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HUMAN RIGHTS LAW PACKAGE ENTERS INTO FORCE

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In July 2015, the new Laws on Anti-Discrimination, the Ombudsperson and Gender Equality came into effect.¹ The three laws were voted and promulgated simultaneously and together form Kosovo's human rights package on the promotion and protection of the fundamental rights and freedoms and equal treatment of all citizens of Kosovo.²

Following a process of evaluations over the years involving civil society and other actors, such as the Council of Europe, the former laws were revised and changed.³ The adopted revised laws replace all previous related primary and secondary legislation, as they intend to repair former deficiencies and ensure compliance with European human rights standards.

With the adoption of the human rights package, one of the prerequisites of the European Commission has been fulfilled regarding the process of visa liberation.⁴

Now that the human rights framework has been completed it needs to be properly applied so as to actually benefit the citizens of Kosovo in their efforts to seek remedy for discriminatory conduct.

In this political analysis we provide a succinct overview of these laws and the challenges that need to be considered by the Kosovo institutions on how to improve the enjoyment of the fundamental rights and freedoms for all the community members.

¹ [Law \(Nr 05/L-21\) on Protection from Discrimination](#) (2015), [Law \(Nr 03/L-195\) on Ombudsperson](#) (2015) and [Law \(Nr 05/L-020\) on Gender Equality](#) (2015).

² [The Law \(Nr 03/L-047\) on the Protection and Promotion of the Rights of Communities and their Members in Kosovo](#) (2008) forms an integral part of the human rights corpus of laws, but its provisions were not subject to change and therefore will not be analyzed in this article.

³ COUNCIL OF EUROPE, [Reform Proposals to Energise Non-Judicial Human Rights Institutions in Kosovo](#) (2013).

⁴ EUROPEAN COMMISSION, [Second Report on Progress of Kosovo in Fulfilling the Requirements of the Visa Liberalization Roadmap](#) (2014), p. 7–8.

LAW ON PROTECTION AGAINST DISCRIMINATION

In comparison to the previous law, the new law elaborates on grounds for and types of discrimination, clarifies the structure of administrative bodies with competences with regard to discrimination, and prescribes meaningful public awareness measures. One of the main reasons to draft the law was to align legislation with European standards in order to provide victims of discrimination with adequate protection and necessary safeguards.

The principle of non-discrimination is based on the conviction that citizens are entitled to the full enjoyment of human rights and fundamental freedoms and that in this respect all should be treated equally.

The new law supplements the list of characteristics, against which it is prohibited to discriminate, to include social or personal status, pregnancy and genetic inheritance.⁵ It also expands on the types of unequal treatment that constitute discrimination by including provisions such as discrimination based on perception of the stated characteristics, failure to provide reasonable accommodation for persons with disabilities and discrimination based on association.⁶

The most important innovation revolves around the clarification of the roles of administrative bodies which have competences in the domain of anti-discrimination. The previous law caused confusion about the competences of administrative bodies, which alongside competent courts, were responsible for determining violations of the law and for imposing corresponding sanctions.⁷ The Office of the Ombudsperson was mentioned as ‘an authorized body to receive and investigate complaints concerning violations of rights based on discrimination’.⁸ In addition, the Gender Equality Attorney and municipal human rights units were also authorized to handle cases of discriminatory nature.⁹ It remained unclear under these provisions and overlapping mandates to what exact administrative body citizens could turn to seek remedy and what administrative procedure to follow.

The coming into force of the new anti-discrimination law unequivocally appoints two central level bodies to handle all complaints of a discriminatory nature: the Office of the Ombudsperson, as the main non-judicial institution, and the competent courts.¹⁰ The new law now explicitly assigns the Ombudsperson to manage gender discrimination complaints. All regulations relating to the human rights units is repealed upon entry of the human rights package and secondary legislation on their functioning and duties still needs to be adopted.

⁵ Law on Protection from Discrimination (2015), Article 1.

⁶ See Law on Protection from Discrimination (2015), Article 4. Discrimination based on perception relates to persons who do not belong to a certain group but who are perceived as such by others. Reasonable accommodation means providing measures so that persons with disabilities are able to participate fully in society. Discrimination based on association relates to persons who do not belong to a particular group but are associated as such by others.

⁷ [Law \(Nr 2004/3\) on Anti-Discrimination](#) (2004), Article 9 and EUROPEAN CENTRE FOR MINORITY ISSUES, [A legal handbook, Vulnerable and Marginalized Groups in Kosovo](#) (2012), p. 150.

