among the years when compared to the Kosovo Police data for example. In 2016, out of 2959 cases, the prosecution only made 84 requests for pre-detention. While as in 2017, the number increased to 115. On the contrary, in early 2018 the number decreased in 69 cases. Moreover, in this diagram one can notice the fluctuation of the criminal charges dismissed. The year 2016 marks the highest number of cases dismissed, in total 838 and 2018 marks the lowest number of cases dismissed, in total 188. The same analyses applies to the cases where there were direct indictments, indictments after investigation and rejection judgments. On the contrary, the number of cases dismissed because of the expired statute of limitations is the same in 2016 and 2018,³⁵ whereas in 2017 there are no cases dismissed due to the expired statute of limitations.

³³ Author's adaptation based on the report "Accessing Justice for Victims of Gender Based Violence in Kosovo: Ending Impunity for Perpetrators." KIPRED, GLPS and Artpolis for EU-Funded project "Protecting and Promoting Human Rights in Kosovo through active civil society",

https://eeas.europa.eu/sites/eeas/files/accessing_justice_for_victims_of_gender_based_violence_in_kosovo_eng.pdf

³⁴ The data presented in this table for 2018 are collected only for the first six months of the year.

³⁵ Article 99 Statutory limitation on criminal prosecution 1. Unless otherwise expressly provided by this Code, the criminal prosecution may not be initiated after the following periods have elapsed: 1.1. thirty (30) years from the commission of a

The main cause reported for the low number of pre-detention requests, the high number of dismissed cases and rejection judgments has been the failure of the prosecutorial system to fulfill its mandate in responding effectively to cases of domestic violence.³⁶ Moreover, the lack of a proper definition of domestic violence acts within the criminal code of Kosovo has created difficulties in proving that the offense happened. Due to the amendment of the Criminal Code, it is expected that the number of guilty judgments will increase and CSO's should accordingly continue to monitor the proper implementation of these provisions recently amended.

d) Cases of human rights violations that have been investigated by the prosecution and sent to the courts between 2015-2018

