European Union Kosovo

ERAC
EQUAL RIGHTS FOR ALL COALITION

HANDBOOK FOR PARALEGALS WORKING WITH VULNERABLE AND MARGINALIZED GROUPS IN KOSOVO

November 2019



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ECMI Kosovo (ecmikosova.org)
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.

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Equal Rights for All Coalition
ERAC brings together seven (7) NGOs that work in the domain of ***rule of law*** and ***fundamental rights*** that will work together with an additional ***nineteen (19) grass root NGOs***, with a particular focus on the establishment of a sustainable network of NGOs that are active in the protection and promotion of the fundamental rights of vulnerable and/or marginalised groups. The project's special focus are the following groups: ***all minority communities*** in Kosovo, ***women, youth*** and ***LGBT community***. Although working on similar topics and issues, these NGOs are often divided on the basis of the particular target groups they are working with or the region they are active in. By establishing structural cooperation between selected NGOs and providing formal opportunities for continuous learning, the action generates the sharing of knowledge and experience between NGOs, strengthens their capacities for advocacy with relevant central and municipal institutions, and increases their visibility.

ERAC members are the following organisations:
- European Centre for Minority Issues Kosovo – leader of the Coalition;
- Centre for Social Group Development – member of the Coalition;
- Centre for Equality and Liberty for the LGBT Community in Kosovo – member of the Coalition;
- Kosovo Center for Gender Studies – member of the Coalition;
- Youth Initiative for Human Rights – member of the Coalition;
- Kosovo Glocal – member of the Coalition;
- Centre for Legal Aid and Regional Development – member of the Coalition.

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EQUAL RIGHTS FOR ALL COALITION (ERAC)

Fundamental human rights for all citizens of Kosovo are *de jure* guaranteed by the Constitution of Kosovo, in accordance with the Universal Declaration of Human Rights. There is however a considerable gap between legislation and *de facto* access to and protection of fundamental rights. Vulnerable and marginalised groups, including minority communities, women, youth, and LGBT particularly face challanges when exercising their fundamental rights.



In the beginning of 2016, a ***four (4) years project*** "Equal Rights for All Coalition (ERAC)" funded by the EU and managed by the ***European Union Office in Kosovo***, amounting ***EUR 1,110,928.00*** started to be implemented. ERAC is lead by ECMI Kosovo and brings together seven (7) medium-size NGOs that work in ***the domain of rule of law*** and ***fundamental rights*** and additional ***nineteen (19) grass root NGOs,*** with a particular focus on the establishment of a sustainable network of CSOs that are active in the protection and promotion of the fundamental rights of the targeded vulnerable and/or marginalised groups (VMGs) which are ***non-majority communities, women, youth,*** and ***LGBT community.***

ERAC organises its activities around a number of fundamental rights that have been identified by ERAC and international actors as particularly problematic for the targed groups which are: *Equality before the Law; Right to fair and impartial trial; Right to Legal Remedy; Right to Liberty and Security; Freedom of expression; Right to access of public documents; Freedom of media; Right to education; Right to work and exercise profession; Health and social protection.*

INTRODUCTION OF THE HANDBOOK

The Equal Rights for All Coalition (ERAC) handbookon fundamental rights and freedoms is based on the four (4) year project "Equal Rigths for All Coaliton" funded by EU and managed by the Euripean Union Office in Kosovo. The activities of ERAC are initially designed to cover six selected fundamental rights, *Right to Equality before the Law; Right to Liberty and Security; Right to Freedom of Expression; Right to Education; Right to Work and Profession; and Right to Health and Social Protection.*While the focus of this handbook will be on these six fundamental rights, we will also focus in other fundamental rights that ERAC paralegals have been working through the human rights violation cases.

The handbook will focus on the four focus groups of ERAC-project, *minority communities; women; LGBTI persons; and youth.* We will look into the human rights protection mechanisms in Kosovo while focusing on the mechanisms of the four ERAC focus groups.Moreover, the handbook will outline relevant legally binding documents for protection of fundamental rights, which will be done through examples of human rights violation cases that ERAC paralegals have worked with since the beginning of the ERAC project.

Constitution of Kosovo

The Constitution of Kosovo was signed and ratified in 2008 several months after the independence declaration in February 17th.The Constitution is the document which guarantees thathuman rights and fundamental freedoms are the basis of the legal order of Kosovo.Article 21 of the Constitution defines the general principles of the human rights and fundamental freedoms:

- Human rights and fundamental freedoms are indivisible, inalienable and inviolable and are the basis of the legal order of Kosovo.
- Kosovo protects and guarantees human rights and fundamental freedoms as provided by the Constitution.
- Everyone must respect the human rights and fundamental freedoms of others.
- Fundamental rights and freedoms set forth in the Constitution are also valid for legal persons to the extent applicable.

Moreover, the Constitution has a full chapter dedicated to the protection of the rights of communities and their members.There are also several international human rights instruments that are applicable in Kosovo as set in the Constitution. These international instruments are:

- Universal Declaration of Human Rights;
- European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols;

- International Covenant on Civil and Political Rights and its Protocols;
- Council of Europe Framework Convention for the Protection of National Minorities;
- Convention on the Elimination of All Forms of Racial Discrimination;
- Convention on the Elimination of All Forms of Discrimination Against Women;
- Convention on the Rights of the Child;
- Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment.

Fundamental human rights and freedoms

In this handbook we will cover 11 out of 35 fundamental human rights and freedoms from the Constitution. The ones that are listed below are human rights and freedoms that ERAC paralegals have been working with through several cases fromSeptember 2016 to December 2018. The rights and freedoms that were violated, and which our paralegals reported, are:

- Article 24, Equality Before the Law
- Article 26, Right to Personal Integrity
- Article 29, Right to Liberty and Security
- Article 31, Right to Fair and Impartial Trial
- Article 35, Freedom of Movement
- Article 40, Freedom of Expression
- Article 41, Right of Access to Public Documents
- Article 46, Protection of Property
- Article 47, Right to Education
- Article 49, Right to Work and Exercise Profession
- Article 51, Health and Social Protection

Background to Discrimination

Discrimination often happens on the basis of race, ethnicity, nationality, sex, gender identity, sexual orientation, language, religion, disability, age, socio-economic status or any other basis. It can happen by natural persons, legislation, government policies or by any entity that practices any form of discrimination as set below.

Forms of discrimination

- Direct discrimination happens when one person is treated less favorably than another person in the same situation, based in one or more characteristics as mentioned in the background section.
- Indirect discrimination happens when there is a practice, criteria or a policy that puts a person or a group into an unequal position, based in one or more characteristics as mentioned in the background section.

- Harassment is a form of discrimination that happens in several ways, may it be verbal or physical, it can be psychological and sexual, while aiming to violate ones dignity, incite fear, degrade a person, humiliate or create a hostile environment.
- Incitement of discrimination is often considered to happen when one person or a group are subject to hate speech based in one or more characteristics as mentioned in the background section.
- Victimization often happens when a person is made a victim just because of their characteristics as mentioned in the background section, and hence put a person or a group in a less favorable situation.
- Segregation occurs when persons or groups are separated based in one or more characteristics as mentioned in the background section. Most commonly segregation happens on racial and ethnic characteristics, it can happen by natural persons or legislative action.

Most relevant Laws for marginalized and vulnerable groups in Kosovo

- **Law No. 05/L-021 on the Protection from Discrimination**[1]
  Law on the Protection from Discrimination regulates the general framework in order to prevent and combat discrimination based on nationality, social origin, race, ethnicity, colour, birth, origin, sex, gender, gender identity, sexual orientation, language, citizenship, religion and religious belief, political affiliation, political or other opinion, social or personal status, age, family or marital status, pregnancy, maternity, wealth, health status, disability, genetic inheritance or any other grounds, to ensure the implementation of the principle of equal treatment. [2]

- **Law No. 05/L-020 on Gender Equality**[3]
  Law on Gender Equality in Kosovo guarantees, protects and promotes equality between genders by determining the general and specific measures that ensure and protect the equal rights of men and women, as well as defies the Institutions responsibilities and their competencies. [4] Law on Gender Equality applies to men, women and persons who have protected characteristics of gender identity or sex determination, and ensures that equal opportunity and treatment in public areas, private areas, political life, public life, employment, education, health, economy, social benefits, sport, culture and other areas set out by the present or other law.[5]

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1 Law No. 05/L-021 On The Protection From Discrimination Official Gazette Of The Republic Of Kosova / No. 16 / 26 June 2015, Pristina https://gzk.rks-gov.net/ActDetail.aspx?ActID=10924

2 Law No. 05/L-021 On The Protection From Discrimination https://gzk.rks-gov.net/ActDetail.aspx?ActID=10924

3 Law No. 05/L -020 On Gender Equality Official Gazette Of The Republic Of Kosova / No. 16 / 26 June 2015, Pristina https://gzk.rks-gov.net/ActDetail.aspx?ActID=10923

4 Law No. 05/L -020 On Gender Equality Article 1 https://gzk.rks-gov.net/ActDetail.aspx?ActID=10923

5 Law No. 05/L -020 On Gender Equality Article 2 https://gzk.rks-gov.net/ActDetail.aspx?ActID=10923

- **Law No. 03/L-047 on the Protection and Promotion of the Rights of Communities and their Members in Kosovo[6].[7]**
  Law on the Protection and Promotion of the Rights of Communities and Their Members[8] in Kosovo regulates the definition of communities as national, ethnic, cultural, linguistic or religious minorities. Minority groups are considered the Serb Community, Turkish community, Bosnian Comunnity, Roma Community, Ashkali Community, Goran Community, Montenegrin Community, and Croation Community. Minority communities have the right to freely express, cultivate and develop their identity and culture. The minority communities have the right to have their names written in their respective language in the Kosovo Institutions. The official languages in Kosovo are Albanian and Serbian, however, the Turkish, Bosnian and Roma language have an official status at municipal level.