⁸ The Ombudsperson was quoted in the old law as: ‘An authorized body to receive and investigate complaints concerning violations of rights based on discrimination’. Law on Anti-Discrimination (2004), Article 10.

⁹ COUNCIL OF EUROPE, [Reform Proposals to Energise Non-Judicial Human Rights Institutions in Kosovo](#) (2013), p. 111–112. The provisions on the Gender Equality Attorney were never executed and the Ombudsperson *de facto* took charge of gender based human rights violations see SIDA, [Gender Study in Kosovo, Review of the implementation of the law and program on Gender Equality in Kosovo](#), p. 5.

¹⁰ The competence of the courts in Kosovo can be found in the [Law \(Nr 03/L-199\) on Courts](#) (2010).

The Office of Good Governance is another institutional body with competences in discriminatory issues. It is responsible for advising the Government of Kosovo on related matters, drafting policies and monitoring the implementation of recommendations of the Ombudsperson.¹¹

According to the new provisions, the Government of Kosovo and public authorities will have to increase their efforts to educate the public on their fundamental rights and the corresponding human rights mechanisms within the coming months.¹²

LAW ON OMBUDSPERSON

The new adopted law related to the Ombudsperson mostly aims at strengthening the institutional and operational capacity of the institution as the main non-judicial institution with competences in the domain of human rights, harmonizing provisions with the laws on non-discrimination and gender equality, and expanding its mandate. The role of the Ombudsperson is all the more important if we take into consideration that the courts have not yet generated case law based upon the anti-discrimination provisions.¹³ Victims of discrimination have submitted claims revolving around discriminatory issues, but the courts often give judgment based on other applicable laws and disregard the anti-discrimination provisions.¹⁴ Effective judicial steps against discriminatory cases are an absolute requirement for any meaningful anti-discrimination policy. The strengthened position of the Ombudsperson as the main non-judicial institution with competences in the domains of non-discrimination can establish it as a valuable and more accessible alternative to judicial steps, and provide a solid basis and incentives for more vigorous and effective judicial interventions.

The law defines the Ombudsperson as a state human rights mechanism for the promotion and protection of fundamental rights and freedoms of all persons against improper behavior by public authorities. Law on Ombudsperson (2015), Article 1.

As the main non-judicial body for processing discriminatory complaints the Ombudsperson is mandated to process and examine human rights violations. The Ombudsperson is also granted with explicit competences in managing gender cases, together with handling general discriminatory cases.¹⁵

The Ombudsperson's mandate is extended through the new law and includes making general recommendations on the functioning of the judicial system and appearing in the capacity of the *friend of the court*.¹⁶

The office is furthermore assigned to act as National Preventive Mechanism against torture and other cruel and degrading treatment, where it will be responsible for visiting and

¹¹ Law on Protection from Discrimination (2015), Article 10.

¹² Law on Protection from Discrimination (2015), Article 25.

¹³ COUNCIL OF EUROPE, [Reform Proposals to Energise Non-Judicial Human Rights Institutions in Kosovo](#) (2013), p. 112.

¹⁴ EUROPEAN CENTRE FOR MINORITY ISSUES, [A legal handbook, Vulnerable and Marginalized Groups in Kosovo](#) (2012), p. 148.

¹⁵ *Ibid.* Article 16 number 13

¹⁶ A friend of the court is a person or entity that has a strong interest on the matter and who is not a party but who can give a statement on issues related to general interest if the courts permits.

monitoring places of detention suspected of violations of human rights and drafting of recommendations.¹⁷

On 2 July 2015 the Assembly of Kosovo elected a new Ombudsperson.

LAW ON GENDER EQUALITY

The overall goal of the Law on Gender Equality is to ensure and promote equality of women and men and to guarantee equal chances in public and private areas of life. The new law clarifies several gender related concepts and outlines the competences of various bodies in gender matters.

The law defines new leading principles such as gender mainstreaming, gender responsive budgeting and gender identity.¹⁸ It also introduces a comprehensive definition of gender discrimination.¹⁹

The new law remedies the lack of clarity in the former law in provisions allocating responsibilities to different bodies. According to the new law, the Agency for Gender Equality constitutes the key institutional body that is responsible for the, amongst others, implementation of the law, drafting of the Kosovo Program for Gender Equality, ensuring gender mainstreaming and gender budgeting. On the municipal and ministerial level, the officials for gender equality are the main actors in ensuring the implementation of the law.