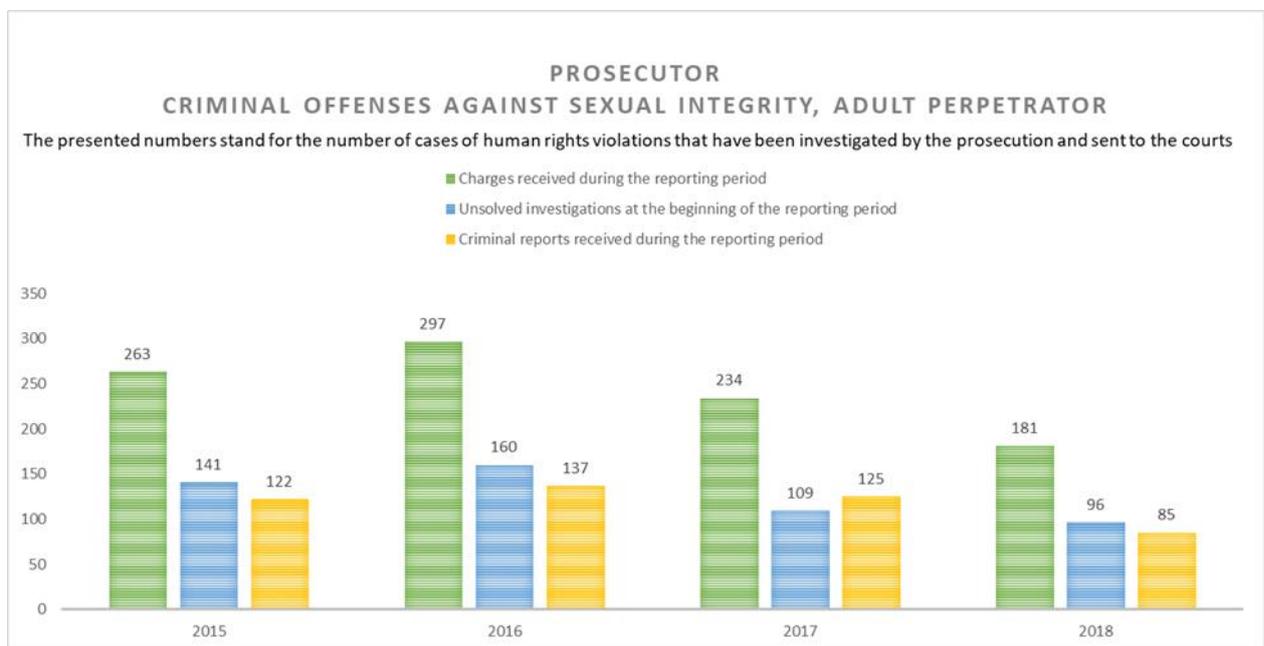


Diagram 3

According to the data gathered from the tracking mechanism and presented in Diagram 3, from 2015 to 2018 the prosecutorial services have been investigating only cases of criminal offenses against sexual integrity. There are no data on any investigation on violence against LGBTI community.

criminal offense punishable by life long imprisonment; 1.2. twenty (20) years from the commission of a criminal offense punishable by imprisonment of more than ten (10) years or 1.6. four (4) years from the commission of a criminal offense punishable by imprisonment up to one (1) year or punishment of a fine.

³⁶ See report "Accessing Justice for Victims of Gender Based Violence in Kosovo: Ending Impunity for Perpetrators." KIPRED, GLPS and Artpolis for EU-Funded project "Protecting and Promoting Human Rights in Kosovo through active civil society", at https://eeas.europa.eu/sites/eeas/files/accessing_justice_for_victims_of_gender_based_violence_in_kosovo_eng.pdf See Executive Summary.

When comparing the number of filed indictments during the reporting period against criminal offenses against sexual integrity, in 2015 there were 263 cases reported. The following year marks the highest number of filed indictments received during the reporting period from 2015 to 2018, with a total number of 297 filed indictments. Contrary to 2016, the total number of filed indictments against this criminal offense continued to decrease, reaching only 181 charges in 2018.

Moreover, comparing the number of unresolved investigations at the beginning of the reporting period on criminal offenses against sexual integrity, the year 2016 registered 160 cases in total, remaining as the highest amongst the reporting period year with unresolved cases. On the contrary, 2018 registered only 96 cases of unresolved investigations at the beginning of the reporting period on criminal offenses against sexual integrity.

In addition, analyzing the number of cases reported related to indictments and cases processed by prosecutorial services, during the reporting period on criminal offenses against sexual integrity, one can conclude that 2016 marked the highest number of cases received. In 2016, there was a total number of 137 criminal reports received during the reporting period. Once again, 2018 marked the lowest number of criminal reports received, amounting to only 85 cases.

From 2015 up to 2018 according to the cases against sexual integrity investigated by the prosecution and sent to the courts, it should be noted that 2016 marked the year with the highest number of filed indictments, the unresolved cases and the number of the criminal reports received by this institution. Overall, as analyzed, the number of criminal offenses indicted against sexual integrity has been decreasing over the years.

e) Cases of human rights violations that have been received and resolved by the courts between 2015-2018 (the total workload)