In the following section you can find the six fundamental rights that ERAC has in its primary objectives, followed by additional fundamental rights that ERAC has worked over past 2 years. Each fundamental right has one case that was successfully solved through the legal assisatance of ERAC community based paralegals.

[6] Law No. 03/L-047a On The Protection And Promotion Of The Rights Of Communities And Their Members In Kosovo Official Gazette Of The Republic Of Kosova / Pristina: Year Iii / No. 28 / 04 June 2008 https://gzk.rks-gov.net/ActDetail.aspx?ActID=2531

[7] Law No. 04/L-020 On Amending And Supplementing Of The Law No.03/L-047 On The Protection And Promotion Of The Rights Of Communities And Their Members In Republic Of Kosovo Official Gazette Of The Republic Of Kosova / No. 29 / 27 December 2011, Pristina https://gzk.rks-gov.net/ActDetail.aspx?ActID=2531

[8] Law on the Protection and Promotion of the Rights of Communities and Their Members https://gzk.rks-gov.net/ActDetail.aspx?ActID=2531

EQUALITY BEFORE THE LAW

Major shortcomings concern the access to justice for non-majority communities, women, and the LGBT community. There is the complex integration of the Serbian judiciary system within the Kosovo system, the inadequate translation of laws into Serbian, and the lack of qualified Serbian-speaking lawyers particularly affect the right to equality before the law of minority communities in Kosovo.

ERAC paralegal case

REINTEGRATION IN KOSOVO: A CASE IN THE FUSHË KOSOVË/KOSOVO POLJE MUNICIPALITY

Introduction

Over the past decade, a large number of families from Roma, Ashkali, and Egyptian communities returned to the Fushë Kosovë/Kosovo Polje area of Kosovo from other European countries. These families need the support of Kosovo institutions to fully recognize their rights granted by the National Strategy of Reintegration of Repatriated Persons in Kosovo. In the meantime, ERAC paralegals have become essential advocates for these repatriated communities and other target groups in 12 municipalities across Kosovo.

Legal Framework

The National Strategy for Reintegration of Repatriated Persons in Kosovo describes necessary measures to ensure the sustainable reintegration of repatriated persons. The document specifically focuses on policies regarding civil registration, health, education, employment, social welfare, and housing.[9] It assigns three main groups to cover all phases of the return process: the Division for Readmission of the Department of Citizenship Asylum and Migration of the Ministry of Internal Affair (MIA), the Department for Reintegration of the MIA, and the Municipal Offices for Communities and Return (MOCRs). With relevance to this story, the responsible local level institution, the MOCR, is expected "to identify, promote, support, implement and monitor policies, activities and programs related to the protection and promotion of communities' rights; equal access of all communities to public services; and the creation of conditions for sustainable return."[10]Lastly, the Municipal Reintegration Commission decides on requests for emergency benefits submitted by repatriated persons. It

[9] http://www.kryeministri-ks.net/repository/docs/National_Strategy_for_Reintegration_of_Repatriated_Persons.pdf

[10] http://kaad-rks.org/wp-content/uploads/2014/03/Monitoring-Report-on-the-Compliance-of-MOCR-with-Government-Regulation-02-2010-in-the-process-of-voluntary-return.pdf

also helps repatriated persons in accessing civilian status registers, acquiring of civilian documents, matters of education, psycho-social training, social assistance, housing, and the issuing of cadastral documents.[11]

Process of the case

An ERAC paralegal identified a case in Fushë Kosovë/Kosovo Polje regarding the lack of support and information given to a repatriated person. The individual wanted to know about the rights guaranteed by the Regulation on Reintegration of Repatriated Persons and Management of the Reintegration Program.[12] According to the client, the MOCR of Fushë Kosovë/Kosovo Polje could not provide the requested information and support due to a lack of personnel to handle the high demand of inquiries from the public.

Outcomes

During a period of 10 months, an ERAC paralegal in the municipality of Fushë Kosovë/Kosovo Polje provided information to 14 families regarding the existing regulation that aims to facilitate the sustainable reintegration of repatriated persons to Kosovo. The paralegal informed the clients of their rights, the state's obligations, sources of assistance, and other benefits. Additionally, the paralegal dispersed information on the basic services provided by the municipality of Fushë Kosovë/Kosovo Polje and the criteria persons must meet to benefit from the program. In one instance, the paralegal supported a client in filling out required documents for assistance with self-employment and the financing of business plans. The client submitted the request, and received a positive answer in 6 months.

Recommendations

In the Fushë Kosovë/Kosovo Polje municipality, the MOCR employs six persons: one head of office, one coordinator for community rights and integration, two officers for community rights and integration, one coordinator for sustainable return, and one officer for sustainable return. Although the number of employees exceeds regulations—based on the paralegal's experience—the office still does not have the capacity to support all persons in need of information.[13] Thus, ERAC suggests that the municipality increase the number of officers at MOCR, or alternatively increase the capacities of the current employees to effectively manage the large demand for services. Municipalities must be compliant with active Regulation for the Municipal Offices for Communities and Return, and meet the needs of their constituents.

[11] http://www.kryeministri-ks.net/repository/docs/National_Strategy_for_Reintegration_of_Repatriated_Persons.pdf

[12] http://www.kryeministri-ks.net/repository/docs/Rregullore_(QRK)_nr__042016_per_riintegrimin_e_personave_te_riatdhesuar_____.pdf

[13] http://www.kryeministri-ks.net/repository/docs/Rregullore_per_Zyrat_komunale_per_Komunitete_dhe_Kthim.pdf

Relevant Legislation

In the constitution of Kosovo, Article 24, equality before the law is described as following: everyone is equal before the law and further enjoys equal legal protection without any form of discrimination or any ground of discrimination as set in this article.

RIGHT TO EDUCATION

Equal Rights for All Coalition (ERAC) believes that education belongs to everyone. Therefore, we are determined to work towards more inclusive and quality education for children and adults, especially for those who belong to marginalized and vulnerable groups.

Members of non-majority communities who wish to pursue education in Serbian have no alternative but to attend the parallel Serbian system. Students from the Roma, Ashkali, and Egyptian communities have lower registration rates, higher dropout rates, and poor levels of academic performance. Women are strongly underrepresented in education staff and material. Moreover, many schoolbooks in Kosovo are in constant revision due to high amount of discriminatory language towards women, ethnic groups and LGBTI community.

Non-majority communities at schools and higher education institutions

Schools have been implementing additional Prevention and Response Teams towards Abandonment and Non-Registration (PRTAN). PRTAN helps the schools to identify children that are in the risk to drop out from the school.

Public Higher Education Institutions have quotas for admissions of students belonging to minority communities in Kosovo. These quotas serve to diminish the ethnic discrimination and address under-representation of students belonging to minority communities in the Higher Education Institutions in Kosovo. The right of registration according to the affirmative measures is given to students of non-majority communities who have successfully completed the upper secondary school in Kosovo or abroad, for the same they provide the certificate for recognition of the prior learning by MEST, based on the legislation in power. The application of affirmative measures for the registration of candidates from non-majority communities will be implemented in all public higher education institutions, Bachelor and Master and Doctorate courses, in accordance with the general allocation of registration quotas.

Community Language

The Law on the Use of Languages regulates the right of minority communities to preservem maintain and promote their linguistic identity.[14] Moreover, the Law on the Use of Languages regulates that every citizen of Kosovo have equal rights in using the official languages in the territory of Kosovo. In the municipalities where five percent (5) of a community resides, the language that is used in the resident community will become an official language even though it does not have the official status at central level.[15] Article four (4) of the Law on the Use of Languages ensures that every citizen has the right to access public documents in Kosovo Institutions in the official language they prefer.[16] Article six (6) of the Law on the Use of Languages regulates that members of minority communities have the right to present oral or written submissions to the Insitution of the Ombudsperson and receive a reply in their mother tongue.[17]

Community education is developed in accordance with the languages of accredited study programs. Public institutions of higher education provide for the preparation of tests for entrance examination in a language that candidates from communities have completed pre-school education and / or for which they declared in advance in the self-declaration form.

Beside Albanian language, the entrance exam must be available in three other official languages:

1. Serbian language;
2. Turkish language; and
3. Bosnian language.

Quotas and affirmative measures for student enrollment from non-majority communities in public higher education institutions include 12% of the total number of admission students, according to the vacancy in each academic unit.

The 12% quota of seats reserved for student enrollment from non-majority communities will be distributed on the basis of registered candidates from non-majority communities until the quota for student enrollment from non-majority communities is met.