As indicated previously, however, the Ombudsperson is now the competent non-judicial body that manages cases of gender discrimination. These provisions have clearly divided competences and domains of activities much more rigorously.

WHAT CHALLENGES REMAIN FOR KOSOVO?

After providing a brief overview of the main legislative novelties, this political analysis will now focus on the different challenges that remain in the human rights field for Kosovo institutions.

However, the mere existence of comprehensive human rights framework is in itself insufficient to provide for and contribute to the equal treatment of citizens.

The adoption of the human rights package by the Assembly is a great step forward in safeguarding fundamental rights for all citizens of Kosovo. In particular, it does away with the overlapping competences of various relevant institutions and reinforces the Ombudsperson as the main non-judicial body for the promotion and protection of human

rights. A variety of challenges will need to be addressed in the following years to create a human rights sensitivity among the different governing bodies and the general public.

¹⁷ It will exercise these powers one year after the entry into force of the law itself.

¹⁸ Law on Gender Equality (2015), Article 3. Gender mainstreaming is the inclusion of a gender perspective in legislation, policies and programs. Gender responsive budgeting is the valorization of budgets from the viewpoint of gender. Gender Identity relates to the gender related characteristics of person.

¹⁹ Law on Gender Equality (2015), Article 4.

ECMI Kosovo believes that the following steps are crucial:

- Undoubtedly, the main prerequisite is the **prioritization of promoting and protecting human rights** in the agendas of the Government and Assembly of Kosovo, ministries and local counterparts so to strengthen the political willingness to ensure these basic rights. Therefore **training and capacity building** needs to be foreseen for public agents. Also allocating adequate **budgets** to the veracious competent bodies is important.
- The **legal framework** that has been established through the human rights laws is not completed yet. To guarantee the proper implementation of the three laws, secondary legislation needs to be drafted within the coming months. Also for the proper functioning of the agency, the Ombudsperson will need to issue internal organizational guidelines and rules of procedure.²⁰
- The Government of Kosovo has not yet finalised the **Action Plan and Strategy on Human Rights**. The draft version for the period 2013-2017 is open to the public, but a final version has not been adopted so far.²¹ The Strategy and Action Plan lay down the priorities for the Government over a given period of time related to the treatment and enforcement of human rights.
- Now that it is clear that the **Ombudsperson** is the main non-judicial body for managing human rights complaints, it is important that its **institutional capacity is strengthened** so that the local and central level authorities follow up its recommendations and advice. Its role as friend of the court should also be taken seriously and supported with concrete capacities.
- **The judges of the courts** should look at alleged discriminatory cases from a variety of perspectives. It is possible for one case to be about slander *and* discrimination and the court should interpret existing cases in a broader sense. Additionally, training and capacity building should be allocated to judges in order to educate them on the human rights legislation.
- Citizens should be **educated through awareness raising measures** on topics such as non-discrimination and the various human rights mechanisms. The human rights framework is of high importance, especially for members of minority communities in Kosovo. All individuals are equally entitled to protection of fundamental human rights, but given their precarious situation, it is clear that members of minority communities might not be able to enjoy these rights in the same way as the majority population. In this regard, it is essential that communities, as others' members, are informed about their rights and know where to turn in case of discriminatory treatment. It is particularly imperative for the Ombudsperson to reach out to the public to promote human rights and explain its mandate to the citizens of Kosovo.

²⁰ Law on Ombudsperson (2015), Article 38.

²¹ [http://www.kryeministri-ks.net/repository/docs/Pjesa_Narrative_e_Draft-Strategjise_per_te_Drejtat_e_Njeriut_\(2013-2017\)_05_gusht_2013_EN.pdf](http://www.kryeministri-ks.net/repository/docs/Pjesa_Narrative_e_Draft-Strategjise_per_te_Drejtat_e_Njeriut_(2013-2017)_05_gusht_2013_EN.pdf)

POLITICAL ANALYSIS

About ECMI Kosovo

ECMI Kosovo is the principal non-governmental organisation engaged with minority issues in Kosovo, with the overarching aim to develop inclusive, representative, community-sensitive institutions that support a stable multi-ethnic Kosovo. ECMI Kosovo contributes to the developing, strengthening and implementation of relevant legislation, supports the institutionalisation of communities-related governmental bodies, and enhances the capacity of civil society actors and the government to engage with one another in a constructive and sustainable way.