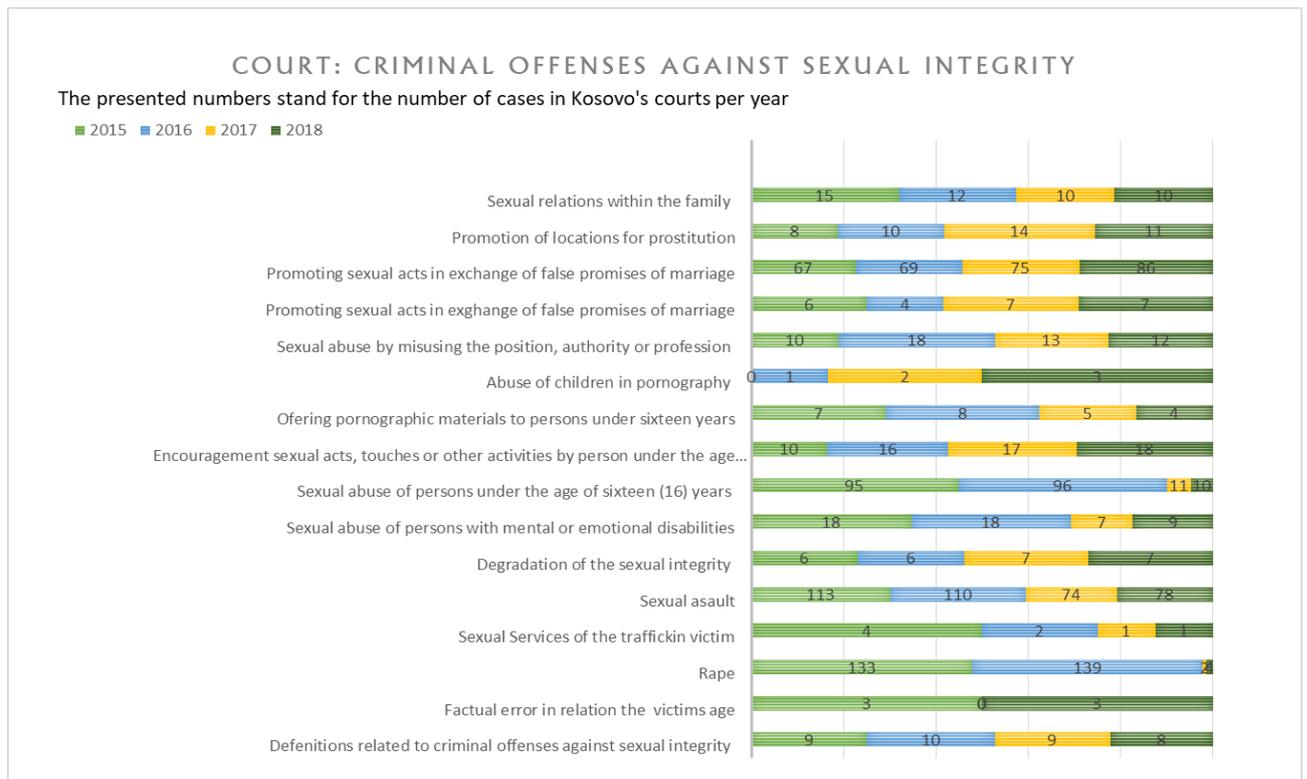


Diagram 3.1

The number of cases of criminal offenses against sexual integrity in Kosovo's courts between 2015 and 2018 fluctuated considerably. According to the numbers presented in Diagram 3.1, in 2015 there were a total number of 504 cases of this nature. In 2016, there is a slight increase in the number of cases. In total, there were 519. On the contrary, in 2017 one can note a significant decrease in the number of cases to 254 in total. In the year 2018 there were 271 cases registered, 17 cases more than 2017 but still a very low figure when compared to 2015.

f) Cases of human rights violations that have been reported and investigated by the Ombudsperson