[14] Law No. 02/L-37 On The Use Languages Article 1.3 https://gzk.rks-gov.net/ActDetail.aspx?ActID=2440
[15] Law No. 02/L-37 On The Use Languages Article 2 https://gzk.rks-gov.net/ActDetail.aspx?ActID=2440
[16] Law No. 02/L-37 On The Use Languages Article 4 https://gzk.rks-gov.net/ActDetail.aspx?ActID=2440
[17] Law No. 02/L-37 On The Use Languages Article 6 https://gzk.rks-gov.net/ActDetail.aspx?ActID=2440

ERAC Paralegal case

PREVENTING DROP-OUTS FROM SCHOOLS: CASE OF MATI LOGOREC SCHOOL IN PRIZREN

Introduction

ERAC paralegal from the municipality of Prizren identified a case of verbal and physical harassment based on ethnic grounds.

The incidents took place at the primary school of Mati Logorec in Prizren, where a boy from Roma community studies. The consequences of harassment led for the boy to drop-out from the school. The issue of school drop-outs is widely spread among Roma community but as well Ashkali and Egyptian communities in Kosovo.

Legal framework and other considerations

The right to education is set as one of the fundamental rights in the constitution of Kosovo, this right is then further regulated into several laws in Kosovo as well as the administrative instructions for the officials at the central and local level.

Law on Pre-university Education in Kosovo stipulates the roles of the parents, school and other public authorities in the field of education for their obligations towards retention of the child in a school. The Law on the Protection and Promotion of the Rights of Communities and their members in Kosovo , as well as Law on the Protection from Discrimination , take into account the marginalized and vulnerable groups that might have specific factors that influence the retention of children in schools, and hence seek to prevent and protect these groups from possible discrimination and injustice they face '' based on nationality, or in relation to any community, social origin, race, ethnicity, colour, birth, origin, sex, gender, gender identity, sexual orientation, language, citizenship, religion and religious belief, political affiliation, political or other opinion, social or personal status, age, family or marital status, pregnancy, maternity, wealth, health status, disability, genetic inheritance or any other grounds.''

Moreover there are other documents in order to enforce and regulate the above in practice, these documents are: Administrative Instruction Nr. 19/2012 on Creating and Strengthening of Teams for Prevention and Response toward Abandonment and Non-Registration in Compulsory Education; and the Manual for School Prevention and Response Teams towards Abandonment and Non-registration in Compulsory Education.

Process of the case

ERAC paralegal discovered the case during his field work in Prizren. Cases of discrimination or harassment based on one's ethnic background are rare in Prizren, as it is one of the well-integrated multi-ethnic municipalities of Kosovo.

According to the law of Kosovo the legal guardians, usually the parents of the child have the first stance duty to make sure their children are enrolled in schools and also follow the curricula, and especially react on case of drop-out. ERAC paralegal met with the parents to find out why they had not taken any action. The parents were not aware of the procedures and possibilities of what they should or can do in order make B.Q go back to school. They had tried to talk to B.Q and convince him to go back to school, but without success. Nevertheless, the parents gave ERAC paralegal permission to talk to B.Q and take the matter through necessary procedures.

ERAC paralegal, with the help of B.Q, identified the boys who had been harassing him, and arranged a meeting with the Principal. The boys who had physically and verbally harassed BQ were questioned by the Principal, given detention at school and they had to apologize to BQ. Also B.Q was convinced to go back to school as his class teacher will follow the situation.

Outcome

B.Q was enrolled back to the school successfully. Moreover, the school did not have a Prevention and Response Team towards Abandonment and Non-registration (PRTAN) at the school. With the help of the ERAC paralegal the school started the procedures to establish a PRTAN. The PRTANs in different municipalities and schools have proven to be effective in fighting drop-outs from schools.

Recommendations

ERAC recommends to all the schools to establish PRTAN's and implement regularly the steps from the PRTAN manual, while reporting cases as necessary. We believe PRTAN will strengthen the work of any school that has problems with drop-outs. Regular documentation of students will help with early stage identification of those who are in danger for possible abandonment of school.

Relevant Legislation

Constitution of Kosovo, Article 47, Right to Education[18]

- Every person enjoys the right to free basic education. Mandatory education is regulated by law and funded by public funds;
- Public institutions shall ensure equal opportunities to education for everyone in accordance with their specific abilities and needs.

[18] Kosovo Constitution http://www.kryeministri-ks.net/repository/docs/Constitution1Kosovo.pdf

Relevant Laws

- Law No.04/L–032 on Pre-University Education in the Republic of Kosovo;[19]
- Law No.04/L-037 on Higher Education in the Republic Kosovo;[20]
- Law On The Protection From Discrimination;[21]
- Law No. 03/L-047 On The Protection And Promotion Of The Rights Of Communities And Their Members In Kosovo.

Administrative instructions

- Administrative Instruction No. 19/2012 on Establishment and Enforcement of Teams for Prevention and Response toward Abandonment and Non-Enrolment in Compulsory Education.[22]
- Manual for School Prevention and Response Teams towards Abandonment and Non-registration in Compulsory Education.[23]
- Manual for Municipal Prevention and Response Teams towards Abandonment and Non-registration in Compulsory Education.[24]
- Administrative Instruction (MEST) No. 09/2016 Application of Affirmative Measures and Quotes for Enrolment of Candidates from the Non-Majority Communities in the Public Institutions of Higher Education.[25]

ECMI Kosovo drafted the Manuals for Municipal and School PRTANs in cooperation with UNICEF and the Ministry of Education, Science and Technology (MEST) within the framework of the joint education programme "Enhancing Access to and Retention in Education for Vulnerable and Disadvantaged Children". The Manuals serve to support the implementation of the Administrative Instruction (AI) 19/2012 which foresees the establishment and functionalization of PRTANs in each municipality and school in Kosovo. The concrete mechanisms and tools entailed in the Manuals help the teams to exercise their role and mandate in prevention, response and treatment of drop-out and non-enrolment in education and thus contribute to the overarching aim to ensure equity in education for all.

[19] Law No.04/L–032 on Pre-University Education in the Republic of Kosovo http://www.kuvendikosoves.org/?cid=2,191,666

[20] Law No.04/L-037 on Higher Education in the Republic Kosovo http://www.kuvendikosoves.org/?cid=2,191,667

[21] Law No. 05/L-021 On The Protection From Discrimination Official Gazette Of The Republic Of Kosova / No. 16 / 26 June 2015, Pristina https://gzk.rks-gov.net/ActDetail.aspx?ActID=10924

[22] Administrative Instruction No. 19/2012 on Establishment and Enforcement of Teams for Prevention and Response toward Abandonment and Non-Enrolment in Compulsory Education https://gzk.rks-gov.net/ActDetail.aspx?ActID=8222

[23] Manual for School Prevention and Response Teams towards Abandonment and Non-registration in Compulsory Education http://ecmikosova.org/uploads/Manual%20for%20School%20PRTANs_ENG.pdf

[24] Manual for Municipal Prevention and Response Teams towards Abandonment and Non-registration in Compulsory Education http://ecmikosova.org/uploads/Manual%20for%20Municipal%20PRTANs_ENG.pdf

[25] Administrative Instruction (MEST) No. 09/2016 Application of Affirmative Measures and Quotes for Enrolment of Candidates from the Non-Majority Communities in the Public Institutions of Higher Education http://masht.rks-gov.net/uploads/2016/06/ua-masht-09-2016-aplikimi-i-masave-afirmative-dhe-vendeve-te-rez-al.pdf

RIGHT TO WORK AND PROFESSION

Youth and women unemployment are particularly high, and women's representation remains low in senior positions in both the private and public sector. Members of non-majority communities are underrepresented in the civil service, particularly at managerial position and in publically owned enterprises. Moreover, members of non-majority communities are disadvantaged from many job opportunities based on their ethnicity or language. The Law on Labour regulates the rights and obligations deriving from employment relationship and applies to the public and privte sector.[26] Article five (5) of the Law on Labour regulates that any kind of discrimination in employment relationships is prohibited.[27]

The Law on the Employment Agency of Kosovo regulates the establishment, organization, functions, duties, responsibilities and funding of the Employment Agency.[28]

The Law for Vocational Education and Training regulates the national vocational education and training system in accordance to economic and social development needs of Kosovo.[29] Article three (3) of the Law on Vocational Education and Training regulates the principles of VET: inclusion; access, transfer and progress; theoretical learning as well as professional practice; current and future needs of the economy; support to career development as an integrated part of lifelong learning. [30]

The Law on Safety and Health at Work regulates the measuresthat improve the level of safety and health of employees at work. [31] Article five (5) of the Law on Safety and Health at Work regulates that employers are responsible to ensure safe and healthy working conditions and are obligated to cover all medical treatment expenses for employees whom have suffered injury/professional illnesses at work, if they are not insured at an insurance company.[32]

The Law on Public Officials regulates the legal basis for employment of public officials in the Kosovo Institutions based on merits, moral integrity, impartiality and sustainability.[33] Moreover, the admission on public officials is based on principles of equal opporutnities, non-discrimination, fair and proportional representation of genders and communities.[34]

[26] Law No.03/L –212 On Labour Article 1 & 2 https://gzk.rks-gov.net/ActDetail.aspx?ActID=2735
[27] Law No.03/L –212 On Labour Article 5 https://gzk.rks-gov.net/ActDetail.aspx?ActID=2735
[28] Law No. 04/L-205 On The Employment Agency Of The Republic Of Kosovo Article 1 https://gzk.rks-gov.net/ActDetail.aspx?ActID=8983
[29] Law No. 04/L-138 For Vocational Education And Training Article 1 https://gzk.rks-gov.net/ActDetail.aspx?ActID=8676
[30] Law No. 04/L-138 For Vocational Education And Training Article 3 https://gzk.rks-gov.net/ActDetail.aspx?ActID=8676
[31] Law No. 04/L-161 On Safety And Health At Work Article 1 https://gzk.rks-gov.net/ActDetail.aspx?ActID=8689
[32] Law No. 04/L-161 On Safety And Health At Work Article 5 https://gzk.rks-gov.net/ActDetail.aspx?ActID=8689
[33] Law No. 06/L-114 On Public Officials Article 1 https://gzk.rks-gov.net/ActDetail.aspx?ActID=18730
[34] Law No. 06/L-114 On Public Officials Article 6 https://gzk.rks-gov.net/ActDetail.aspx?ActID=18730

ERAC paralegal case

THE CASES OF PERSONS DEPRIVED FROM THEIR OCCUPATION: TEACHERS OF NOVO BERD

Introduction

In the municipality of Novo Berd, schools appeared to terminate several teachers from their positions without legal justification. An ERAC paralegal in Partesh took on the cases of three of these teachers, and came across another 10 similar cases in the process. The paralegal gave legal advice to all three teachers, but further helped one teacher bring his case to light in court.

Process of the case

The ERAC paralegal monitored the court case of this one teacher from the time that the teacher first submitted a complaint to the court all the way through the final verdict. During the trial, neither representatives of the school nor the municipality attended. The court ruled in favor of the plaintiff. The verdict stated that the teacher should get back his occupation if the school and municipality did not oppose the decision, which they did not. Nevertheless, the teacher is still unemployed, and the school and municipal authorities are neglecting the court's decision; therefore, they are not respecting the law.

Authorities gave the other teachers with similar cases the same unlawful treatment, and in the repeated proceedings, the court continually passed verdicts in favor of the fired teachers. The person delivering the verdicts assigned the three teachers 2000e each in compensations from the municipality directorate of education, 600e each in compensations from the school, and also ruled that they had a right to get their jobs back. The authorities in the Novo Berd municipality are undermining the law and the verdicts of the court. Moreover, shortly after the cases, the municipality announced job openings for teaching positions in the schools where the 13 teachers were let go.

Legal framework and other considerations

Article 49 in the Consitution of Kosovo stipulates the right to work and choose one's occupation.[35] The Law on Labour No.03/L –212 further defines occupational rights by regulating obligations in employment relationships.[36] Based on the Law on Labour, the Basic Court gave the verdicts on behalf of the teachers who were deprived of their occupation: the court found that the school and municipal authorities violated several articles of this law.

[35] http://www.kryeministri-ks.net/repository/docs/Constitution1Kosovo.pdf
[36] http://www.assembly-kosova.org/common/docs/ligjet/2010-212-eng.pdf

Outcome

The ERAC paralegal helped the teachers take all the cases and their verdicts from the Main Court to the higher Appellate Court. The complaint now goes against the municipality of Novo Berd for not complying with the verdicts of the Main Court in Gjilan/Gniljane. Currently, the cases are still unsolved at the Appellate court.

Recommendations

Teachers in Novo Berd should be especially aware of this pattern of unjust termination in their municipality. If they, or persons in any other profession, find that their employers unlawfully let them go, ERAC recommends that they file a report to the proper authorities. Reporting these cases is in the best interest of the plaintiff as well as their colleagues. Employers should not deny their employees of the right to work through unfair termination, especially if the decision is based off discriminatory matters.

Relevant Legislation

Constitution

Article 49 Right to Work and Exercise Profession
1. The right to work is guaranteed.
2. Every person is free to choose his/her profession and occupation.

Relevant Laws
- Law No.03/L –212 on Labour
- Law No. 04/L-011 for Organizing Trade Union in Kosovo
- Law No. 03/L-017 on Amendment and Supplementation of the Law on Labour Inspectorate No. 2002/9
- Law No. 04/L-161 on Safety and Health at Work
- Law No. 04/L-205 on the Employment Agency of the Republic Of Kosovo
- Law No. 03/L-019 on Vocational Ability, Rehabilitation and Employment of People With Disabilities
- Law No. 06/L-114 on Public Officials

Administrative Instructions
- Administrative Instruction No.01-2011 for Imposing Fines on Employers for Violating Legal Provisions;
- Administrative Instruction No.4-2011 for the Regulation of Procedures for the Establishment of Labour Relation in the Public Sector.

FREEDOM OF MOVEMENT

The right to freedom of movement in Kosovo Constitution derives from the articles 12 and 13 of the International Covenant on Civil and Political Rights (ICCPR). This international instrument is directly applicable to Kosovo as set in the Constitution. The right to freedom of movement, as set in the constitution of Kosovo, has three different components that apply to Kosovo and any other country:

- The right to freedom of movement within a country, which includes the right to choose where to live within the country;
- The right to leave any country, regardless of your citizenship;
- The right to enter a country of which you are a citizen, this depending on the regulated law excludes persons who are only long-time residents of a country.

The right to freedom of movement can be withdrawn or restricted following the cases of derogation and limitation as set in ICCPR Articles 4 and 12(3):

- Derogation of the right to freedom of movement can be practiced only in time of war or public emergency threatening the life of the nation;
- Limitation can happen if necessary to protect national security, public order, public health or morals or the rights and freedoms of others.

The Law on Citizenship of Kosovo regulates manners of acquisition, loss and reacquisition of Kosovo citizenship, as well as other issues related to citizenship of Kosovo. Hence, the law regulates that the Kosovo citizenship can be acquired by: birth, adoption, naturalization, based on international treaties, and article 31[37] and 32[38] of the Law on Citizenship of Kosovo.[39]

[37] Law No. 04/L-215 On Citizenship Of Kosovo Article 31"Every person who is registered as a habitual resident of the Republic of Kosovo pursuant to UNMIK Regulation No. 2000/13 on the Central Civil Registry shall be considered a citizen of the Republic of Kosovo and shall be registered as such in the register of citizens." https://gzk.rks-gov.net/ActDetail.aspx?ActID=8873

[38] Law No. 04/L-215 on Citizenship of Kosovo Article 32All persons who on 1 January 1998 were citizens of the Federal Republic of Yugoslavia and on that day were habitually residing in the Republic of Kosovo shall be citizens of the Republic of Kosovo and shall be registered as such in the register of citizens irrespective of their current residence or citizenship https://gzk.rks-gov.net/ActDetail.aspx?ActID=8873

[39] Law No. 04/L-215 On Citizenship Of Kosovo Article 5 https://gzk.rks-gov.net/ActDetail.aspx?ActID=8873

ERAC Paralegal cases

THE CASES OF VIOLATION TO THE RIGHT OF CIVIL REGISTRY AND IDENTITY DOCUMENTS IN SEVERAL MUNICIPALITIES

Introduction

During the engagement of paralegals within the Action, there were a lot of cases identified and raised related to the issues of civil registration, civil status changes and obtaining identity documents of Kosovo. This is a very serious concern which has a negative impact in the Serb community living in all regions of Kosovo. There were a lot of Serb community members who reported that they are having problems obtaining Kosovo documents since they are not registered in the Kosovo's central civil registry, especially those that have only been registered in the Serbian parallel system. Many of them have changed or stated civil statuses (marriage,birth, death) only in Serbian parallel system but not in the Kosovo system, which has resulted to make impossible for them to register the birth of their children, or marital status or death of a family member in the Kosovo system.

Process of the case

To discuss this issue, ECMI Kosovo within the Coalition Action organized a workshop where representatives of the Ministry of Internal Affairs were invited. Cases were presented by paralegals; however, there were no positive results from the reply from the panelists. Furthermore, ECMI Kosovo on behalf of the Coalition worked on publishing a research paper analyzing the issue of *"The People in Between: The future of Citizenship and Freedom of Movement of Kosovo Serbs and other Non-Majority Communities".* A conference was organsied where the draft paper was presented to all relevant stakeholders in order to gather their inputs and then incorporated in the final draft. The final draft of the paper, which comments of the representatives of the Ministry of Internal Affairs also incorporated, was shared with the Ministry and was discussed in informal meetings that were held. Further, recommendations were analysed into details and a strategy of solving this problem was analysed. Moreover, this issue was analyzed deeply and referred to the Central Registry Agency of Kosovo also. Both institutions, MIA and Central Registry Agency of Kosovo, had also received individual complaints by representatives of Serb community in Kosovo regarding this issue.

Outcome

After analyzing all the legal remedies in Kosovo, in July 2018, Ministry of Internal Affairs took a decision that all the citizens of Republic of Kosovo, who have registered their civil facts (birth, marital and death), in Serbian parallel structures, from 10th of

June 1999 until 14th of September 2016, have the right to apply for registration in Central Civil Registry of Kosovo.

Currently ECMI Kosovo is helping the Central Registry Agency to monitor the implementation of this decision. The decision was shared with the paralegals and it is being promoted by the Coalition. On behalf of the Coalition, ECMI Kosovo is continuouslyproviding support to the Central Registry Agency to monitor the implementation of this decision.

Relevant Legislation

Kosovo Constitution
- Artice 35, Freedom of Movement.

Relevant Laws
- Law on the Protection from Discrimination;
- Law No. 03/L-047 on the Protection and Promotion of the Rights of Communities and Their Members in Kosovo;
- Law No. 04/L-215 on Citizenship of Kosovo;
- Law No.04/L-003 on Civil Status.