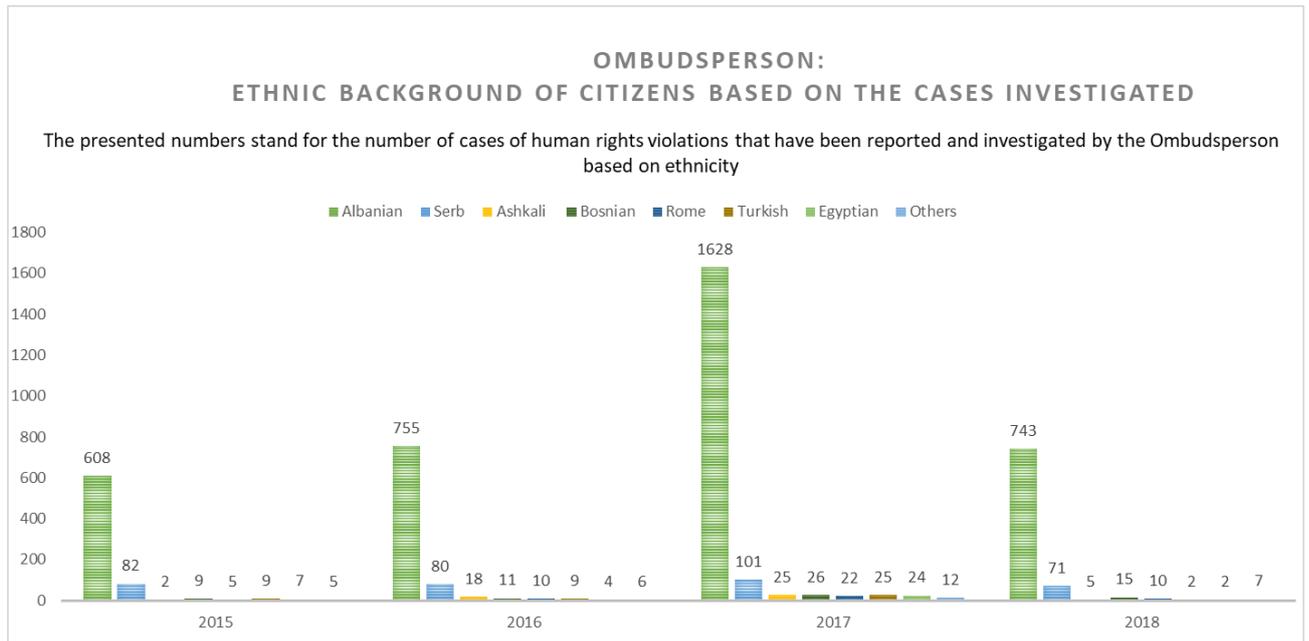


Diagram 4

Diagram 4 presents ethnic based data on cases of human rights violations that have been reported and investigated by the Ombudsperson Institution amongst the years. The majority of the cases reported between the years have been by ethnicity by Albanians. On the other hand, the lowest number of cases reported among the years varies from year to year. 2015 marked the lowest number of cases reported by Ashkali, while in 2016 the lowest number of cases reported was by Egyptians. Moreover, in 2018, the lowest number of cases reported based on ethnicity was once again by Egyptians and other minorities. Although cases reported vary from year to year, this comparison shows the overall number of cases reported based on ethnicity.

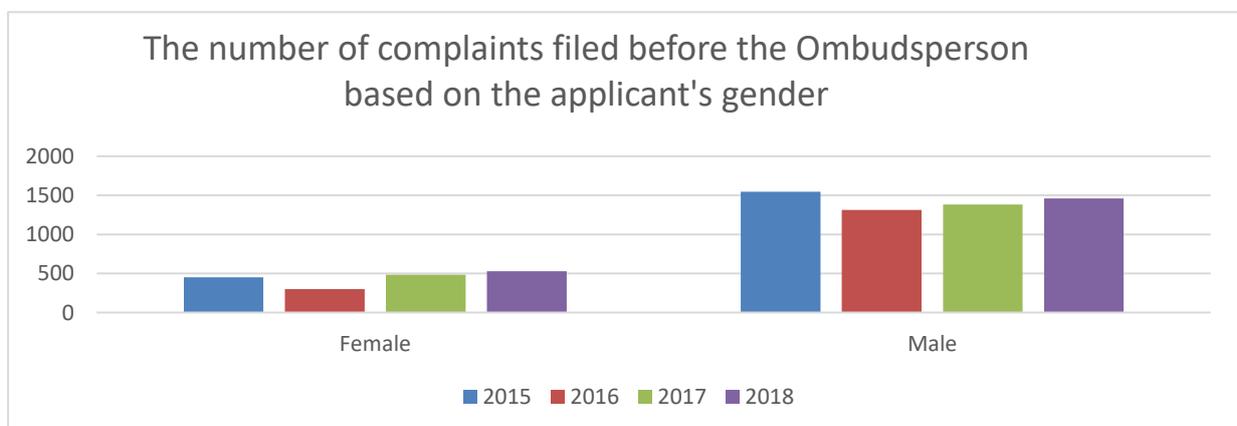


Diagram 5

In diagram 5, one can find gender disaggregated data according to the number of complaints received by the Ombudsperson throughout the years. As analyzed, the number of complaints received by the Ombudsperson from men is always higher than the number of complaints received by women. The difference between the numbers of complaints received by this institution based on the applicant's gender is very high. In 2015, 449 complaints were filed by women and 1546 complaints were filed by men. The same trend is noticed in the following years as well.