Administrative instructions
- Administrative Instruction (Mia) No. 12/2016 on Defining the Procedure for Digitalization of Scanned Basic Civil Status Registers;
- Decision nr 296/18.

RIGHT TO FREEDOM OF EXPRESSION

The institutional framework guaranteeing freedom of media and expression remains fragmentary and effective handling against threats, attacks, and hate speech against VMGs in media persist. Women are underrepresented and discriminated against in media. Furthermore, the implementation of Kosovo's language legislation remains insufficient.

Law on the Protection and Promotion of the Rights of Communities and Their Members[40] in Kosovo regulates the definition of communities as national, ethnic, cultural, linguistic or religious minorities. Minority groups are considered the Serb Community, Turkish community, Bosnian Comunnity, Roma Community, Ashkali Community, Goran Community, Montenegrin Community, and Croation Community. Minority communities have the right to freely express, cultivate and develop their identity and culture. The minority communities have the right to have their names written in their respective language in the Kosovo Institutions. The official

[40] Law on the Protection and Promotion of the Rights of Communities and Their Members https://gzk.rks-gov.net/ActDetail.aspx?ActID=2531

languages in Kosovo are Albanian and Serbian, however, the Turkish, Bosnian and Roma language have an official status at municipal level.

The Law on Civil Law Against Defemation and Insult regulates civil liability for defamation and ensures the right to freedom of expression; rules out defamation and insult on being an unreasonable limit on the freedom of expression on publications and discussions on matters related to public interest/importance; adequate compensation for people whose reputation was harmed by defamation and insult; the role of media as essential to the democratic process as monitors and transmitters of information to the public.[41]

ERAC paralegal cases

ERAC paralegals have received several cases related to the violations of the right to freedom of expression. Most of the cases have to do with the public institutions that in many municipalities lack information and documents in Serbian language, moreover citizens that speak only Serbian language do not have the possibility always to conduct their requests at public institutions in Serbian language. According to the existing Law on Language of Kosovo, Serbian language is the second official language in the whole territory of Kosovo, meaning that in public institutions any service should be conducted also in Serbian language.

Law on the Protection and Promotion of the Rights of Communities and their Members in Kosovo and its amendment 04/L-020 enable communities to cultivate, develop and express their identity, to protect their fundamental and human rights and to ensure their full and effective equality. Together with the Law on the Use of Languages, this is the most important law with regard to community rights. It has provisions on: identity; language; culture; media; religion; education; economic and social opportunities; health; political participation; and the Consultative Council for Communities. The Law protects communities and their members' right to freely express, maintain and develop their culture and identity. It also guarantees the equality of communities and protects them from discrimination.

[41] Law No. 02/L-65 Civil Law Against Defamation And Insult Article 1 https://gzk.rks-gov.net/ActDetail.aspx?ActID=2503

ERAC paralegal case

ADDRESSING LINGUISTIC RIGHTS VIOLATIONS: CASE OF ECOHIGJIENA IN GJILAN/GNJILANE

Introduction:

A customer of the public-private partnership Ecohigjiena notified an ERAC paralegal of a linguistic rights issue: the waste company sent the customer bills largely written in only one of the official languages of Kosovo. One example of a bill presented to the ERAC paralegal provides translation in Albanian, Serbian, and English for terms such as month and client ID, yet gives other crucial information only in Albanian. The public enterprise's lack of equal use of official languages created difficulties for the customer.

Legal Framework:

The Law No. 02/L-37 on the Use of Languages in Kosovo protects communities' right to expression in their language of choice. A prominent goal of this law, that serves to protect human rights and respect cultural identity, is the equal accessibility to services. The law states that the official languages of Kosovo are Albanian and Serbian and their respective alphabets. According to Article 11, *"In Publicly Owned Enterprises and in Socially Owned Enterprises the equality of the official languages applies. Every person has the right to communicate with, and to receive services and documents from, Publicly Owned Enterprises and Socially Owned Enterprises in any of the official languages."*[42]

Legal/Political Processes:

In order to help the client exercise his/her linguistic rights, the ERAC paralegal first advised the client to contact Ecohigjiena directly with this complaint. The company responded positively to the customer's request, yet did not act accordingly on the case. Due to the company's failure to comply with the law, the customer's next step was to notify municipal authorities; however, these officials also did not generate change in the company's actions. With the customer still receiving bills in only Albanian, the ERAC paralegal contacted the Office of the Language Commissioner of Kosovo on the client's behalf. The Language Commissioner's responsibility is to defend the rights detailed in the Law on the Use of Languages. After the ERAC paralegal brought the case to the attention of the Office of the Language Commissioner, the Language Commission was able to put pressure on the Ministry of Economic Development to prompt change.

[42] http://www.assembly-kosova.org/common/docs/ligjet/2006_02-L37_en.pdf

Outcome:

Thanks to the ERAC paralegal's informed guidance, the Office of the Language Commissioner assured the client that the problem would be fixed shortly. Once the client receives communications from Ecohigjiena in Serbian, he/she will be able to enjoy the equal accessibility to services that the Law on the Use of Languages guarantees.

Recommendations:

ERAC paralegals received many comparable cases with language issues in public enterprises that are still in progress. Any citizen of Kosovo that experiences a similar linguistic rights violation has the option to seek justice. ERAC recommends those affected to proceed with the outlined steps of this case until the company respects the law.

1. Send a request directly to the public enterprise to receive documents in a preferred language, as is the company's obligation under Kosovo law.
2. Contact the relevant municipality in regards to the issue.
3. File a complaint with the Office of the Language Commissioner. Submit a complaint form[43] in person, by mail, or by email to info-zkgj-kpj@rks-gov.net.

Relevant Legislation

Kosovo Constitution
- Article 40 Freedom of Expression;

Relevant Laws
- Law on the Protection and Promotion of the Rights of Communities and their Members in Kosovo and its amendment;
- Law on the Use of Languages;
- Law on the Protection from Discrimination;
- Law on Civil Law against Defamation and Insult.

Administrative instructions
- Administrative Instruction No. 10/2007 Teaching In the Choose Official Language;
- Administrative Instruction No. 2007/01 Mps on Determining Administrative Sanctions for Violation of The Law On the use of Languages;
- Administative Instruction No. 8/2005 on Descreption on Responsabilities of Human Rights;
- Administrative Instruction No. 04/2007 for the Human Rights Units in the Kosovo Government.

[43] Any citizen of Kosovo can file a complaint directly to the Office of the Language Commissioner. Complaint forms are available at http://www.komisioneri-ks.org/?page=2,58

RIGHT TO PROHIBITION OF TORTURE, CRUEL, INHUMAN OR DEGRADING TREATMENT

In the Constitution of Kosovo, Article 27, it is stated that: ''No one shall be subject to torture, cruel, inhuman or degrading treatment or punishment.''

Domestic violence has been treated as a human rights issue only in recent years. As such domestic violence is in violation with many fundamental rights, however for this handbook we have decided to present it as a violation of the Right to Prohibition of Torture, Cruel, Inhuman or Degrading Treatment.

Domestic violence and gender based violence is a widespread issue in Kosovo. Women and girls have fewer opportunities and face inequalities in different aspects of life in the Kosovo society. Moreover, the participation of women and girls in the public life of Kosovo is often limited.

ERAC paralegal case

LITIGATING DOMESTIC VIOLENCE: DIVORCE CASE IN PRISHTINË/PRIŠTINA

Introduction:

Domestic violence is an indiscriminate form of violence that affects individuals worldwide—regardless of gender, age, sexual orientation, or ethnicity. Nonetheless, this silent epidemic disproportionately affects women.[44] One such woman in Kosovo, with the initials QZ, went to an ERAC paralegal declaring that she was a victim of domestic violence by her husband, NZ. QZ and NZ were undergoing a divorce, and Pristina's Main Court refused to grant QZ a protection order or custody of their child before the opposing parties reached a divorce settlement. QZ contacted the ERAC paralegal following this refusal from the court.

Reasonings—such as societal stigma, difficulties in prosecution, and fears of retaliation—lead to the common belief that instances of domestic violence largely go unreported. Accurate statistics on rates of occurrence are nearly impossible to construe. Even so, Kosovo police received 1092 reports of domestic violence in 2017, according to an inquiry by the NGO KIPRED.[45] ERAC recognizes the bravery of Kosovo's aforementioned reporters, including QZ, and hopes that their paralegal's work demonstrates to other victims of domestic violence that litigation is possible for those who wish to seek protection through the law.

Legal Framework and other considerations:

Kosovo's Law on Protection against Domestic Violence defines domestic violence as any intentional act or omission by a person that inflicts abuse onto another person with whom they once shared or shares a domestic relationship. Under law, the protected party includes the victim/victims of domestic violence and their subordinates. Protection measures are enforced by Kosovo police, and are issued *"with the purpose of preventing domestic violence, to protect a person who is exposed to violence, by removing the circumstances which impact or may impact in committing other acts."*[46] The first defense for protected parties in cases of domestic violence is an emergency protection order, which a court will decide on a petition for within 24 hours. A victim of domestic violence may also petition for a longer-term protection order. Violation of these orders by the perpetrator is a criminal offense.

According to Article 6.2, *"child custody shall be entrusted temporarily to the victim of domestic violence, while the parental right temporary shall be removed from the*

[44] https://www.osce.org/kosovo/88708?download=true
[45] http://www.kipred.org/repository/docs/Final_English_Version_141863.pdf
[46] http://www.assembly-kosova.org/common/docs/ligjet/2010-182-eng.pdf

perpetrator of domestic violence."[47] In cases where one spouse or both have filed a claim for divorce, the Family Law of Kosovo is the primary legislation for reference.[48]

Processes:

ERAC's paralegal filed a complaint to Pristina's Appeals Court within the legal deadline.[49] The complaint claimed that the decision of Pristina's Main Court contradicted a number of points in the Law on Protection against Domestic Violence.[50]

Outcome:

The court moved forward with QZ's case. Additionally, QZ is anticipating the finalization of her and NZ's divorce agreement.

Recommendations:

Being mindful of victim-blaming, ERAC recognizes the difficult reality of domestic violence situations, yet hopes to empower victims to learn their options for justice and protection from domestic abuse. If you are a victim of domestic violence, ERAC recommends taking the following measures:

- Seek immediate safety: prepare a safety plan while avoiding tipping off the abuser;[51]
- Consider the safety of dependents and others;
- Report the instance directly to the Kosovo Police or call the Victims Advocacy and Assistance Office 24/7, toll free at 0800 11 112 for assistance reporting the case;
- Petition for an emergency protection order, if necessary;
- Consider contacting friends, alternative family members, or a professional counselor for personal support;
- Consider utilizing the services of a shelter for victims of domestic violence.[52] There are currently nine shelters for women in Kosovo; however, funding for these institutions is currently under threat, and affects their availability and capacities;[53]

[47] Ibid
[48] https://www.kuvendikosoves.org/common/docs/ligjet/2004_32_en.pdf
[49] Appeals for protection orders must be filed within eight days following the court's decision.
[50] The complaint referenced Article 2, Paragraph 1.2, Points 1.2.1. to 1.2.7.; Article 5; Article 6; and Article 17 of the Law on Protection against Domestic Violence.
[51] https://www.dvrc-or.org/safety-planning/
[52] Presently, there are not any shelters open for men in Kosovo.
[53] https://prishtinainsight.com/kosovo-domestic-violence-shelters-face-financial-strain/

- Consider options for legal aid or representation: contact legal offices or organizations that may provide gratis or low-cost legal counsel;[54]
- Petition for a protection order: file a complaint to the Appeals Court in the case of a seemingly unjust decision;
- Request an extension for a protection order, if needed: protection orders are first granted for 12 months or less, but a court can rule on a request for an extension up to 24 months.

Relevant Legislation

- Law No.03/L –182 On Protection Against Domestic Violence

RIGHT TO HEALTH AND SOCIAL PROTECTION

The enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, and political belief, economic or social condition. Right to health care and social protection is at the fundamentals of ERAC as well. Throughout the project lifecycle, ERAC is being engaged to promote equal standard of health care and social protection for marginalized and vulnerable groups, which often have no access to such services. Awareness and access to health care treatment for diseases that affect women in particular remain far below the EU standards. The same applies for members of the LGBT community. Roma, Ashkali, and Egyptian communities face major challenges as a result of weak health care and access to social protection.

[54] Domestic violence victims have the right to request free legal aid by the Law on Free Legal Aid: https://www.kuvendikosoves.org/common/docs/ligjet/Law%20on%20free%20legal%20aid.pdf

ERAC paralegal case

THE CASE OF PEOPLE OF ZUPA REGION NOT RECEIVING FIRST AID AND NECESSARY HEALTHCARE

Introduction

There has been an ongoing issue in the region of Zupa, located in Prizren and mostly inhabited by the Bosniak community with regards of not being provided with necessary healthcare services, although in this region, there are 9 Ambulance Medicine Centers (AMC) and one Family Medicine Center (FMC), within which was a bio chemistry laboratory which stopped functioning. Our paralegal took the case and visited the villages in Zupa region in order to gain more information and what measures have been taken by the authorities.

Process of the case

ERAC paralegal made a field visit in the villages of Zupa region, inhabited approximately by 11 thousand people. The residents reported that although there are enough AMC and there is already a FMC, there is lack of staff that provides healthcare services. They imply that some villages are visited by a doctor at most twice a week and three times a week by a technician who does not come as scheduled. Moreover, due to the fact that in less populated villages, there is no AMC and moreover, do not possess an auto ambulance to bring the patients to the FMC in Recan, they are left with no choice other than to travel by themselves. In this region, it was reported that there were five doctors, one dentist and eight Medicine technicians providing its inhabitants with Medicine services. After the case was reported to ERAC by the paralegal, the Director of Health in the Municipality of Prizren was contacted via email and several questions were sent to obtain more information with regards to this case. They stated that they have to make field visits in order to evaluate the situation and come back to ERAC with answers. While ERAC was waiting to get a response by the Directory, on 10th of March 2018, the Ministry of Health of Kosovo had delivered an auto ambulance to the Family Medicine Center in Zupa. [55]

Legal framework and other considerations

The distribution of the Medicine healthcare facilities in Kosovo is carried out through legal framework adopted by the Ministry of Health of Kosovo.[56] The centerpiece of this framework is the Law on Health No. 04/L-125[57] and the Administrative Instruction (health) No. 08/2017.[58]

[55] https://kallxo.com/ministria-e-shendetesise-dhuron-dy-autoambulanca/
[56] https://msh.rks-gov.net/
[57] https://www.kuvendikosoves.org/common/docs/ligjet/Law%20on%20Health.pdf
[58] https://msh.rks-gov.net/wp-content/uploads/2017/01/Udhezim-Administrativ-08-2017.pdf

Outcome

After the analysis of laws by ERAC, it was concluded that the inhabitants were deprived from the right to be provided with proper healthcare services. Further, since Zupa region is mostly populated by the Bosniak community, it was found that there was a violation of Kosovo's Constitution[59] on minority community rights.

The paralegal has been monitoring this case and as a result of ERAC, the Director of Health in Municipality of Prizren has hired a doctor that works three times a week and a technician that works during the working days.

Recommendations

More frequent monitoring of the situation is required to be made by the Ministry of Health. Furthermore, people should seek for their rights in case they feel that they are being deprived of, by filing the complaint to respective municipalities. In case their rights are still being violated, they should seek help from Ombudsperson in respective municipalities.

Relevant Legislation

Kosovo Constitution
- Article 51 Health and Social Protection

Relevant Laws
- Law No. 04/L-125 on Health
- Law No. 02/L-17 on Social and Family Services
- Law No.2004/32 Family Law of Kosovo

Administrative instructions
- AI (Health) Nr. 08/2017 Organizing, structure, determining the services and activities of Primary Health Care Institutions (PHC)

RIGHT TO LIBERTY AND SECURITY

Despite years of progress, reports show that the security of non-majority communities remains fragile. Moreover, threats and cases of hate speech targeting women and LGBT continue and are rarely investigated and preventive measures scarce.

[59] http://www.kryeministri-ks.net/repository/docs/Constitution1Kosovo.pdf

ERAC parlegal case

THE HATE CRIME AGAINST PERSONS BELONGING TO THE LGBTI COMMUNITIES: CASE OF FERIZAJ

Introduction

In October 2017, Kosovo held its first ever Pride Parade. Yet, despite this step forward, the level of homophobia in Kosovo remains at a regional high for the Balkans. LGBTI communities are often marginalized and targets of discrimination. Displays of homophobia are rampant, including verbal and physical assaults. Many victims choose to not report these instances due to fear or skepticism of authorities' response. Nonetheless, ERAC paralegals guided several victims through the process for successful reporting. The coalition hopes more victims can obtain safety and justice in the future.

Legal framework and other considerations

Though implementation remains weak, the Constitution of Kosovo states that all persons are equal before the law and ensured equal protection without discrimination. Article 24.2 specifies, *"No one shall be discriminated against on grounds of race, color, gender, language, religion, political or other opinion, national or social origin, relation to any community, property, economic and social condition, sexual orientation, birth, disability or other personal status."*[60]

Moreover, these constitutional rights are translated into the Criminal Code of Kosovo and the Law on Protection from Discrimination. The Criminal Code stipulates sexual orientation in Article 74, and requires courts to take into account whether the perpetrator committed a criminal offence because of a person's sexual orientation."[61] The Law on Protection from Discrimination includes preventing and combatting discrimination by sexual orientation in its statement of purpose.[62]

The process of the case

In 2016, two individuals from the LGBTI community were verbally and physically assaulted in the municipality of Ferizaj. The victims were distributing flyers to raise awareness of the rights of the LGBTI community, and promote an upcoming event for their work. When two passing males saw the flyers, they started verbally harassing and forcibly attacking the victims. Since the attacked persons were employees of an LGBTI organization, they had the courage to report the incident to the police. After notification of the case, Ferizaj Police took the appropriate measures and the case was brought to court.

[60] http://www.kryeministri-ks.net/repository/docs/Constitution1Kosovo.pdf
[61] http://www.assembly-kosova.org/common/docs/ligjet/Criminal%20Code.pdf
[62] https://www.kuvendikosoves.org/common/docs/ligjet/05-L-021%20a.pdf

Outcomes

In court, the perpetrators were found guilty based on Article 188 of the Criminal Code of Kosovo which defines assault and Article 147 which describes incitations of "national, racial, religious or ethnic hatred, discord or intolerance." This is the first case tried successfully in favor of the LGBTI community, and serves as a positive precedent for other cases. However, the court did not categorize the perpetrators' criminal actions as a hate crime since the criminal code does not include sexual orientation as a valid reason for hate crimes.