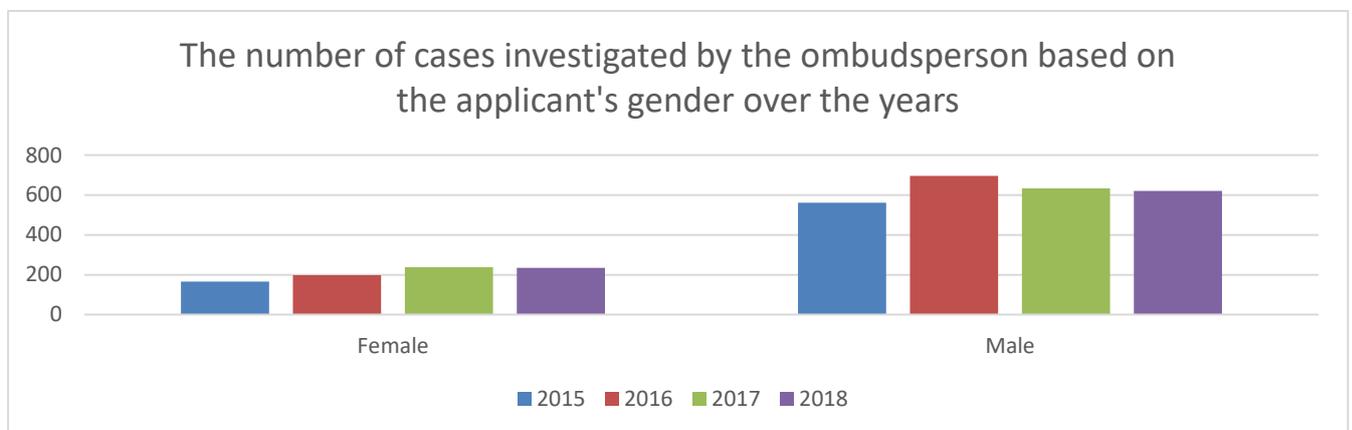


Diagram 6

Additionally, considering the fact that the highest number of complaints received by the Ombudsperson was from men, it may be expected that the highest number of the cases investigated by this institution based on the applicant's gender would be from men as noticed in Diagram 6. However, one can notice that 2016 marked the year with the highest number of cases investigated by the Ombudsperson for men applicants and 2017 for women applicants.

IV. Other institutional and policy approaches in ensuring the protection of human rights in Kosovo

a) Kosovo's Draft Strategy and Action Plan on Human Rights 2019 -2023

This section analyzes the key points that Kosovo's Strategy and Action Plan on Human Rights 2019 -2023 has incorporated so far and further issues it needs to address based on the analysis above and the monitoring undertaken in the human rights violations reported above. It has been

acknowledged many times that Kosovo overall has an adequate institutional and legal framework on the field of human rights, including relevant strategies and action plans, but implementation remains weak.³⁷

Moreover, the 2019 EC Country Report for Kosovo states that human and fundamental rights are broadly protected and guaranteed in Kosovo.³⁸ Nevertheless according to the report, due to financial reasons, limited political will and lack of coordination, Kosovo's institutions lack on implementing the legislation. To validate this conclusion, the report puts an emphasis on Kosovo's failure to finalize the Kosovo Human Rights Strategy, a process that has started in 2013. Moreover, the report delves into analyzing the lack of coordination among the existing mechanisms on ensuring human rights protection in Kosovo, the continuous dependence on foreign donors, the necessity to guarantee the rights of minorities, especially Roma and Ashkali, etc. In addition, the report mentions the lack of necessary resources and capacity of the Advisory Office for Good Governance on fulfilling its mandate on coordinating and drawing up policies in the areas of good governance, human rights, equal opportunities and anti-discrimination issues.³⁹

In addition, to measure Kosovo's progress on improving human rights protection, the 2019 World Report of Human Rights Watch considered many pillars.⁴⁰ Regarding Kosovo's internal policy towards the improvement of human rights protection, amongst others, treatment of minorities, women's rights, sexual orientation and gender identity issues were emphasized. Overall, according to the report, Kosovo's progress on improving human rights protection during 2018 was considered slow.

Regarding the treatment of minorities, the 2019 World Report of Human Rights Watch reported that Roma, Ashkali, and Balkan Egyptians continue to face the same integration problems affecting their basic human rights of attaining personal documents, access to health care and education. Secondly, when considering the relation between Serbs and Albanians, the report stressed the continuous inter-ethnic tensions between them. As for women's rights, the issue of domestic violence remains prevalent as a concern. Domestic violence remains as one of the

³⁷European Commission, "Kosovo* 2019 Report", Brussels, May 2018, <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-kosovo-report.pdf>

³⁸Ibid. See page 4 – 24.

³⁹Ibid.

⁴⁰Human Rights Watch, "World Report 2019", https://www.hrw.org/sites/default/files/world_report_download/hrw_world_report_2019.pdf

main problems when discussing human rights protection in Kosovo. The report stressed the weak institutional response towards the abusers and the institutional negligence concerning the crucial importance that victim's shelters have in this regard. The third issue underlined in the report was the institutional treatment towards LGBTI community in Kosovo. Hate speech directed to LGBTI community and the institutional rejection of a request made by a transgender to change his first name and legal gender were highlighted as the main failures of the country on ensuring the protection of human rights.