The punishments for the perpetrators came based in articles 147 and 188, but not 74 of the Criminal Code; therefore, the court did not recognize the physical assault as being based on the sexual orientation of the victims, only the punishment for verbal assault takes sexual orientation motivations into consideration. One perpetrator was found guilty on the incitement of hate and criminal act of physical assault, whereas the other perpetrator was only found guilty on the latter.

Recommendations

ERAC request lawmakers to change the Criminal Code of Kosovo to include sexual orientation in all relevant articles of the Criminal Code. ERAC member organizations Center for Social Group Development and Center for Equality and Liberty are now part of the working group to make these changes.

Relevant Legislation

- Criminal code of Kosovo
- Law onthe Protection from Discrimination

RIGHT TO PROTECTION OF PROPERTY

The Kosovo Constitution guarantees the right to own property. In terms the use of property, the rights of property are regulated by law in accordance with public interest. Article three (3) of the Kosovo Constitution states that no one shall be arbitrarily deprived of property. In case Kosovo public authorities find it necessary or appropriate to exportate property due to public purpose or promotion of public interest, adequate compensation is to be followed to the person or persons whos property has been expropriated and if any disputes were to arise from such an act, it shall be settled by a competent court.

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ERAC parlegal case

ETHNICALLY MOTIVATED ASSAULT INCIDENT AND DAMAGE OF PROPERTY: THE CASE OF A WOMAN BELONGING TO AN ETHNIC MINORITY IN KOSOVO

Introduction

A woman with the initials K.G. is a returnee to Kosovo from Serbia. In 2010, she and her husband landed in the area of Petraci in Kline, where they wanted to build a new house. Unfortunately, her husband passed away, and K.G now lives alone in a house that was built with the assistance of international organizations.

K.G. is the only Serb returnee to Petraci, and claims her experiences as a returnee are harmful to her psychological and physical well being. Integration of returnees is difficult, especially for Serbs in Albanian-majority municipalities. In such areas, many Serb returnees do not feel welcomed and face ethnic prejudice. For example, they are often times threatened to leave and intentionally provoked to a point of discomfort. In K.G.'s case, perpetrators damaged her vegetable garden, hampering proprietary integrity and her right to cultivate the land as she pleases. Additionally, cars aggressively speed in front of her house.She lives in fear for her security and liberty.

Legal framework and other considerations

The Constitution of Kosovo protects every person's right to personal integrity: Article 26 states, ''Every person enjoys the right to have his/her physical and psychological integrity respected.''[63]
The attacks against K.G. directly violate the Law on the Protection from Discrimination, specifically Articles 1 and 2.[64] The characteristics of the incidents also fit several articles of the Criminal Code of Kosovo, such as Articles 185, 186 and 187 that describe threats, harassment, and assault as criminal acts that should be dealt with seriously.[65]

Process of the case

The ERAC team visited K.G. to get more information on the case, give her support, and let her know that there is a coalition of organizations behind her. K.G. did not report the incidents. She was afraid it would only worsen the situation, especially since she heard that authorities are generally ineffective in providing support and help. By collecting more information, the team could identify the authorities relevant to the case and try to find a solution.

[63] http://www.kryeministri-ks.net/repository/docs/Constitution1Kosovo.pdf
[64] https://www.kuvendikosoves.org/common/docs/ligjet/05-L-021%20a.pdf
[65] http://www.assembly-kosova.org/common/docs/ligjet/Criminal%20Code.pdf

Outcomes

After visiting K.G's house, ERAC contacted the Regional Office in Peja for Protection and Assistance of Victims at the Chief Prosecutor of Kosovo State, the Ombudsperson Institution in Peja, the Free Legal Aid Agency in Klina, and the Klina Police. The police agreed to occasionally visit the victim's house and, if necessary, regularly patrol the surrounding area. Additionally, the Free Legal Aid Agency equipped the victim with a phone so she can call the police and Agency if she feels she is in danger and in need of protection. ERAC is hopeful that with the authorities' attention on the case, residents in Kline will respect the victim and her property.

Recommendations

If you are a victim of ethnically-motivated assault, ERAC recommends:

- Obtaining medical attention, if needed
- Reporting the case to the police or other government agencies. Consider contacting an NGO that may serve as a representative to ensure the body effectively takes testimony, respects the victim, and fulfills its organizational obligations
- Inquiring about legal support by contacting offices such as the Free Legal Aid Agency
- Developing a safety plan in the case of future assaults. Reach out to local police or other relevent organizations for help taking preventative measures.

Relevant Legislation

Kosovo Constitution
- Article 46 Protection of Property.

Relevant Laws
- Law No. 03/L-154 on Property and Other Real Rights;
- Law No. 03/L-139 on Expropriation of Immovable Property;
- Law No. 04/L-136 on the Registration of a Pledge in the Registry of Movable Property.

Administrative Instructions
- Administrative Instruction No. 09/2011 for the Loss of the Rights on Property

RIGHT OF ACCESS TO PUBLIC DOCUMENTATION

The Kosovo Constitution guarantees the right to acess public documentation to every person. All public documentation is accessible with the exepction when its information that is limited by law due to privacy, business trade secrets or security classification. [66]

The Law on Civil Status regulates and defies the civil status components of Kosovo citizens, foreign nationals, as well as stateless persons with temporal or permanent residence in Kosovo, and the organization and functioning of civil service in Kosovo. [67] Article four (4) of the Law on Civil Status regulates that individual and family data related to civil status components have personal character. Acts, recorcs, written civil status certificates can only be given to whom the data belongs to, family members, guardians, legal representatives, persons who have legitimacy to claim legal inheritance or heirs testamentary. [68] The law on Civil Status regulates the civil status of foreign citizens and stateless persons whom are temporary or permanently residing in Kosovo, as well as persons whom have acquired asylum in Kosovo.[69]

[66] Kosovo Constitution Article 41 Right of Acess to Public Documentation http://www.kryeministri-ks.net/repository/docs/Constitution1Kosovo.pdf?__cf_chl_jschl_tk__=b64f29f17d2a1c2dd6a6c99d-682f8b8845e6c0dc-1575031615-0-AXOysLy0FHuyEBGf3EO9Kib2WBLWW1CMTdFAFtrdDtV-o4bY-ibaEifONcPFwJiV62gGHAS9HLlOqCeE-jcYhttoXrbLDswbsEFTyJGfsQ4-JWqRXOOK6hPWKrevYQ2ZHX-Nr5O7Dk0wJD5nTCYeZ0jLqSYe2bQopQzAeqW7hgB0CeaJwKA7_BZG3dGK1uuESn-oglCSt3PWm_Zk-fRkv5Js75V7-FB4TjcahzgQEH45ZdTzTMm0KazT04QpwDdw5HMgEIzjeLeQUK7VXiOKpsh4tWjDKEY-toGwfNVpqCT8fjRsBmTNmOZ6CXlC_plNMCt8jg

[67] Law No.04/L –003 On Civil Status Article 1 https://gzk.rks-gov.net/ActDetail.aspx?ActID=2743

[68] Law No.04/L –003 On Civil Status Article 4 https://gzk.rks-gov.net/ActDetail.aspx?ActID=2743

[69] Law No.04/L –003 On Civil Status Article 16 https://gzk.rks-gov.net/ActDetail.aspx?ActID=2743

ERAC parlegal case

UNABLE TO REGISTER THEIR CHILDREN IN THE CIVIL STATUS REGISTER, A CASE IN PEJA/PEČ

Introduction

In the municipality of Peja/Peč, Ms. Katarina Manojlevič, was facing difficutlies registering her two minor children in thecivil status register. Ms. Manojlevič tried several times to register her two daughters but was unsuccesful, therefore, she asked for help to one of the paralegals stationed in Peja/Peč.

Process of the case

After Ms. Manojlevič turned to our office for legal help, we then came in contact with the Director of the Civil Registration Office in Peja/Peč to get the neccessary information so that the children can be registered in the civil status register and attain their Kosovo citizenship. After we consulted with the Director of the Civil Registration Office, we got the right information in order for Ms. Manojlevič to register her daughters in the database.

Legal framework and other considerations

The criteria and required documents for the registration of persons in the Civil Status Registry can be found in the official website "State Portal"[70] of the Civil Registry in Kosovo. Every document that is required in order to register someone in the civil status registry in Kosovo is on the official website. One can gain access to the critera by asking someone from the Civil Registriation Officies in their municipalities. However, cases like these have proven that persons have not been able to attain the right information in order to undergo registration.

Outcome

The ERAC paralegal helped Ms. Manojlevič to register her two daughters in the Civil Status Registry in the Municipality of Peja/Peč. The family is now registered and the two daughters have gained the certificates and the Kosovo ciztizenship.

Recommendations

Civil Registration Office in Peja/Peč should be aware of the lack of information people have regarding the registration of family, or other required registration criteria/procedure regarding civil status. ERAC recommends that required critera/

[70] State Portal of the Civil Registry https://www.rks-gov.net/EN/f308/dokumente/regjistrimi-civil

procedures to be more accessible to all citizens and people living in the territory of Kosovo, considering that we have been handeling different cases regarding the registration of people in the Civil Status Registry in Kosovo.

Relevent Legislation

Kosovo Constitution
- Article 41: Every person enjoyes the right of access to public documents. [71]

Laws
- Law No.04/L –003 On Civil Status[72]

Administrative Instructions
- Administrative Instruction (Mia) No. 17/2015 On The General Registration Procedures Of The Fact Of Birth, Marriage And Death[73]

State Portal of Civil Registry in Kosovo
- https://www.rks-gov.net/EN/f306/citizen-services/documents

[71] Kosovo Constitution, Article 41 http://www.kryeministri-ks.net/repository/docs/Constitution1Kosovo.pdf?__cf_chl_jschl_tk__=de9d877affb700bbb7efb022d7439310943d2c74-1575296776-0-AQOTtNajSMz6Zht0GAShsDmXXuA6Tjq2zH_WynBGP8K1AU6UXwQm_t1-oIzFTVo7272VGGzBXPbvxOJXlYlWOLotArjp7cwqVvkFm18GP-FzMx6Yv_h5WWRny9QKmCAQQwBxCQhiz6uzh2t6f6VO5RwE0No3hWV40IWTentLpANpiglausuc5o8uIgCJw_ah7LbpqWwHl6hhzRWju5P2K0YhTp2uCSOvkyy-3qoSoG_tNP7tZf4_sdOkscvmx4m47fpwnzPb9D-09X2EerwvZgn44XLcEQZZbV9IKhYsZ6s-9L15S6UXKK84WehWjYR9hAsA

[72] Law No.04/L –003 On Civil Status https://gzk.rks-gov.net/ActDetail.aspx?ActID=2743

[73] Administrative Instruction (Mia) No. 17/2015 On The General Registration Procedures Of The Fact Of Birth, Marriage And Death https://gzk.rks-gov.net/ActDetail.aspx?ActID=11020

CONTACT INFORMATION OF ERAC (EQUAL RIGHTS FOR ALL COALITION)

ECMI Kosovo – leader of the Coalition
The European Centre for Minority Issues in Kosovo (ECMI Kosovo) is the leading non-governmental organization engaged with ***issues of minority communities and inter-ethnic relations in Kosovo.*** ECMI Kosovo extends its activities into three main areas: (1) Capacity-building and provision of policy development recommendations to government institutions so that they function in a community-sensitive, responsible and transparent way; (2) Empowerment of civil society organizations within communities to effectively participate in decision-making and to advocate for their rights; (3) Increasing awareness and informing the public about the situation of minority communities in Kosovo.

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Website: http://ecmikosova.org/en/Home

KGSC – member of the Coalition
The mission of the Kosovo Gender Studies Centre (KGSC) is to ***integrate a gender perspective*** into all analyses, programmes and policies of in sectors in the Kosovar society, through awareness-raising on ***gender issues, developing gender studies, creating gender sensitive policies;*** through research; policy development, advocacy and lobbying.

KGSC is an organization focused on gender issues in Kosovo and the region. In almost 14 years of its existence, KGSC has contributed to gender mainstreaming and achieving gender equality in all spheres of life in Kosovo. KGSC has implemented over 50 projects in the field of women's rights and gender equality. Their expertise and experience in the areas of advocacy, monitoring and research, as well as awareness campaigns, provides an added value to the project activities. KGSC has so far been a pioneering organization opposing the discriminatory system in Kosovo, social norms and double standards, and has been very effective in monitoring public institutions in implementation of gender-relevant policies and laws.

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Phone number: +381 (0) 38 735 991
Email: info@kgscenter.net
Website: http://kgscenter.net/en/

CSGD – member of the Coalition
The Centre for Social Group Development (CSGD) is a non-governmental organization that defends and promotes rights of the ***LGBT community*** in Kosovo. The main focus of CSGD is on: (1) Empowerment of the LGBT community; (2) Advocacy and lobbying for human rights of members of the LGBT community; and (3) Raising the awareness of society about the issues facing members of the LGBT community.

Contact information
Phone number: 038 728 417
Email: info@csgd-kks.org
Website: http://csgd-ks.org/

CEL Kosova – member of the Coalition
The Centre for Equality and Freedom of members of the LGBT community in Kosovo (CEL) was established in July 2013, with the aim of empowering the ***LGBT community*** in Kosovo, preventing discrimination based on sexual orientation, raising public awareness of the rights of members of the LGBT community, and advocating for equal rights and non-discrimination against members of the LGBT community in Kosovo, in accordance with the Constitution and laws of the Republic of Kosovo. CEL also aims to strengthen the legal framework in the country affecting and impacting members of the LGBT community, as well as to increase the level of active participation of members of the LGBT community in Kosovo in relevant international and regional mechanisms and projects beneficial to community members and the society in general.

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YIHR KS – member of the Coalition
Youth Initiative for Human Rights (YIHR KS) is a non-governmental organization active in the protection and promotion of human rights, particularly the ***rights of young people.*** YIHR has (1) contributed to strengthening the rule of law through documentation, reporting and advocacy for implementation of legislation guaranteeing human rights for all; (2) promoted human rights through education, citizen activism, campaigns, local and regional networks, and increasing the level of critical thinking among young people; and (3) developed activities to strengthen the process of dealing with the past by creating new links between youngsters from different ethnic groups in Kosovo and the Western Balkans region.

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Phone number: +383 (0) 38 748 018
Email: ksoffice@yihr.org
Website: http://www.yihr-ks.org/

CLARD – member of the Coalition
The Centre for Legal Aid and Regional Development (CLARD) has an excellent track record of providing or providing ***legal aid*** and ***free of charge representation to courts*** on administrative, civil and criminal matters for vulnerable and marginalized groups. CLARD also has strong expertise in strategic litigation and research on legal issues affecting VMGs. Besides the headquarters in Prishtina, CLARD also has mobile teams working to identify cases in legal clinics located throughout Kosovo.

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Kosovo 2.0 – member of the Coalition
Glocal Kosovo is an independent media based on the foundation and approach of advocacy journalism. Kosovo 2.0 reports and explores the state of play of important political/social issues in Kosovo, but is also committed to the necessary changes and reforms. This includes activities and actions in the fields of gender equality, human rights, citizen participation and activism, greater access to information and improvement of inter-ethnic relations. Kosovo 2.0 runs a network of contributors and bloggers from all over Kosovo and the region, and is one of the few independent media sharing informed criticism and analysis.

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Website: https://kosovotwopointzero.com/

REFRENCES

- The Constitution of Kosovo
- Law No. 05/L-021 on the Protection from Discrimination
- Law No. 05/L-020 on Gender Equality
- Law No. 03/L-047 on the Protection and Promotion of the Rights of Communities and their Members in Kosovo
- Law No. 02/L-37 On The Use Languages
- Law No.04/L–032 on Pre-University Education in the Republic of Kosovo
- Law No.04/L-037 on Higher Education in the Republic Kosovo
- Administrative Instruction No. 19/2012 on Establishment and Enforcement of Teams for Prevention and Response toward Abandonment and Non-Enrolment in Compulsory Education.
- Manual for School Prevention and Response Teams towards Abandonment and Non-registration in Compulsory Education.
- Manual for Municipal Prevention and Response Teams towards Abandonment and Non-registration in Compulsory Education.
- Administrative Instruction (MEST) No. 09/2016 Application of Affirmative Measures and Quotes for Enrolment of Candidates from the Non-Majority Communities in the Public Institutions of Higher Education.
- The Law on Labour
- The Law on the Employment Agency of Kosovo
- The Law for Vocational Education and Training
- The Law on Safety and Health at Work
- The Law on Public Officials
- Law No. 04/L-011 for Organizing Trade Union in Kosovo
- Law No. 03/L-017 on Amendment and Supplementation of the Law on Labour Inspectorate No. 2002/9
- Administrative Instruction No.01-2011 for Imposing Fines on Employers for Violating Legal Provisions (not on internet)
- Administrative Instruction No.4-2011 for the Regulation of Procedures for the Establishment of Labour Relation in the Public Sector
- The Law on Citizenship of Kosovo
- Law No.04/L-003 on Civil Status
- Administrative Instruction (Mia) No. 12/2016 on Defining the Procedure for Digitalization of Scanned Basic Civil Status Registers
- Law on Civil Law against Defamation and Insult
- Administrative Instruction No. 10/2007 Teaching In the Choose Official Language

- Administrative Instruction No. 2007/01 Mps on Determining Administrative Sanctions for Violation Of The Law On Language Usr
- Administative Instruction No. 8/2005 on Descreption on Responsabilities of Human Rights
- Administrative Instruction No. 04/2007 for the Human Rights Units in the Kosovo Government
- Law No.03/L –182 on Protection against Domestic Violence
- Law No. 04/L-125 on Health
- Law No. 02/L-17 on Social and Family Services
- Law No.2004/32 Family Law of Kosovo
- AI (Health) Nr. 08/2017 Organizing, structure, determining the services and activities of Primary Health Care Institutions (PHC)
- Criminal code of Kosovo
- Law No. 03/L-154 on Property and Other Real Rights
- Law No. 03/L-139 on Expropriation of Immovable Property
- Law No. 04/L-136 on the Registration of a Pledge in the Registry of Movable Property
- Administrative Instruction No. 09/2011 for the Loss of the Rights on Property
- Administrative Instruction (Mia) No. 17/2015 on the General Registration Procedures of the Fact of Birth, Marriage and Death
- State Portal of Civil Registry in Kosovo https://www.rks-gov.net/EN/f306/citizen-services/documents

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