Moreover, prior to analyzing further issues that Kosovo's Draft Strategy and Action Plan on Human Rights 2019 -2023 should address, one should note the ERAC's report and proposals on the human rights strategy for Kosovo 2016 – 2022.⁴¹ Regarding Kosovo's legal framework and fundamental freedoms, this report concluded that due to the lack of commitment, clear division of duties, experience, and human and financial resources, Kosovo's government faces difficulties in implementing existing human rights legislation. Moreover, this report delved into mentioning, the lack of proper planning of the budget and the missing human capacities as the key issues adding to the extensive lack of proper implementation of Kosovo's legal framework. ERAC's report elaborated the need to set a comprehensive policy framework that would serve as an "umbrella" for other related strategies dealing with human rights. In this regard, such a strategy would bring together all current human rights strategies in a single strategy. Hence, its implementation would be much easier.⁴²

Consequently, based on the analyzes of the above reports and the monitoring results highlighting challenges faced by victims of above analyzed human rights violations, it is crucial to offer recommendations related to the recent initiative for Kosovo to draft the overarching human rights strategy. Hence, Kosovo's policy action plan and Human Rights Strategy for 2019 – 2023 should ensure the government's commitment on the rule of law, enhanced implementation of legislation, and effective protection and enforcement of human rights in Kosovo to be ensured by the active role of the justice system as well.

⁴¹Equal Rights For All Coalition – ERAC, "Human Rights Strategy for Kosovo 2016 – 2022: A way forward", September 2016, http://www.ecmikosovo.org/uploads/002.%20HR_Strategy_ENG.pdf

⁴²Ibid.

Firstly, in order to ensure the respect and implementation of the rights of the minority communities in Kosovo, the government should show commitment on implementing its legislation. Hence, their full integration into Kosovo society would be ensured. The creation of equal educational opportunities for all minority communities in Kosovo, and equal employment opportunities for all minority communities in public institutions would ensure the implementation of laws. Further, Kosovo courts should also react promptly to all cases reported of violations against minority communities as well.⁴³

Secondly, the Government of Kosovo should express a clear commitment to protect, respect, promote and enforce women rights by clear actions. The activities to be undertaken should foresee the amendment of the constitution as according to the Istanbul Convention, continuous awareness campaigns in all levels of government and a media campaign in raising awareness amongst the public at large. Moreover, the Government should provide policy options on addressing issues identified by various reports,⁴⁴ regarding the necessity for a full adherence of the Law on Gender Equality, the Law on Elections and the Law on Municipal Elections which provide different quotas for the least represented gender in decision making positions.

Finally, yet importantly, national and international reports on Human Rights issues in Kosovo have reported that the LGBTI community in Kosovo faces discrimination in all levels due to their sexual orientation or gender identity. Moreover, until April 2019, Kosovo's Criminal Code considered as an aggravating circumstance if gender or sexual orientation was to be the motive behind a crime. Only in April 2019, Kosovo's Criminal Code was amended to offer broader legal protection for the LGBTI community from acts such as hate crime and other crimes motivated by gender and sexual orientation individuals. Therefore, Kosovo's government must ensure that the new Criminal Code will be implemented rightfully and LGBTI community will enjoy their constitutional and legal rights. The strategy should foresee a concrete plan on raising awareness amongst all governmental levels and the public at large on the amendment of the Criminal Code, and engage all the stakeholders towards ensuring its rightful implementation.

⁴³Supra note at 18.

⁴⁴See for example Ombudsperson Institution opinion related to the Kosovo Elections 2016 and the requirements of the Kosovo Law on Gender Equality to the quota. www.theioi.org/downloads/144hj/kosovo_om_annual-report_2016_en-1.pdf

V. Conclusion

This brief provided a snapshot analysis of the recent developments related to human rights issues monitored by the Coalition in the period from 2015 to 2018. Starting from the constitutional protection of human rights, the brief highlights the limited political will and lack of coordination on protecting human and fundamental rights in line with European standards. Failure to amend the Constitution and include the direct applicability of Istanbul Convention in Kosovo marked a setback on Kosovo's constitutional approach on protecting human rights and the human rights of women victims of domestic violence and violence against women. Contrary to amending the Constitution, the Kosovo's members of parliament – MPs showed willingness in amending the legislation by proposing to amend the legal and international definitions of domestic violence and hate crimes against LGBTI community in Kosovo. This marked only crucial progress that state institutions achieved on a policy and legislative level. In addition, data portrayed in the tracking mechanism with the support of the Civil Society for Human Rights project showed many differences on the number of cases reported to the police, prosecuted by prosecutorial services and adjudicated by the courts. The data implies that there is no clear link on how the number of cases are tracked and recorded and they differ from institution to the other. Due to the lack of a proper definition of domestic violence, hate crimes against LGBTI community and sexual integrity within the Criminal Code in Kosovo, until early 2019, all cases have been tracked differently by the police, State Prosecutor and courts. Therefore, there are no clear and matching data of cases processed by these institutions.⁴⁵

Further, the snapshot analysis elaborates also some of the main pillars that Kosovo's Strategy and Action Plan on Human Rights 2019-2023 should be focused on. It should first and foremost ensure gendered analysis and gendered perspective in accordance to the requirements of the Kosovo Law on Gender Equality.⁴⁶Elaborating state's strategic approaches on ensuring the

⁴⁵ As stated in projects report "Accessing Justice for Victims of Gender-Based Violence in Kosovo: Ending Impunity of Perpetrators," (2018), data sent from institutions are incomplete and difficult to comprehend due to different tracking mechanisms used across judicial institutions. For instance, it is currently not possible to track the number of rape and sexual assault cases reported to the police, investigated by the prosecution and indicted by the courts. While the Kosovo Police and the Judicial Council keeps data on rape and other offenses separately, the Prosecutorial Council reports all data together in the —Crimes against Sexual Integrity section. This makes it difficult to follow rape and assault cases separately. See at page 41 and 42 for detailed explanation. At

https://eeas.europa.eu/sites/eeas/files/accessing_justice_for_victims_of_gender_based_violence_in_kosovo_eng.pdf

⁴⁶ Assembly of Kosovo, Law on Gender Equality No. 05/L-020, Article 3, <http://www.assembly-kosova.org/common/docs/ligjet/05-L-020%20a.pdf>

protection from domestic violence and hate crimes against the LGBTI community, this brief tackled minority rights as well. Inclusion of minorities in Kosovo's society has been pointed out, by many international reports, as one of the pillars that Kosovo institutions must focus on. Community minorities in Kosovo present a crucial part of its society and state institutions should ensure their full integration within Kosovo's society. Moreover, the state strategy should foresee a concrete plan on the implementation of the new amendments of the Criminal Code of Kosovo in order to ensure public awareness regarding the legal definition of domestic violence included in the legislation and the rights protected by the criminal code for the LGBTI community.

VI. Recommendations

1. The Kosovo Assembly should urgently amend the Constitution of the Republic of Kosovo to include the Istanbul Convention as directly applicable instrument in Kosovo.
2. The Kosovo Assembly should monitor closely the implementation of the amended Criminal Code of Kosovo with special emphasis on articles related to domestic violence, hate crimes against LGBTI community and criminal offenses against sexual integrity.
3. The Ministry of Justice through the Kosovo National Coordinator against Domestic Violence should organize awareness campaigns to inform the public on the new amendments of the Criminal Code of Kosovo.
4. The requirements and duties stemming from international covenants and the ECHR case law need to be increased especially among judges and legal professions, if they are to be effectively used in practice. This will require extensive training at different levels, spanning from the Constitutional Court to judges of the Basic Courts.
5. Regular trainings on handling LGBTI cases should be institutionalized across all Kosovo central and local level institutions mandated by laws to protect LGBTI rights and should also focus on the importance of protecting the confidentiality of the LGBTI community.
6. The Kosovo Judicial Council (KJC) should appoint specialized judges to work on domestic violence cases in order to ensure appropriate understating of the dynamics of domestic violence acts as well as provide adequate sentences accordingly. Additionally, the KJC should draft a set of procedures on how judges should treat domestic violence and LGBTI crimes after the amendments of the 2019 Criminal Code of Kosovo.
7. Kosovo's Government must ensure the full integration of all minorities into Kosovo society through provision of personal documents, as well as access to health care and education.

8. CSO coalitions should also continue to be supported by donors to enable monitoring of gender-based violence cases in Kosovo and increase public pressure towards Kosovo institutions to deliver on their mandate to protect human rights of victims of gender-based violence in Kosovo.

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